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CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

Kay Magdaberg
C/o Deirdre Woodrow
O'Gorman Architectural Services
4 Showgrounds view
Ennis
Co. Clare
V95 W27H

18th June 2025

Section 5 referral Reference R25-42 – Kay Magdaberg

Is the construction of a balcony & basement for covered storage at 7 Girroga Heights considered development and if so, is it exempted development?

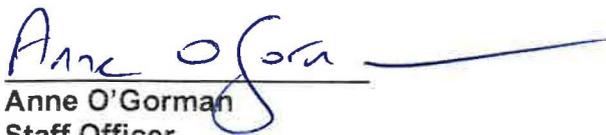
A Chara,

I refer to your application received on 22nd May 2025 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

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

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

Mise, le meas


Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

An Roinn Pleanála
An Stiúthóireacht 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



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:

85692

Reference Number:

R25-42

Date Referral Received:

22nd May 2025

Name of Applicant:

Kay Magdaberg

Location of works in question:

7 Girroga Heights, Gort Road, Ennis,
Co. Clare

Section 5 referral Reference R25-42 – Kay Magdaberg

is the construction of a balcony & basement for covered storage at 7 Girroga Heights considered development and if so, is it exempted development?

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Classes 1 and 2 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 has concluded:

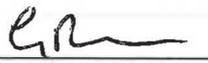
- (a) The alterations to the dwelling to create a basement level within the dwelling, an additional boiler house storage area and a raised balcony to the rear of the dwelling constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended;
- (c) The alterations to the dwelling, which comprise a basement level within the dwelling, an additional boiler house storage area and a raised balcony to the rear of the dwelling is not exempted development having regard to Section 4(1)(h) of the Planning and Development Act 2000 (as amended), the Conditions and Limitations (item no.'s 1(c) and 7) of Class 1 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended) and Article 9(i) and 9(vii)(b) of the Planning and Development Regulations 2001 (as amended).
- (d) Additionally, there are no noted provisions in the Planning and Development Regulations 2001 (as amended) which allow specifically for exempted development of a basement or of a balcony as their own individual entities. The development of the balcony or the

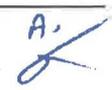
basement level are, therefore, not exempted by omission, under article 6(1) of the Planning and Development Regulations 2001 (as amended).

ORDER: Whereas by Chief Executive's Order No. HR 343 dated 19th May 2025, Gordon Daly, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Garreth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

NOW THEREFORE pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Garreth Ruane, Senior Executive Planner, hereby declare that the creation of a basement level extension, additional storage area and raised balcony at 7 Girroga Heights, Gort Road, Ennis, Co. Clare is considered development which is not exempted development.

Signed:



GARRETH RUANE
SENIOR EXECUTIVE PLANNER 

Date:

18th June 2025

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

Reference No.: R25-42



**Cornhairle Contae an Chláir
Clare County Council**

Section 5 referral Reference R25-42

Is the construction of a balcony & basement for covered storage at 7 Girroga Heights considered development and if so, is it exempted development?

AND WHEREAS, Kay Magdaberg 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 –

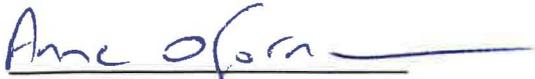
- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Classes 1 and 2 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended;
- (d) The works as indicated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

And whereas Clare County Council has concluded:

- (a) The alterations to the dwelling to create a basement level within the dwelling, an additional boiler house storage area and a raised balcony to the rear of the dwelling 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 alterations to the dwelling, which comprise a basement level within the dwelling, an additional boiler house storage area and a raised balcony to the rear of the dwelling is not exempted development having regard to Section 4(1)(h) of the Planning and Development Act 2000 (as amended), the Conditions and Limitations (item no.’s 1(c) and 7) of Class 1 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended) and Article 9(i) and 9(vii)(b) of the Planning and Development Regulations 2001 (as amended).
- (d) Additionally, there are no noted provisions in the Planning and Development Regulations 2001 (as amended) which allow specifically for exempted development of a basement or of a balcony as their own individual entities. The development of the balcony or the basement level are, therefore, not exempted by omission, under article 6(1) 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 creation of a basement level extension, additional storage area and raised balcony at 7 Girroga Heights, Gort Road, Ennis, Co. Clare constitutes development which is not exempted development as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

18th June 2025

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT

FILE REF:	R25-42
APPLICANT(S):	Kay Magdaberg C/O O’Gormam Architectural Services, 4 Showgrounds View, Ennis
REFERENCE:	Is the construction of a balcony and basement for covered storage at 7 Girroga Heights considered development, and if so, is it exempted development?
LOCATION:	7 Girroga Heights, Ennis, Co Clare, V95 PDX9
DUE DATE:	18 th June 2025

Site Location

The subject site is located in Ennis, at 7 Girroga Heights, on lands zoned ‘Existing Residential’. The site is located in a residential area to the north of Ennis town and to the north of Lough Girroga. The site comprises a detached residential dwelling located close to within the existing residential estate.

