

Surveyed 2000
 Revised 2009
 Levelled

Rural PLACE Map



Appendix 3

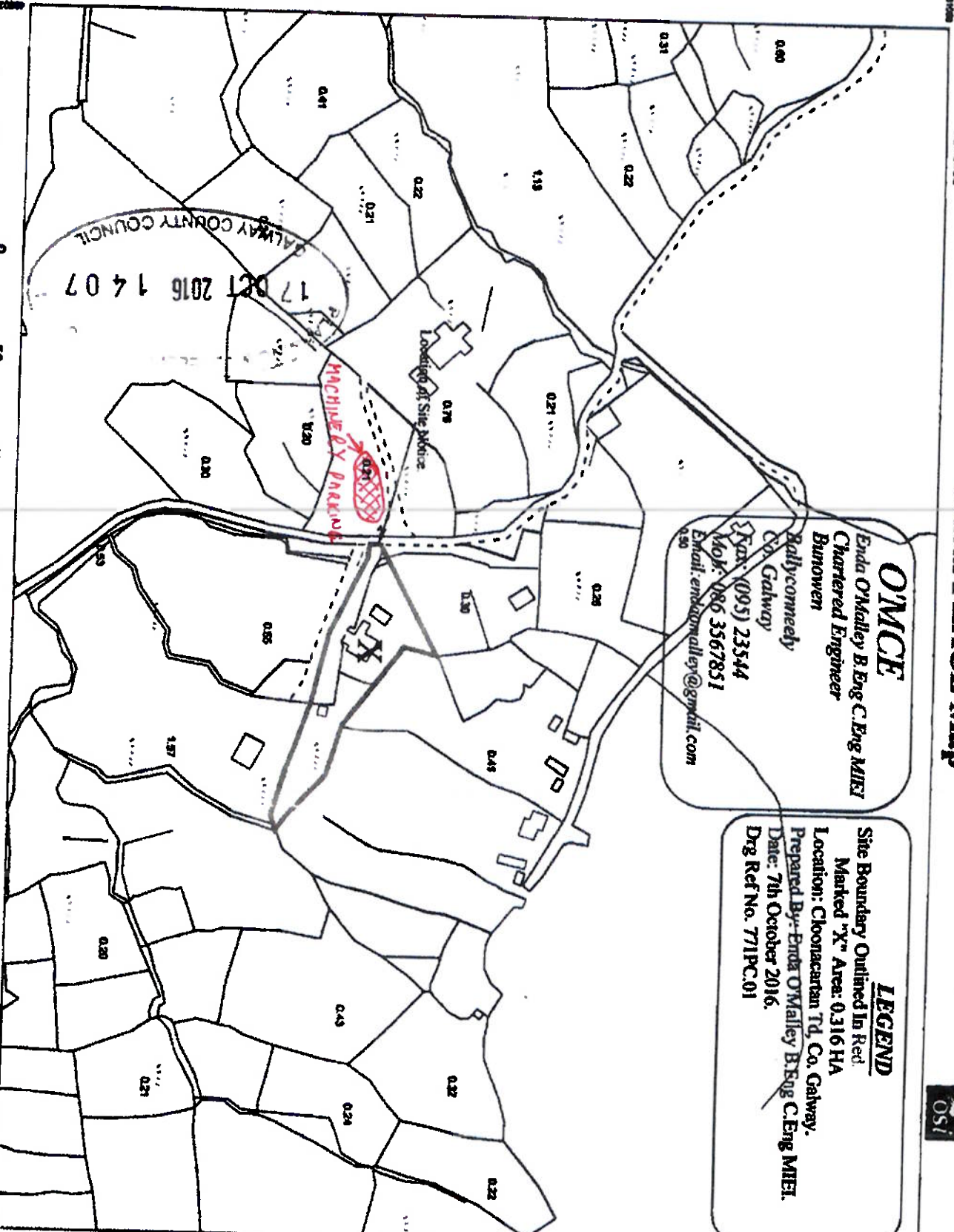
O'MCE

Enda O'Malley B.Eng C.Eng MIEI
 Chartered Engineer
 Bunowen
 Rathconmeeley
 Co. Galway

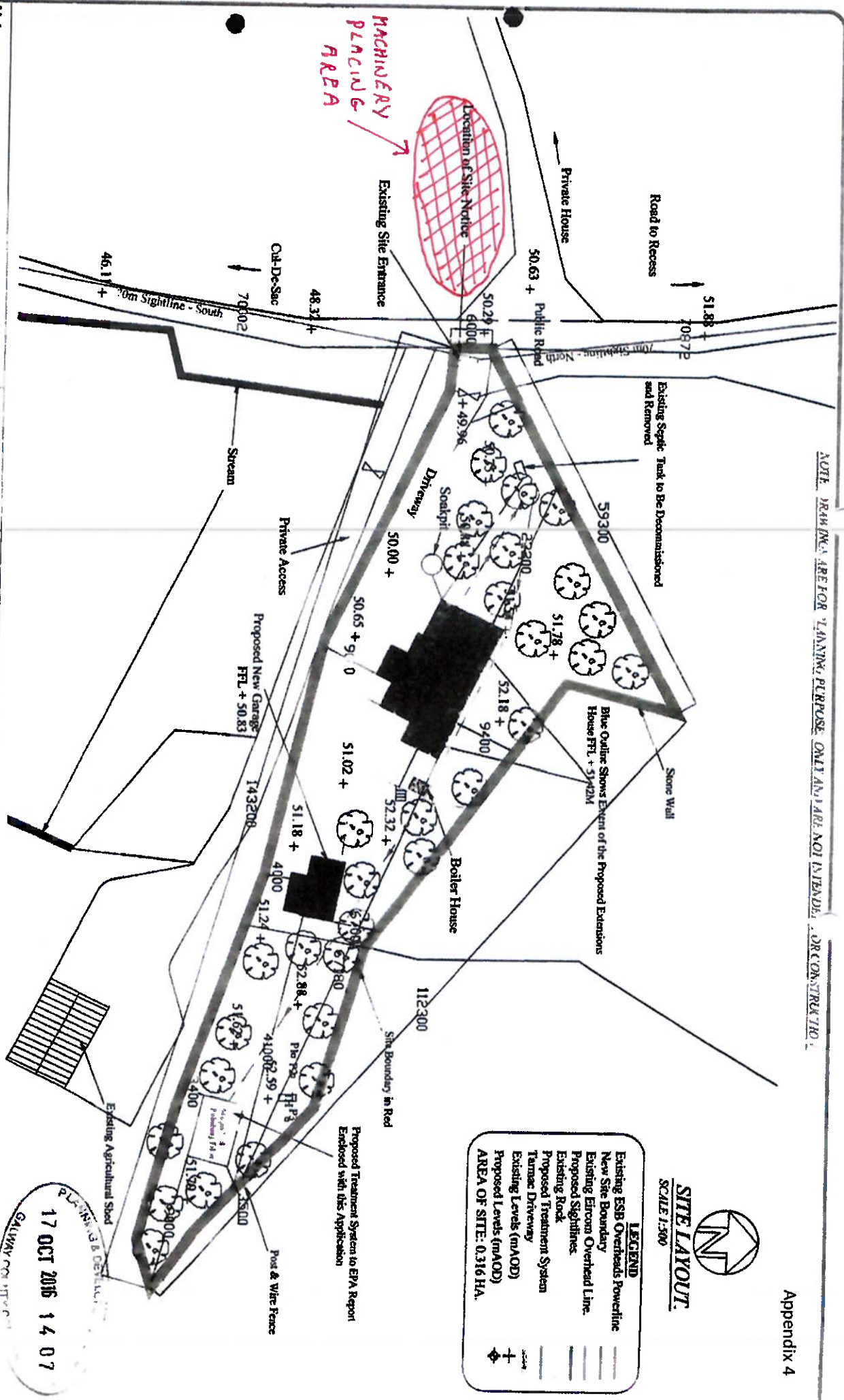
TEL: (095) 23544
 Mob: 086 3567851
 Email: endaomalley@gmail.com