There are no protected structures or Architectural Conservation Areas in close proximity to the site. It is located approximately 15m north of Lough Girroga, a proposed Natural Heritage Area (pNHA) and SAC and approx. 430m south-east of the Lower River Shannon SAC. There is a recorded monument located to the north-west of the subject site (CL0333-038), which is sited to the rear of an existing dwelling in the estate.

Recent Planning History

- **Ennis UDC ref: 96/61 – Sean O’Eistin – Permission to construct a dwellinghouse at 7A Giroga Heights, Ashfield Park, Ennis. Granted on 24th April 1996**

Background to Referral

This referral under Section 5(1) of the Planning and Development Act 2000 (as amended) has been made by O’Gorman Architectural Services on behalf of Kay Magdaberg.

The applicant is seeking a Section 5 Declaration as to the following:

Is the construction of a balcony and basement for covered storage at 7 Girroga Heights considered development, and if so, is it exempted development?

The applicant has stated that the works have been carried out and have provided detailed descriptions of the works. They have advised that the works were carried out in circa 1996/1997. These works comprised the construction of a basement, which was facilitated by the topography of the site. It is noted that this basement is used for storage purposes only and the images provided indicate this. The balcony in question was stated to be constructed to provide a level outdoor area at the rear of the site. It is also included that there is a covered storage area constructed for the boiler associated with the house, which is located under the patio area. Drawings and photographs have been included to demonstrate the works as completed.

It is indicated that the basement area is approximately 41sqm in area, while the covered storage area is approximately 8.25sqm and the balcony area is approximately 19sqm.

As constructed Site Layout Plan, Floor Plans and Elevations have been furnished to the Planning Authority.

Statutory Provisions

Planning and Development Act, 2000 (as amended)

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

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

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

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

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

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

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 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.

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

Development within the curtilage of a house

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.

Conditions and Limitations:

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 above ground 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.

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

a) The provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure.

Conditions and Limitations:

The capacity of an oil storage tank shall not exceed 3,500 litres.

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 applicants are seeking a Section 5 Declaration as to whether the construction of a balcony and basement for covered storage at 7 Girroga Heights is considered development, and if so, is it exempted development?

Planning and Development Act, 2000 (as amended)

In accordance with Sections 2 and 3(1) of the Planning and Development Act 2000 (as amended) (hereafter referred to as 'the Act'), the items listed above do fall under the definition of 'works' and are, resultingly, characterised as 'development'.

S.4(1)(h) of the Act states that development consisting of works for the alteration of any structure, which affects only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures would be exempted development.

The works carried out have resulted in a split-level dwelling, which is single storey to the front of the site and two storey to the rear, where the basement level is used for storage but includes windows and a door at lower ground level in the garden, with a large timber façade which is approximately 11m in length and a storey in height, resulting in a raised balcony with additional storage for a boiler underneath. The resulting development has a materially different external rear façade to the development granted permission under ref: 96/61, and therefore, is not exempted under this section of the Act.

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

Development within the curtilage of a house

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 applicants have constructed a rear basement extension measuring at approximately 41sqm, additional rear storage area, measuring approximately 8.25sqm and a raised balcony on the roof of the storage area, measuring approximately 19sqm. The total rear extensions are calculated as approximately 49.25sqm of below ground extensions and 19sqm of balcony (68.25sqm total overall).

There are a number of conditions and limitations to this exemption, which are assessed as follows:

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 not previously been extended, however, the total extensions to the rear of the dwelling do exceed 40sqm.

(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

N/A

(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 house is detached; however, the extension does not relate to internal extensions above ground level, only relating to the balcony area.

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.

N/A.

(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.

N/A.

(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.

N/A.

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

N/A.

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.

The below ground floor/basement extension does 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.

The below ground floor/basement extension does not exceed the height of the rear wall 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.

The below ground floor/basement extension does not exceed the height of the rear wall of the house.