LEGEND

Site Boundary Outlined In Red
 Marked 'X' Area: 0.316 HA
 Location: Cloonacaran Td, Co. Galway.
 Prepared By: Enda O'Malley B.Eng C.Eng MIEI.
 Date: 7th October 2016.
 Drg Ref No. 771PC.01



NOTE: DRAWINGS ARE FOR PLANNING PURPOSE ONLY AND ARE NOT INTENDED FOR CONSTRUCTION.



LEGEND

- Existing ESB Overheads Powerline
- New Site Boundary
- Existing ESB Overhead Line
- Proposed Sightlines
- Existing Rock
- Proposed Treatment System
- Tarmac Driveway
- Existing Levels (mAOD)
- Proposed Levels (mAOD)
- AREA OF SITE: 0.316 HA.

SITE LAYOUT.
SCALE 1:500

Notes:

This drawing and any design hereon is copyright and must not be reproduced without written consent. DO NOT SCALE from drawing use figured dimensions only. All dimensions to be checked on site and any discrepancies reported immediately. the engineer before work proceeds. All Dimensions in mm unless stated.

O'MCE
Enslin O'Malley & Eng C. Eng MBE
Brimmer
Ballyvaughan
Co. Galway
Tel: 095 23614
Mob: 086 3567851
Email: endomalley@o.com

Revision	Date	Description
1		

PROJECT TITLE
Proposed Alterations to Existing Dwelling
House at Derryclare Cottage, Recess,
Co. Galway.

CLIENTS
Mr. Patrick Cleary.

DATE
16th February 2016

SCALE
1:500 (G.A.)

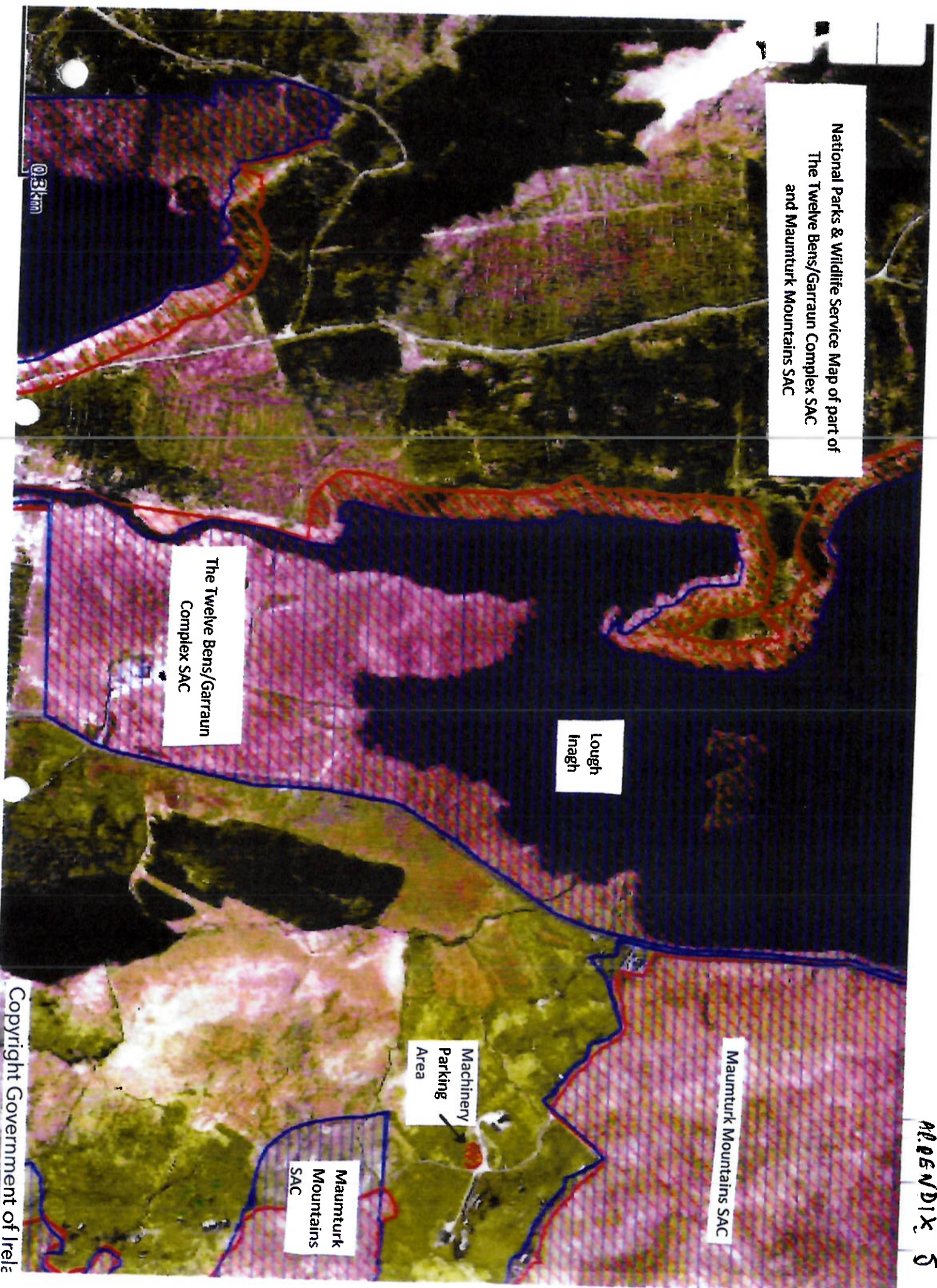
PROJECT NO.
771

DRAWING NO.
PP-15

REVISION NO.
R6

17 OCT 2016 14 07
PLANNING & DESIGN
GALWAY CITY OFFICE

National Parks & Wildlife Service Map of part of
The Twelve Bens/Garraun Complex SAC
and Maumturk Mountains SAC



Áras an Chontae,
Cnoc na Radharc, Gaillimh.
H91 H6KX.