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 extension has not reduced the private open space to the rear of the house below 25sqm.

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

All windows are more than 1m from the boundary they face.

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

N/A.

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

N/A.

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

The extension of the dwelling includes a raised balcony area.

The development is not considered to be exempted under the above Schedule 2, Part 1, Class 1, in respect of the basement extension which exceeds 40sqm and the boiler house storage which includes an extended raised balcony area.

Separately, it is noted that there are no provisions in the Planning and Development Regulations 2001 (as amended) which allow for exempted development of a basement or of a balcony as their own individual entities. The development of the balcony is not exempted, while the boiler house storage beneath could be considered exempted.

the extension of the balcony at first floor level, which comprised the conversion of part of the roof to a balcony is not exempted under Part 7 of the Conditions and Limitations set out under Schedule 2, Part 1, Class 1.

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

a) The provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure.

The subject works include a 19sqm storage area attached to the dwelling, which is referenced as a storage area for the dwelling's boiler.

Conditions and Limitations:

The capacity of an oil storage tank shall not exceed 3,500 litres.

This does not relate to an oil storage tank and, therefore, the boiler specific storage is considered exempted.

Article 9 of the Planning and Development Regulations 2001, as amended outlines restrictions on exempted development, and these are assessed below:

(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 existing dwelling was granted permission in 1996 under application ref 96/61. Condition no. 7 of this permission stated "no excavation or other works on the estate road shall take place without prior written consent of the Council". While it is noted the works were likely carried out at the same time as the building of the dwelling itself, noting the dates for construction provided, meaning cutting of lands at a later date was likely not required, additional cutting of lands beyond what was granted permission was likely required to accommodate the basement. Therefore, these works have contravened Condition no. 7 of the permission granted for the dwelling.

- (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,*

Not applicable – the related development is located within the curtilage of a dwelling and no alterations to the parking area or footpath are noted.

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

Not applicable – the related development is located within the curtilage of a dwelling and no alterations to the parking area, road or footpath are noted to have taken place.

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

The site is located on zoned land within a settlement and in the curtilage of an existing residential estate and the works relate to residential development to an existing dwelling. The development does not have a negative impact on the visual amenities of the area.

- (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 in this instance.

- (vi) *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 in this instance

(vii)

- a. *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,*

This is not applicable in this instance.

- b. *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,*

This is undetermined given the limited detail included with this application. The proximity of the site to the Ballyallia Lake SAC is noted, however, the time in which the works were noted, along with the limited detail pertaining to how the construction would have been managed, etc. mean the Planning Authority cannot fully conclude this screening. However, further information is not recommended to be sought as it is considered the subject works are not exempted. Any future application to retain the works would require details to be submitted which addresses the gaps in the screening.

- c. *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."*

There is a proposed Natural Heritage Area adjacent to the site. As noted above, it is unclear how construction took place and whether it had any impact on the pNHA.

- (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,*

This is not applicable in this instance.

- (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,*

This is 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,*

This is not applicable in this instance.

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

This is 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.*

This is not applicable in this instance.

Recommendation

The following questions have been referred to the Planning Authority:

Is the construction of a balcony and basement for covered storage at 7 Girroga Heights considered 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) Classes 1 and 2 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:

- (a) The alterations to the dwelling to create a basement level within the dwelling, an additional boiler house storage area and a raised balcony to the rear of the dwelling 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 alterations to the dwelling, which comprise a basement level within the dwelling, an additional boiler house storage area and a raised balcony to the rear of the dwelling is not exempted development having regard to Section 4(1)(h) of the Planning and Development Act 2000 (as amended), the Conditions and Limitations (item

no.'s 1(c) and 7) of Class 1 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended) and Article 9(i) and 9(vii)(b) of the Planning and Development Regulations 2001 (as amended).

(d) Additionally, there are no noted provisions in the Planning and Development Regulations 2001 (as amended) which allow specifically for exempted development of a basement or of a balcony as their own individual entities. The development of the balcony or the basement level are, therefore, not exempted by omission, under article 6(1) of the Planning and Development Regulations 2001 (as amended).

~~(e) The works carried out are~~

Now therefore Clare County Council (Planning Authority), hereby decides that:

1. The works as outlined in this referral relating to the creation of a basement level extension, additional storage area and raised balcony, ~~are~~ not exempted development.