Áras an Chontae,
Prospect Hill, Galway.
H91 H6KX.

Fón/Phone: (091) 509 000
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www.galway.ie

@GalwayCoCo
GalwayCounty

Our Ref: ED 22/32



Comhairle Chontae na Gaillimhe
Galway County Council

Patrick Cleary,
Derryclare Cottage,
Cloonnacartan,
Recess,
Co. Galway
H91 YP6X

ATTACHMENT 2

16th June, 2022

Seirbhísí Corparáideacha
Corporate Services
(091) 509 225
corpserv@galwaycoco.ie

Tithíocht
Housing
(091) 509 300
housing@galwaycoco.ie

Timpeallacht & Tréidliacht
Environment & Veterinary
(091) 509 510
environment@galwaycoco.ie

Bóithre, Iompar, Cúrsaí Mara
& Seirbhísí Ginearálta
Roads, Transportation, Marine
& General Services
(091) 509 309
roads@galwaycoco.ie

Acmhainn: Daonna
Human Resources
(091) 509 303
hr@galwaycoco.ie

Motarchain
Motor Taxation
(091) 509 099
motortax@galwaycoco.ie

Clár na dToghthóirí
Register of Electors
(091) 509 310
electors@galwaycoco.ie

Seirbhísí Uisce
Water Services
(091) 509 505
water@galwaycoco.ie

Pobal & Foirtear
Community & Enterprise
(091) 509 521
community@galwaycoco.ie

Pleanál
Planning
(091) 509 308
planning@galwaycoco.ie

Leabharlann
Library
(091) 562 471
info@galwaylibrary.ie

**RE: Declaration of Exempted Development under section 5 of the
Planning & Development Act 2000 –
ED 22/32**

Description – *Placing on land of construction machinery - Cloonnacartan, Recess*

DECISION – EXEMPTED DEVELOPMENT

A Chara,

I refer to the above application which was received by this office on the 18th May, 2022.


The Planning Authority, in considering this Section 5 application, had regard particularly to

- (a) The definition of "works" set out in Section 2 of the Planning and Development Act 2000 (as amended).
- (b) The definition of "development" set out in Section 3 of said Planning and Development Act.
- (c) Section (3) of said Planning and Development Act.
- (d) Section 4 (1) (h) & (4) of said Planning and Development Acts.
- (e) Article 6(1) of said Planning and Development Regulations.
- (f) Article 9(1)(a) subsections (i), (ii), (iii), (vi), (vi), (viiB) & (viiC) of said Planning and Development Regulations.
- (g) 'Class 16' of Schedule 2 Part 1 of the 2001 Planning and Development Regulations.
- (h) 'Class 18' of Schedule 2 Part 1 of the 2001 Planning and Development Regulations
- (i) Documents submitted from the referrer in this Section 5 application.

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

The placing on land of construction machinery at Cloonnacartan, Recess, County Galway is development and is **exempted development** only where it meets what is described under 'Class 16', with the associated Conditions and Limitations, of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended)

Mise le meas


Robert Lydon
Planning & Sustainable Development Unit

Foirm Ghearáin Forbartha



Development Complaint Form

Comhairle Chontae na Gaillimhe
Galway County Council

Tá an fhoirm seo le fáil i gcló mór chomh maith

This form is also available in large print

Tá míle fáilte an fhoirm seo a líonadh i nGaeilge

1. Láthair na Forbartha	1. Location of Development	Cloonnacartan, Recess
2. Nádhúr an Ghearáin	2. Nature of Complaint	Placing of machinery on commonage comprised in Folio GY47628 being a material change of use of land as detailed in the attached letter dated 12 July 2021.
3. Ainm Úinéir na Talún/Réalóir	3. Name of Landowner/Developer:	David Burke

4. Sonraí an Ghearáin		4. Complainant Details
Ainm	Name	Patrick Cleary
Seoladh	Address	Derryclare Cottage Cloonnacartan Recess
Cód Poist	Postcode	H91YP6X
Teileafón	Telephone	086 8233797
Facs	Fax	
Ríomhphost	Email	clearyp9@gmail.com

Sínithe	Signature	<i>Patrick Cleary</i>
Dáta	Date	12 July 2021

An mian leat an t-eolas a choimeád faoi rún?	Do you wish this information to be treated as confidential?	Ba Mhaith/Yes <input type="checkbox"/> Níor Mhaith/No <input checked="" type="checkbox"/>
--	---	--

Ba cheart go mbeadh léarscáil láthair suímh nó sceitse ag taispeáint an láthair ceangailte le seo.	A site location map or sketch identifying the location should be attached
--	---

Úsáid oifige amháin	For office use only
Dáta glactha	Date received
Uimh. gearáin	Complaint No.
Dáta admháil	Acknowledgement Date

Seol an fhoirm ar ais chuig: An tAonad Pleanála & Forbartha nmharthana Comhairle Contae na Gaillimhe Áras an Chontae Cnoc na Radharc Gaillimh	Return to: Planning & Sustainable Development Unit Galway County Council Áras an Chontae Prospect Hill Galway	Tel. (091) 509308 Fax (091) 509199 planning@galwaycoco.ie www.gaillimh.ie www.galway.ie
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Derryclare Cottage,
Cloonnacartan,
Recess,
Co. Galway.

12 July 2021

Planning and Sustainable Development Unit,
Galway County Council,
Áras an Chontae,
Prospect Hill,
Galway.
H91 H6KX

Re: Representation pursuant to section 152(1) of the Planning and Development Act 2000

Dear Sir/Madam,

I wish to make a representation pursuant to section 152(1) of the Planning and Development Act 2000 regarding the placing of machinery on land comprised in Folio GY47628 which I believe is unauthorised development.

I am the owner of Derryclare Cottage (H91YP6X) which property is separated from the land in question by a public road.

I attach a site map of the land in question (Appendix 1). The land on which the machinery is placed is marked 'X'. I also attach a Google Map (Appendix 2) on which I have marked the area with an 'X' where the machinery is parked and 'Y' my sunroom window. I attach a photograph of the visual aspect of this open area from my sunroom window (Appendix 3).

When I first took an interest in the cottage I was concerned about the sensitive visual amenity area directly across the public road from the cottage. It is an elevated prominent open space and I enquired of the auctioneer by email on 11 September 2013 as to who owned the open area land outside the cottage gates. She replied that she believed it to be commonage. My understanding of commonage is that it is land in common ownership for the grazing of sheep or cows.

By virtue of Folio GY47628, the landowner owns one undivided 3rd part of the plot of ground hatched blue on Appendix 1 and the registered owners of Folios GY46745 and GY46746 own the remaining two-thirds undivided shares.