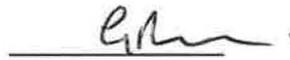
constitute development which is



Áine Bourke

Executive Planner

Date: 17/06/2025



Gareth Ruane

Senior Executive Planner

Date: 17/06/25

Clare County Council
Screening for Appropriate Assessment & Determination

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

Table 1: Project Details

Planning File Reference	R25-42
Applicant Name	Kay Magdaberg
Development Location	at 7 Girroga Heights, Ennis, Co. Clare
Application accompanied by an EIS	No
Application accompanied by an NIS	No

Description of the project (To include a site location map):

The construction of a basement for covered storage and a terraced/ balcony area to the rear of an existing dwelling house in Girroga Heights, to the north of Ennis town. The subject site is outlined in red on the map below.



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

This section identifies the European Sites within the likely zone of impact of the plan or project. For plans an initial 15km zone of influence (NPWS-DAHG)¹ is recommended. For projects, the distance could be much less than 15km, and in some cases less than 100m, but this must be evaluated on a case-by-case basis.

Having regard to the nature and scale of the proposed development, the established use of the site, the location on zoned land within an existing settlement, I am satisfied that the likely zone of impact of the proposed development is no greater than 500m.

Table 2 (a): European Sites within 500m of Applicant Site

Ballyallia Lake SAC (000014) – 15m
Lower River Shannon SAC (02165) – 430m.

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

Appropriate Assessment Screening Determination

Planning File Reference	R25-42
Proposed Development	Is the construction of a balcony and basement for covered storage at 7 Girroga Heights considered development, and if so, is it exempted development?
Development Location	7 Girroga Heights, Ennis, Co. Clare
European sites within impact zone	Ballyallia Lake SAC (15m) Lower River Shannon SAC (430m)

Description of the project:

The construction of a basement for covered storage and a terraced/ balcony area to the rear of an existing dwelling house in Girroga Heights, to the north of Ennis town.

Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site

Ballyallia Lake SAC:

Annex I habitats:

Natural eutrophic lakes with *Magnopotamion* or *Hydrocharition*-type vegetation [3150]

Lower River Shannon SAC

Annex I habitats:

- Sandbanks which are slightly covered by sea water all the time [1110]
- Estuaries [1130]
- Mudflats and sandflats not covered by seawater at low tide [1140]
- *Coastal lagoons [1150]
- Large shallow inlets and bays [1160]
- Reefs [1170]
- Perennial vegetation of stony banks [1220]
- Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]
- *Salicornia* and other annuals colonizing mud and sand [1310]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation [3260]
- *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) [6410]
- *Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]

Annex II species:

- Freshwater Pearl Mussel *Margaritifera margaritifera* [1029]
- Sea Lamprey *Petromyzon marinus* [1095]
- Brook Lamprey *Lampetra planeri* [1096]
- River Lamprey *Lampetra fluviatilis* [1099]
- Atlantic Salmon *Salmo salar* (only in fresh water) [1106]
- Bottlenose Dolphin *Tursiops truncatus* [1349]
- Otter *Lutra lutra* [1355]

Describe how the project or plan (alone or in combination) is likely to affect the European site(s).	
Insufficient detail is provided to determine how this development may have impacted the European Site and further detail addressing this should be provided in any future application to retain such development.	
If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?	
The proposed development relates to works which are not exempted and therefore do require planning permission. While further information is required to determine whether there would be any potential negative impacts on the European Site as a result of this development, further information is not being sought as the works are noted to not be exempted. Therefore the screening cannot be concluded and determined at this time.	
Documentation reviewed for making this statement	
<ul style="list-style-type: none"> - County Development Plan (including Flood Maps, SEA & AA) - NPWS website - Documents received as part of the planning application 	
Conclusion of assessment (a, b, c or d)	
(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s)²	
(b) There is no potential for significant effects to European Sites³	Unknown at this time
(c) The potential for significant effects to European Site(s) cannot be ruled out⁴	Unknown at this time; screening cannot be completed.
(d) Significant effects to European sites are certain or likely or where potential for significant effects to European sites remains following receipt of Further Information requested under S177U of the Planning and Development (Amendment) Act 2010⁵	

² Appropriate Assessment is not required and therefore Planning permission may be granted at this stage subject to all other planning considerations. However, no material changes may be made to the proposed development after this conclusion has been reached as this would invalidate the findings of the screening exercise.