The landowner is a sheep farmer and builder. The photographs named Appendix 4 and Appendix 5 show his construction machinery. At the many times I visited the site between 2013 and 2015 no machinery was parked on this commonage nor was any parked there other than on an occasional basis until 2020. Since then the occasions I have observed when, either combined or singly, the tractor unit, low loader and earth dumper have been parked on the commonage have increased to the point where it is only rarely that the site is free of machinery.

Appendix 6 shows the dumper on 18 September 2020. Appendix 7, taken on 15 May 2021, shows the dumper, tractor unit and low loader. Appendix 8 and 9 taken on 4 and 5 June 2021, shows the

tractor unit and low loader, Appendix 10 shows the dumper on 19 June 2021 and Appendix 11 shows the dumper on 7 July 2021. I did not observe the dumper being moved in the intervening days and I can supply additional photographs if required.

A comparison of Appendix 3 with any of Appendices 5 – 11 shows the altered visual amenity created by the placing of this machinery. The machinery is placed in the most prominent location that is visible from my front garden and sunroom. It is an elevated position and to put the proportions in perspective Appendix 10 shows the dumper truck to appear considerably higher than the landowner's entrance pillars, house and shed roofs and of a colour that clashes with the surrounding countryside. The placing of this machinery in this location has a detrimental effect on the visual amenities and rural character of this spectacularly beautiful and remote place. It is the only visually sensitive part, in the context of the cottage, of a holding that comprises 152.25 hectares.

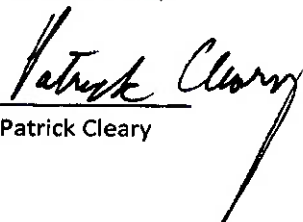
I submit that the placing of this machinery on the land constitutes a material change in the use of the land for the purpose of agriculture and is "development" within the meaning of section 3(1) of the Planning and Development Act 2000 ("the Act") both in general and specifically in the context of section 3(1)(b)(iii) regarding vehicles.

I also submit that it is not "exempted development". Part 1 of Schedule 1 of the Planning and Development Regulations 2001, in relation to 'temporary structures and uses' provides certain exemptions in relation to plant and machinery. Class 16 provides for the placing on land of machinery needed temporarily for work on adjoining land being carried out pursuant to either a planning permission or exempted development. Class 18 provides a similar temporary exemption in relation to mining activities. The placing of the landowner's machinery on the land does not satisfy either of these categories.

In October 2016, I applied for planning permission for an extensive redevelopment of my property and permission was granted on 9 December 2016. I would not have purchased Derryclare Cottage if the open space opposite my gate was used for anything other than its intended purpose i.e. the grazing of sheep.

It would not be financially justifiable for me to proceed with any development until such time as the unauthorised uses of adjoining lands that impact on the amenity value of my property cease.

Yours sincerely


Patrick Cleary

The Property Registration Authority An tÚdarás Clárúcháin Maoine



Official Property Registration Map

This map should be read in conjunction with the folio

Registry maps are based on OSI topographic mapping. When maps are printed at a scale that is larger than the OSI publication accuracy is limited to that of the original OSI Map Scale

For details of the terms of use, and limitations as to scale, and other conditions relating to Land Registry Maps, see www.prl.ie

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

(centre-line of parcel(s) edged)

- Freehold
- Leasehold
- SubLeasehold
- 'S' Register

(see Section 8(b)(iii) of Registration of Title Act 1964 and Rule 224 & 225 Land Registration Rules 1972 - 2010).

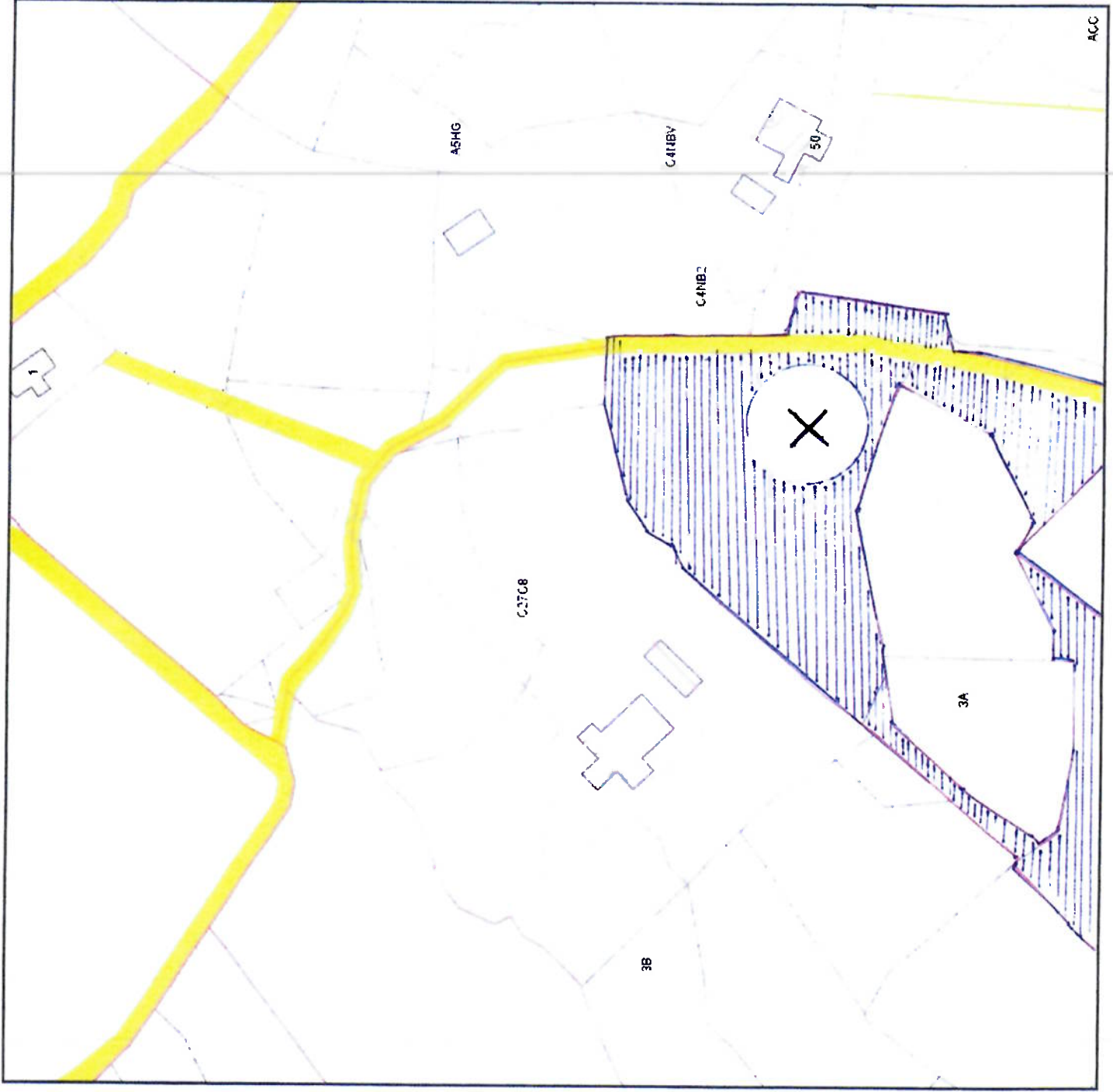
Burdens (may not all be represented on map)