⁴ In accordance with S177U of the Planning and Development (Amendment) Act 2010, the applicant should be requested to submit an 'Appropriate Assessment Screening Matrix' completed by a suitably qualified ecologist, by way of Further Information. Following receipt of this information a new Appropriate Screening Report should be completed. The requested 'Appropriate Assessment Screening Matrix' should be in accordance with the template outlined in Annex 2, Figure 1 of the EU (2001) guidance document 'Assessment of plans and projects significantly affecting European Sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. This guidance document is available from http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf

Alternatively, where other planning concerns arise the proposal could be refused planning permission.

⁵ The proposed development must either by refused planning permission or alternatively an 'Appropriate Assessment' (AA) should be carried out by the Planning Authority. In order to facilitate the preparation of an AA the applicant should be requested to submit a Natura Impact Statement (NIS) in accordance with S177 (T) of the Planning and Development (Amendment) Act 2010. However, in the case of an application to retain unauthorised development of land and where the authority decides that an 'appropriate assessment' should have been carried out prior to the commencement of development, the application is required to be invalidated by the Planning Authority

Completed By	Áine Bourke
Date	16/06/2025

as per S34 (12) of the Planning and Development (Amendment) Act 2010 and accordingly an NIS should not be requested in such instances.



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Kay Magdaberg
C/o Deirdre Woodrow
O'Gorman Architectural Services
4 Showgrounds view
Ennis
Co. Clare
V95 W27H

23/05/2025

Section 5 referral Reference R25-42 – Kay Magdaberg

Is the construction of a balcony & basement for covered storage at 7 Girroga Heights considered development and if so, is it exempted development?

A Chara,

I refer to your application received on 22nd May 2025 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 Stiúthóireacht 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



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

COMHAIRLE
CONTAE

22/05/2025 09:13:57

Receipt No. L1CASH/1513350/379227
***** REPRINT *****

KAY MAGDABERG
C/O DEIRDRE WOODROW
4 SHOWGROUNDS VIEW
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 - Noelette Barry
From : MAIN CASH OFFICE LODGEMENT AF
Vat reg No.0033043E

COMHAIRLE
CONTAE

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) 682161
Fax No. (065) 6892071
Email: planoff@clarecoco.ie
Website: www.clarecoco.ie

**CLARE
COUNTY COUNCIL**

22 MAY 2025

Received
Planning Section



R25-42

**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	<p>KAY MAGDABERG</p> <hr/> <p>7 GIRROGA HEIGHTS</p> <hr/> <p>GORT ROAD, ENNIS</p> <hr/> <p>V95 PDX9</p> <hr/>
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	<p>DEIRDRE WOODROW</p> <hr/> <p>O'GORMAN ARCHITECTURAL SERVICES</p> <hr/> <p>4 SHOWGROUNDS VIEW</p> <hr/> <p>ENNIS, CO. CLARE</p> <hr/> <p>V95 W27H</p> <hr/>

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 BASEMENT, ^{BALCONY & COVERED STORAGE} AT
7 GIRROGA HEIGHTS CONSIDERED DEVELOPMENT
& IF SO IS IT EXEMPTED DEVELOPMENT

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

DUE TO THE TOPOGRAPHY OF THE SITE,
THE APPLICANT CONSTRUCTED A BASEMENT,
WHICH IS CURRENTLY USED FOR STORAGE
PURPOSES ONLY, AS OPPOSED TO
HAVING TO FILL THE VOID.

THE BALCONY WAS CONSTRUCTED TO
PROVIDE LEVEL OUTDOOR AREA AT
REAR & BOILER IS FITTED IN COVERED
STORAGE UNDER PATIO

(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)

O.S. MAP SHEET NO. 4264-13 (SCALE 1:1000)
PLANS & ELEVATIONS (3 NO. DRGS)
PHOTOGRAPHS (5 NO.)

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	7 GIRROGA HEIGHTS GORT ROAD ENNIS V95 PDX9
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	NO
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	OWNER
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question: <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	NIA
(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? <i>If so please supply details:</i>	NO
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	ENNIS UDC REF. YES - P96/61
(h) Date on which 'works' in question were completed/are likely to take place:	1996 / 1997

SIGNED: Deirdre Woodrow

DATE: 21/05/2025

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:	.....	