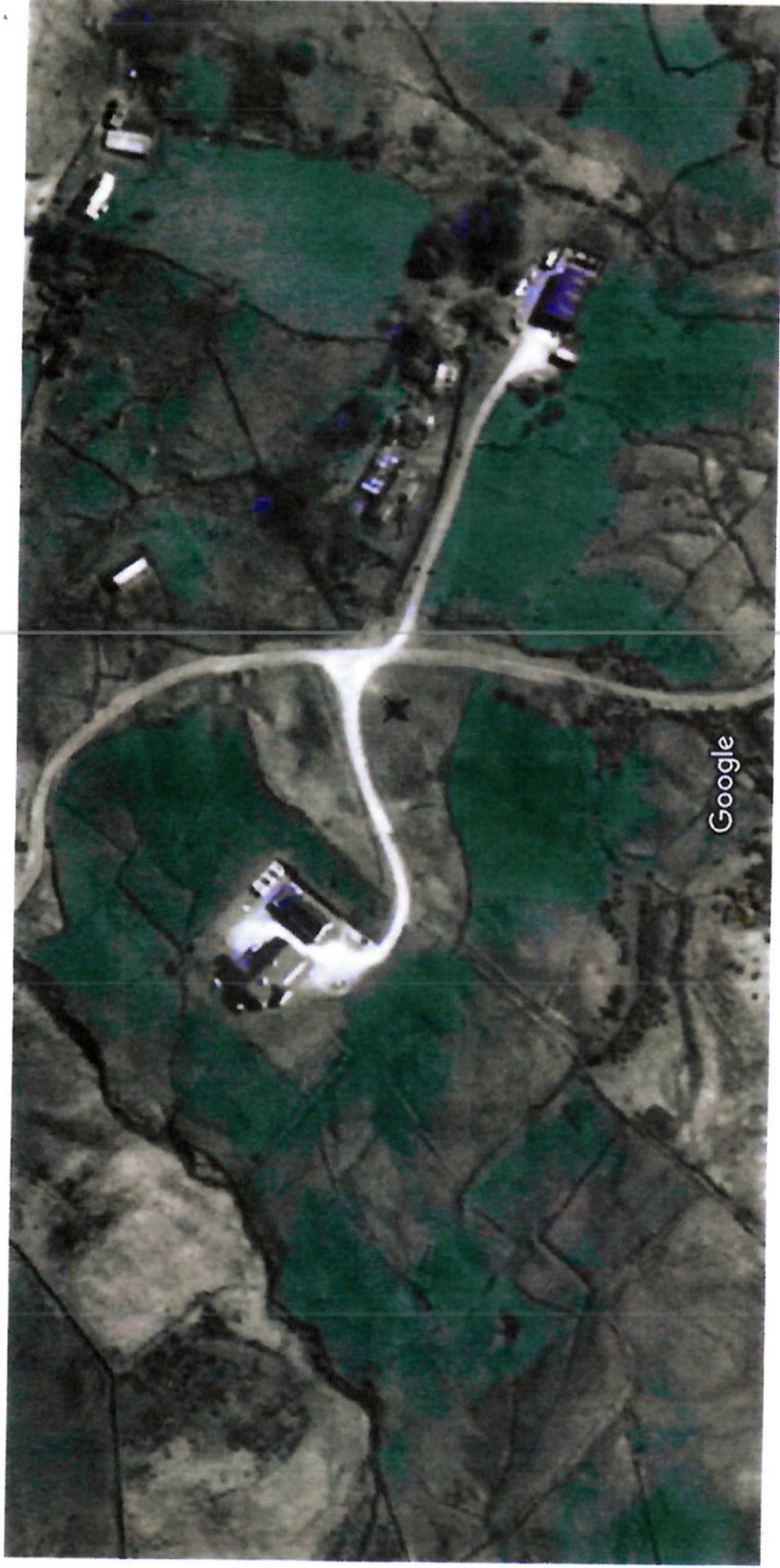
- Right of Way / Wayleave
- Turbary
- Pipeline
- Well
- Pump
- Septic Tank
- Soak Pit

A full list of burdens and their symbology can be found at: www.landdirect.ie

The registry operates a non-conclusive boundary system. This map identifies properties not boundaries meaning neither the of land in a register nor its identification by reference to a registry map is conclusive as to the boundaries or extent

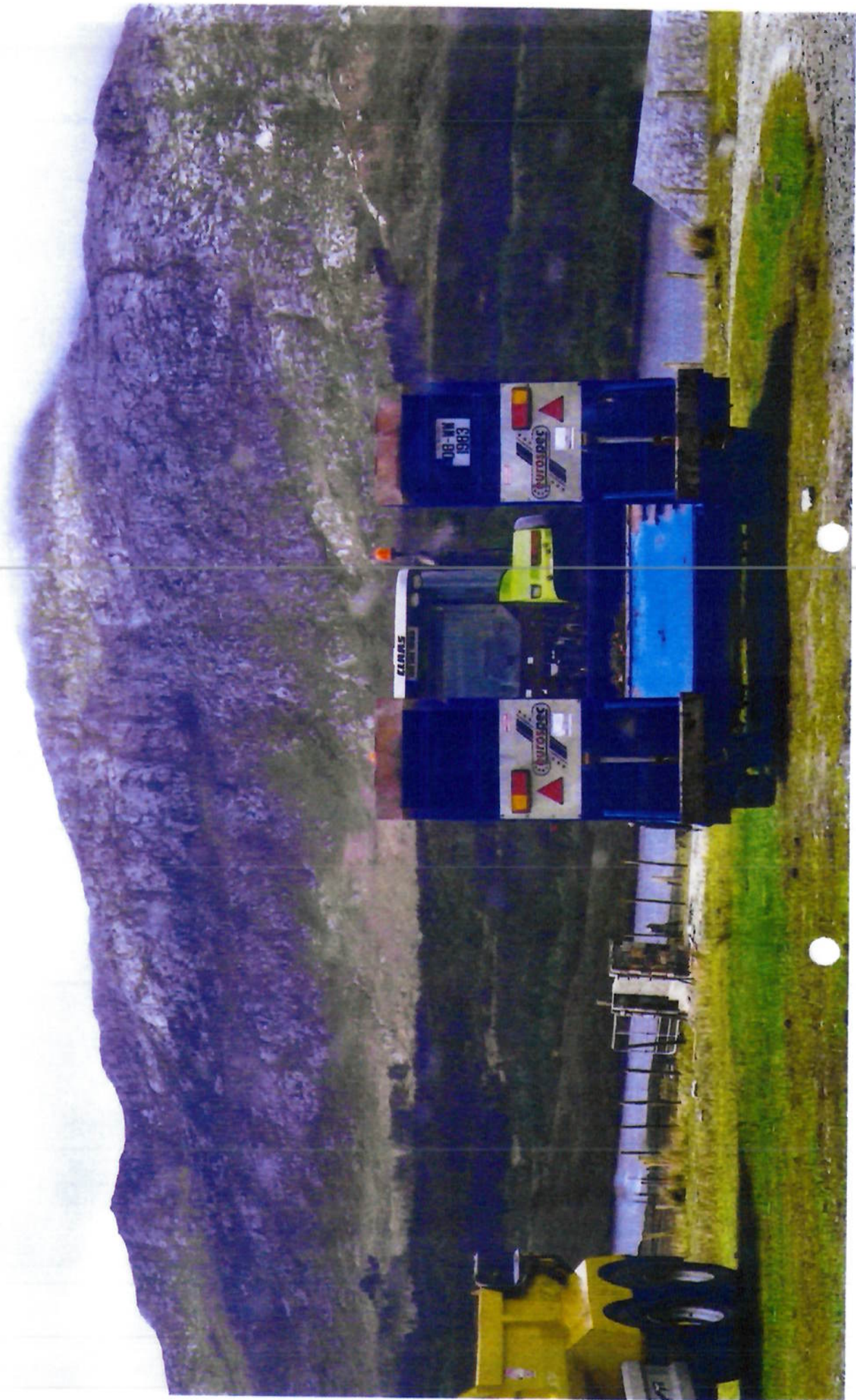
(see Section 85 of the Registration of Title Act, 1964). As inserted Section 62 of the Registration of Deed and Title Act 2006





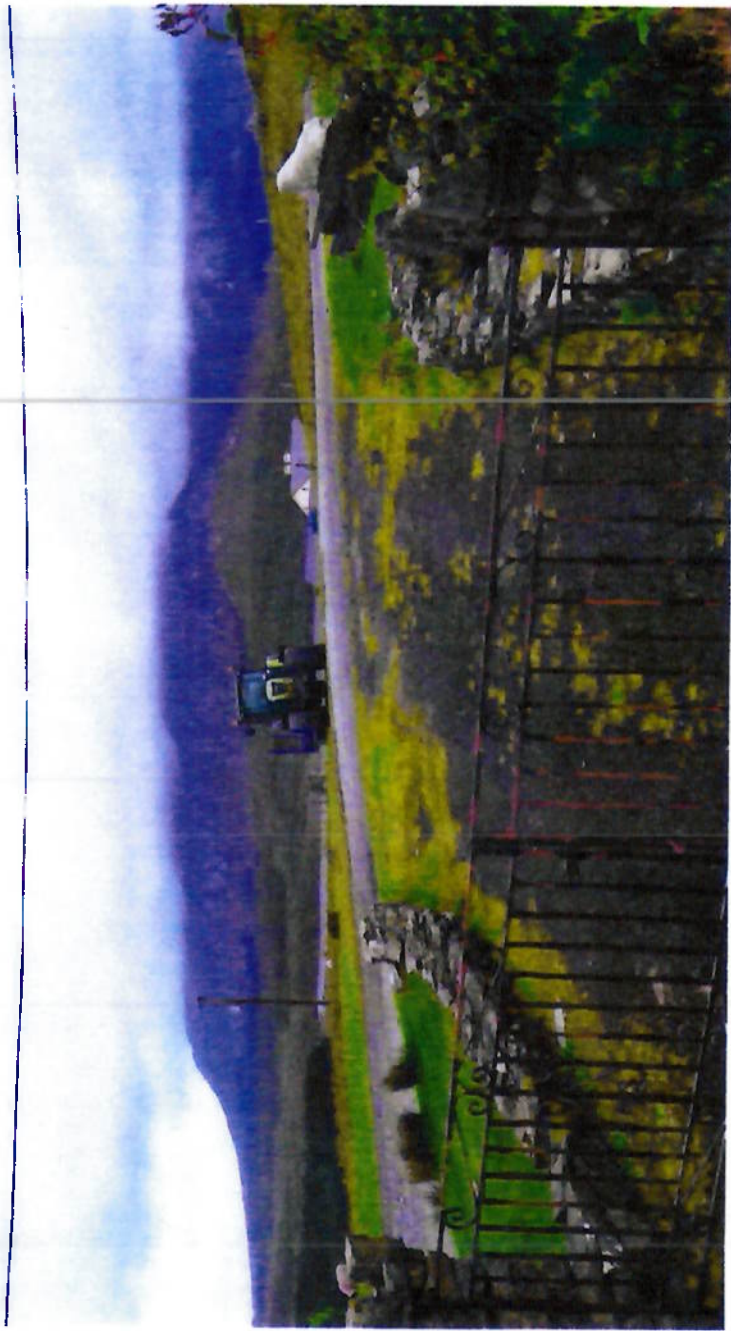








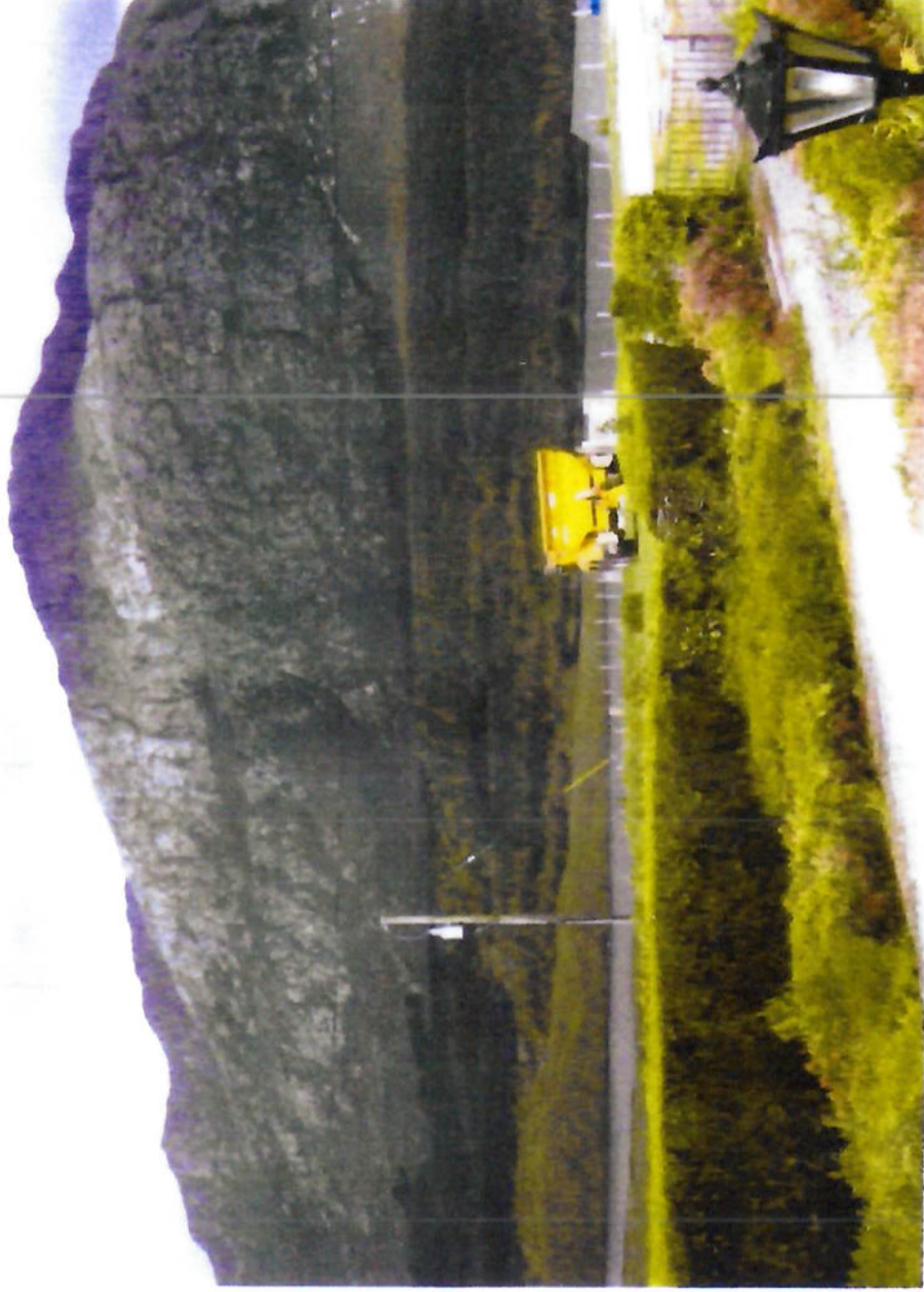




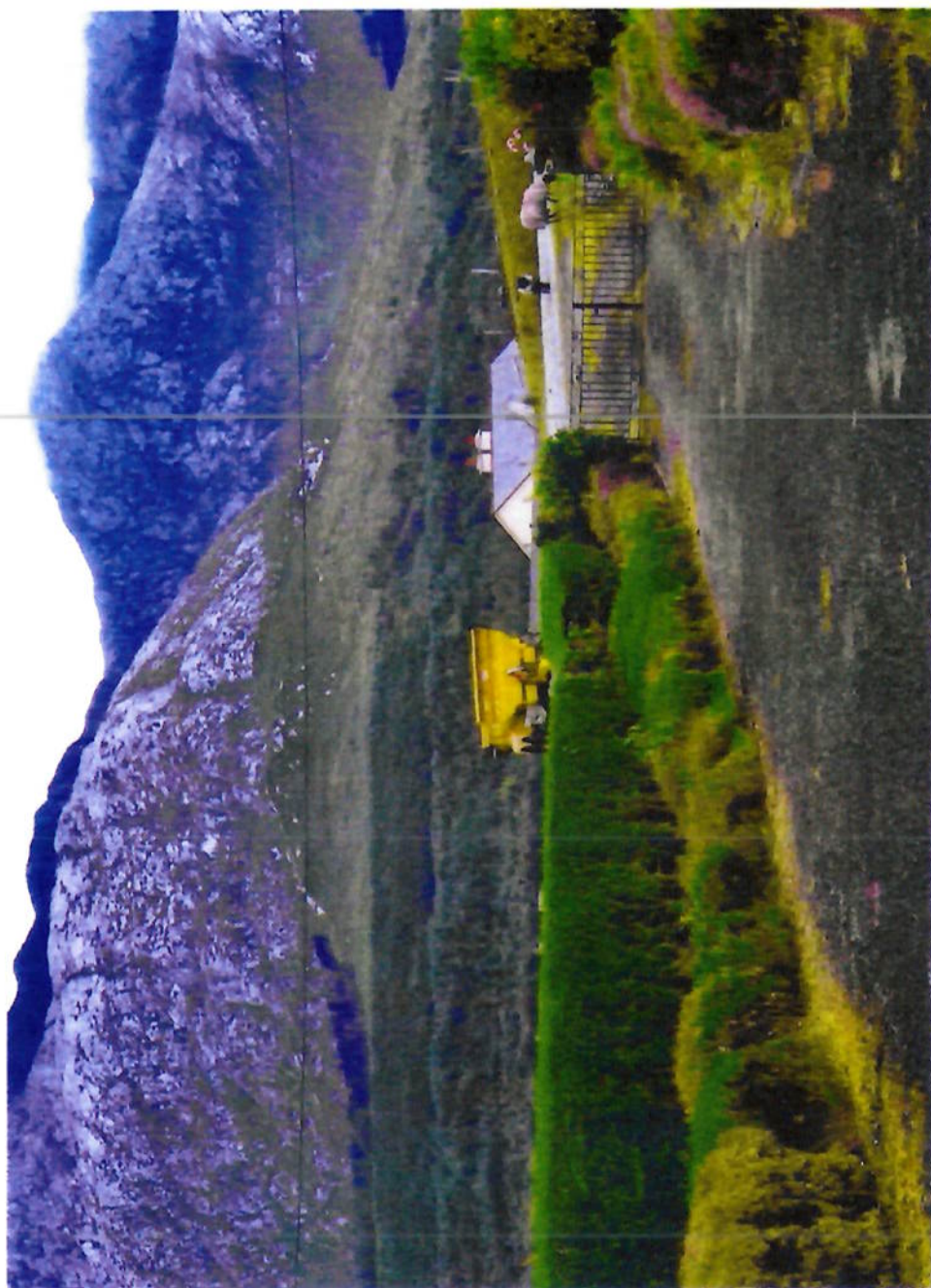
04.06.2021



05.06.2021



19.06.2021



07.07.2021

Aras an Chontae,
Cnoc na Radharc, Gaillimh
H91 H6KX

Aras an Chontae
Prospect Hill, Galway
H91 H6KX

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Idirlián/Web: www.gaillimh.ie
www.galway.ie

@GalwayCoCo
GalwayCounty

Seirbhísí Corparaídeacha
Corporate Services
(091) 509 225
corpserv@galwaycoco.ie

Tithocht
Housing
(091) 509 300
housing@galwaycoco.ie

Timpeallacht & Tréidiacht
Environment & Veterinary
(091) 509 510
environment@galwaycoco.ie

Rothra, Iompar, Cursai Mara
& Seirbhísí Ginearálta
Roads, Transportation, Marine
& General Services
(091) 509 309
roads@galwaycoco.ie

Acmhainní Daonna
Human Resources
(091) 509 303
hr@galwaycoco.ie

Mótarchain
Motor Taxation
(091) 509 099
motortax@galwaycoco.ie

Clár oghthóirí
Register of Electors
(091) 509 310
electors@galwaycoco.ie

Seirbhísí Uisce
Water Services
(091) 509 505
water@galwaycoco.ie

Obair & Fiontar
Community & Enterprise
(091) 509 521
community@galwaycoco.ie

Seirbhísí
Planning
(091) 509 308
planning@galwaycoco.ie

Leabharlann
Library
(091) 562 471
info@galwaylibrary.ie



Comhairle Chontae na Gaillimhe Galway County Council

20/07/21

Patrick Cleary
Derryclare cottage
Cloonnacartan
Recess
H91 YP6X

Your Ref: Placing of shipping container on land comprised in Folio GY47628

A Chara

The Planning Authority acknowledge receipt of your correspondence dated 14th July.