O'GORMAN ARCHITECTURAL SERVICES

4 Showgrounds View, Ennis, Co. Clare

Mobile: 085 120 7565

E-mail: woodrowdeirdre@yahoo.ie

22 May 2025

Planning Department
Clare County Council
New Road
Ennis
Co. Clare
V95 DXP2



A Chara

Re: Request for a Declaration on Development & Exempted Development (Section 5 of the Planning & Development Act 2000 (as amended))

Applicant: Kay Magdaberg

Address: 7 Girroga Heights, Gort Road, Ennis, Co. Clare V95 PDX9

Development/Exempted Development: Basement, Balcony & Covered Storage to Rear of Dwelling

Enclosed please find 2 no. copies of the following documentation in respect of the above request;

- Completed Application Form
- Site Location Map, Scale 1:1000, site outlined in RED
- Ground & Basement Floor Plans, Rear Elevation, Scale 1:100
- Photographs
- Fee €80.00

Is mise le meas

A handwritten signature in blue ink that reads "Deirdre Woodrow".

Deirdre Woodrow

I.Eng., B. Sc. (Hon.s), M.I.E.I.

cc Kay Magdaberg, 7 Girroga Heights, Gort Road, Ennis, Co. Clare V95 PDX9

Enc.

Planning Pack Map



Tailte Éireann



CENTRE COORDINATES:
ITM 534311,679793

PUBLISHED: 14/04/2025
ORDER NO.: 50460747_1

MAP SERIES: 1:1,000
1:2,500
MAP SHEETS: 4264-13
4264-B

COMPILED AND PUBLISHED BY:
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Dublin 8,
Ireland.
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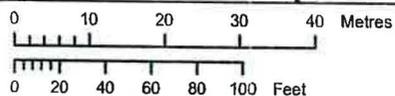
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B a i l e U i
C h o m h r a i
B a l l y c o r e y



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LEGEND:
To view the legend visit www.tailte.ie and search for 'Large Scale Legend'



Photographs of Existing Dwelling House (part)

At

7 Girroga Heights, Gort Road, Ennis, Co. Clare V95 PDX9



Front Elevation



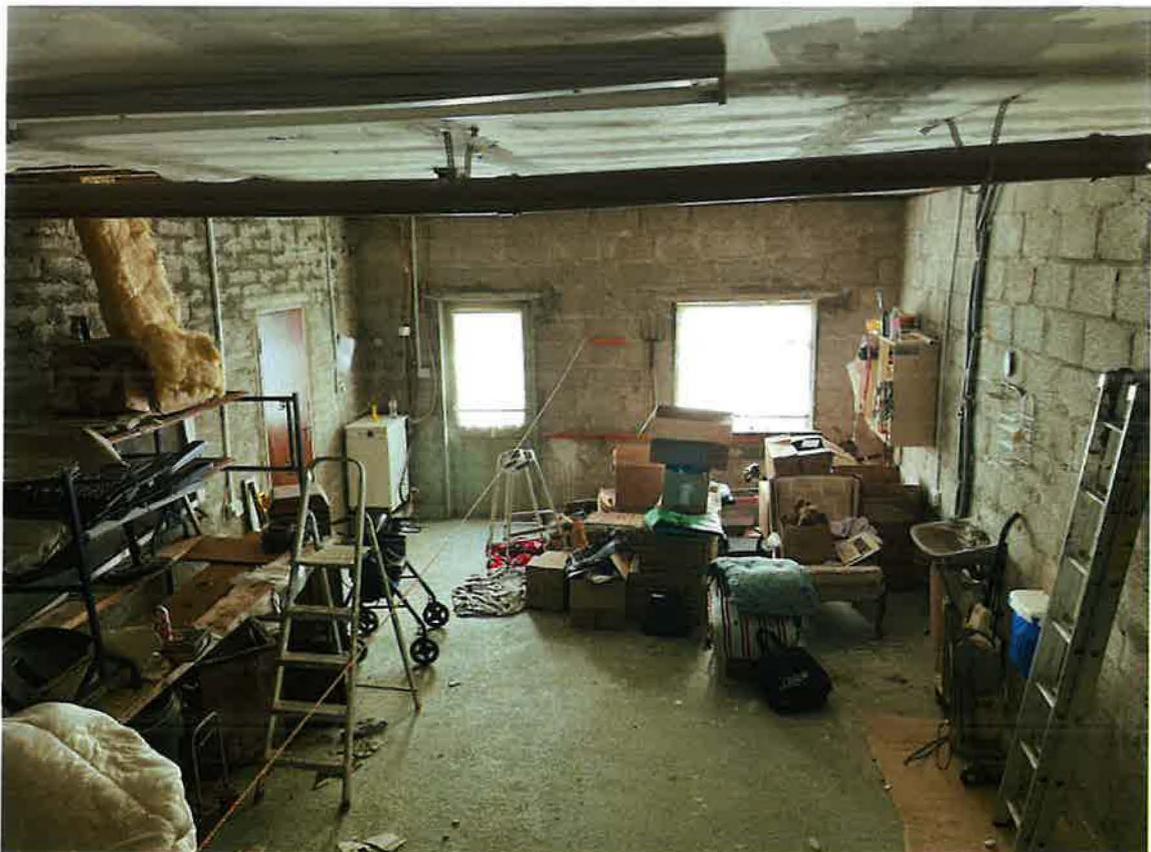
Rear Elevation, Covered Storage & Balcony



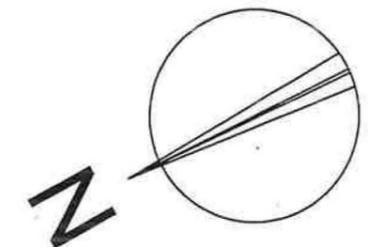
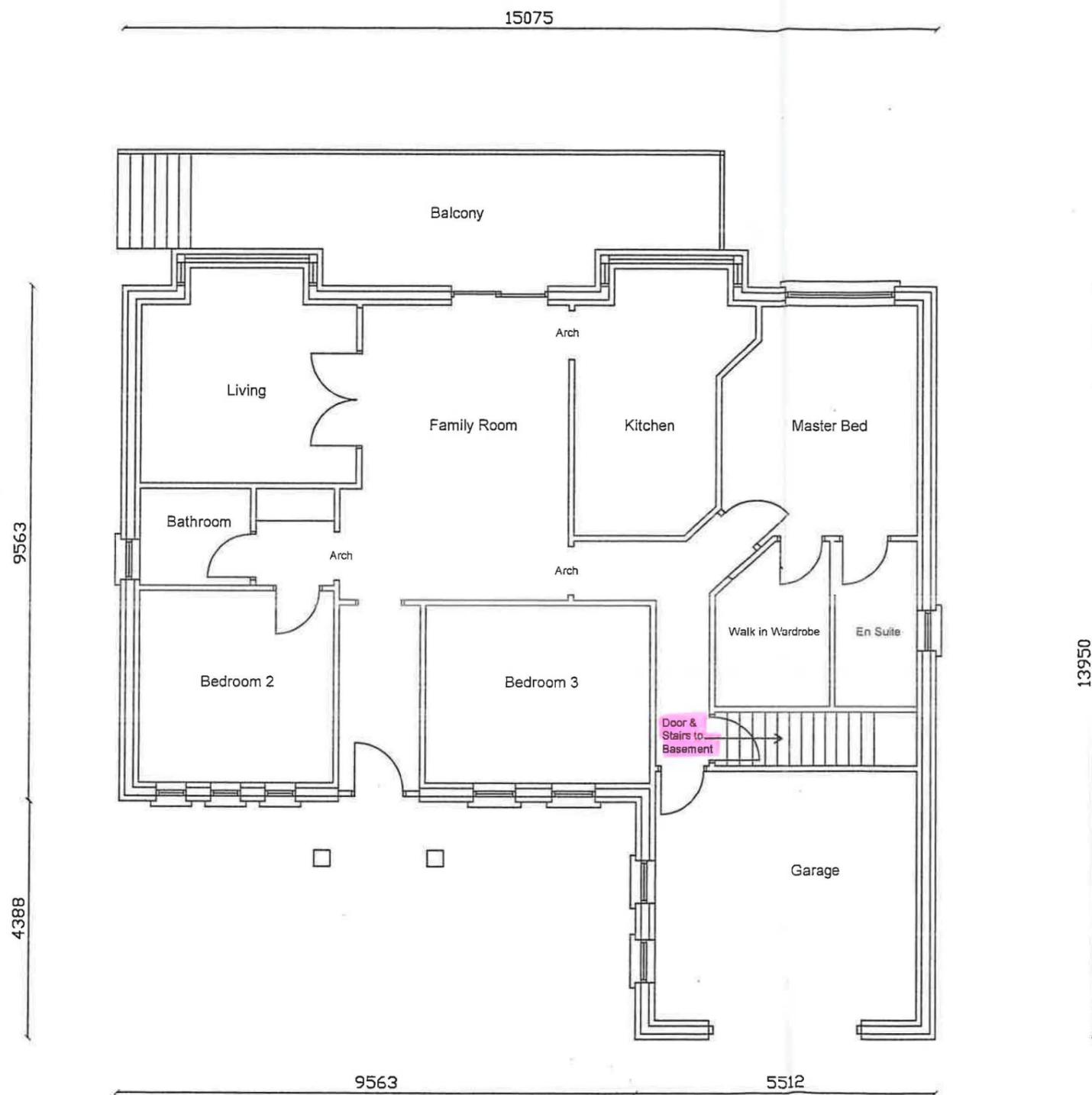
Rear Elevation – basement entrance