This complaint relates to the parking of three pieces of farm machinery on lands owned/jointly owned by a farmer.

The Planning Authority will not be investigating this matter as it is not considered to be an unauthorised development, you are advised however, that this does not preclude you from taking your own civil action in this matter if you so wish.

Meas le meas

Saoirse Kennedy
Senior Executive Planner
Planning Enforcement Dept.
Galway County Council

Derryclare Cottage,
Cloonnacartan,
Recess,
Co. Galway.

2 August 2021

Ms. Saoirse Kennedy,
Senior Executive Planner,
Planning Enforcement Department,
Galway County Council,
Áras an Chontae,
Prospect Hill,
Galway.
H91 H6KX

Re: Representation regarding the placing of machinery on land comprised in Folio GY47628.

Dear Ms. Kennedy,

I refer to your letter dated 20 July 2021 regarding the above.

I wish to appeal the decision that my complaint dated 12 July 2021 will not be investigated because it is not considered to relate to an unauthorised development.

The decision appears to be based on the second sentence of your letter i.e. that my complaint "relates to the parking of three pieces of farm machinery on lands owned\jointly owned by a farmer."

The letter does not specify the statutory provision on which this decision is based. I assume, therefore, that my complaint is not considered to relate to an unauthorised development because section 4(1)(a) of the Planning and Development Act 2000 (as amended) ("the 2000 Act") provides that "development consisting of the use of any land for the purpose of agriculture" shall be exempted development.

If that is the basis for the decision, I submit that it exceeds the statutory scope of section 4 as decided by the High Court on two occasions.

Mr Justice Costello decided in 1996 that section 4 of the Local Government (Planning and Development) Act 1963 ("the 1963 Act") must be considered in the light of section 3(1) of that Act. The relevant wording of sections 3(1) and 4(1)(a) of that Act are materially the same as in sections 3 and 4(1)(a) respectively of the 2000 Act.

Section 3(1) of the 1963 Act:

"Development" in this Act means, save where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any structures or other land."

The Judge concluded that if an activity consisted of "the carrying out of any works on the land" then it could not be regarded as amounting to a "material change in the use of the land" within the meaning of the second limb of the definition. He said that it followed therefore, that the work carried out was not "development consisting of the use of any land for the purpose of agriculture and was not exempted by section 4."

The interaction of section 3 with section 4 of the 2000 Act was considered by Mr Justice Hogan in 2013. He considered that "if the definitional meaning in s. 3 were to be employed without qualification, it would expand the definition of "development" [in section 4(1)(a)] to include the carrying out of works, as well as in respect of development which consisted of the use of lands and structures. This would radically distort the exemption contained in s.4(1)(a) where the Oireachtas plainly intended that the development in question must consist of only the use of the land and buildings for agricultural purposes."

Section 4 of the 2000 Act refers to agricultural purposes and "agriculture" as defined in the Act:

"includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and "agricultural" shall be construed accordingly;"

The definition only refers to livestock for the purpose of its use in the farming of land but does not include machinery or other equipment. The original source of these terms was the UK's Town and Country Planning Act 1947 and they continued to be used, as here, in subsequent UK legislation. The problem of the restrictive nature of the definition of "agriculture" was addressed in the UK Courts by extending the meaning, on a non-legislative basis, to include items that were "ordinarily incidental to the agricultural use of land".

This approach has been followed in this jurisdiction so that machinery or equipment that is ordinarily incidental to the agricultural use of the land of the farmer on whose land the machinery or equipment is stationed is treated as being included in "the use of land for agricultural purposes" for the purposes of section 4 of the 2000 Act.

Both Mr. Justice Costello and Mr. Justice Hogan considered that if development comes within the meaning of works to the land it is not development "consisting of the use of any land for the purpose of agriculture" within the meaning of section 4. On that basis, I believe that the stationing of machinery that is incidental or ancillary to the landowner's operations involving works to land does not come within section 4.

"Works" are defined in section 2 of the 2000 Act as including "any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."

In my letter dated 12 July 2021 I referred to the machinery of which I complained as construction machinery. I identified the items as a tractor unit, low loader and earth dumper and I applied photographic evidence of them on a construction site. Since my letter, the tractor unit has been stationed opposite my gate with another trailer used for the transportation of peat. (See Photographs 1 and 2).

None of these items are incidental or ancillary to the agricultural use of the land on which they are stationed i.e. the breeding and keeping of sheep and the use of the land for sheep grazing. They are used for the operations of construction and excavation which constitute 'works' within the meaning of the 2000 Act (and the 1963 Act).

Page 166 of the Galway County Development Plan 2015 - 2021 includes the following:

"The Planning and Development Act, 2000 (as amended) requires the inclusion of a development plan objective for:

"The preservation of the character of the landscape where, and to the extent that, in the opinion of the Planning Authority, the proper planning and sustainable development of the area requires it, including the preservation of views and prospects and the amenities of places and features of natural beauty or interest".

The land in question has a Landscape Value Rating of 'Outstanding' and a Landscape Sensitivity Rating of 'Class 4 - Special'. Objective LCM 2 states that "Consideration of landscape sensitivity ratings shall be an important factor in determining development uses in areas of the County."

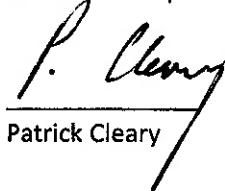
The land is also unfenced commonage. Objective LCM 3: "Preserve the status of traditionally open/unfenced landscape. The merits of each case will be considered in light of landscape sensitivity ratings and views of amenity importance."

In the Draft Galway County Development Plan 2022 – 2028, the land has a Landscape Sensitivity Rating of 'Class 4 - Iconic: Unique Landscape with high sensitivity to change.'

I would be grateful if you would initiate the Galway County Council appeal procedure in respect of the original decision.

I request that a Warning Letter be issued to the landowner as soon as possible in relation to the placing of his machinery on the land opposite my property.

Yours sincerely



Patrick Cleary

PHOTOGRAPH 1



PHOTOGRAPH 2