Side Elevation



Internal Basement



Existing Ground Floor Plan

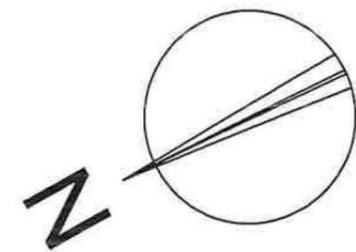
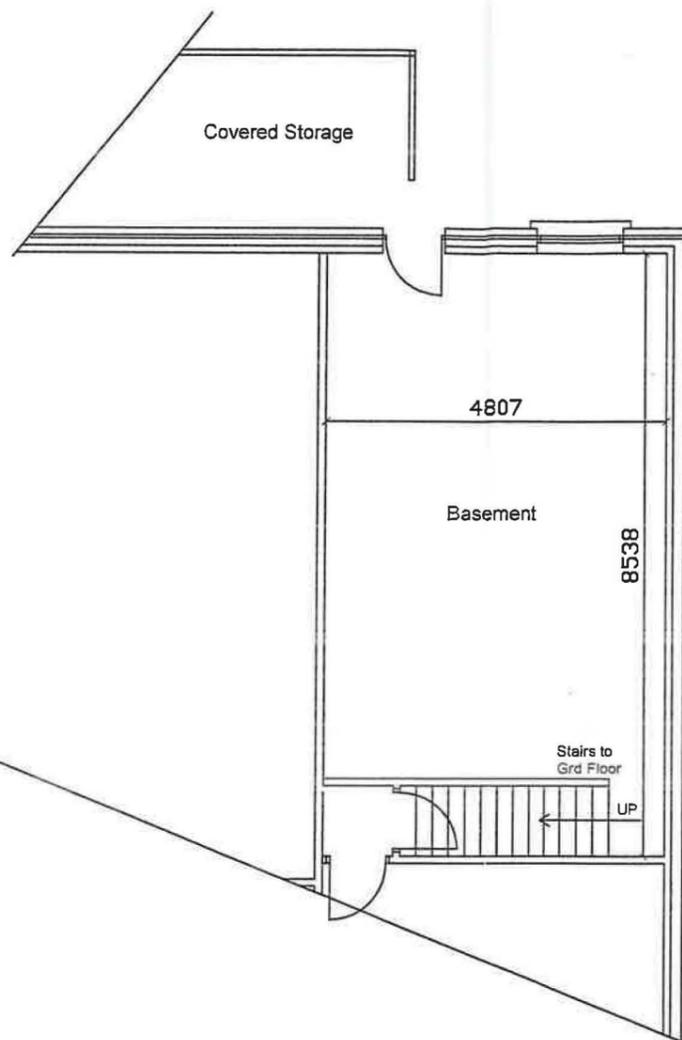
Plan Showing Existing Dwelling House at 7 Girroga Heights, Gort Road, Ennis V95 PDX9, the property of Kay Magdaberg

Scale 1 / 100

Date May 2025

Drawn By:
D. Woodrow, I.Eng., B.Sc.(Hon.s), M.I.E.I.

O'Gorman Architectural Services,
4 Showgrounds View, Ennis, Co. Clare. Tel: 085 120 7565



Existing Basement Plan

Plan Showing Existing Dwelling House at 7 Girroga Heights, Gort Road, Ennis V95 PDX9, the property of Kay Magdaberg		
Scale 1 / 100	Date May 2025	Drawn By: D. Woodrow, I.Eng., B.Sc.(Hon.s), M.I.E.I.
		O'Gorman Architectural Services, 4 Showgrounds View, Ennis, Co. Clare. Tel: 085 120 7565



Existing Rear Elevation

Plan Showing Existing Dwelling House at 7 Girroga Heights, Gort Road, Ennis V95 PDX9, the property of Kay Magdaberg

Scale 1 / 100

Date May 2025

Drawn By:
D. Woodrow, I.Eng., B.Sc.(Hon.s), M.I.E.I.

O'Gorman Architectural Services,
4 Showgrounds View, Ennis, Co. Clare. Tel: 085 120 7565