

Derryclare Cottage,
Cloonnacartan,
Recess,
Co. Galway
H91YP6X

23 June 2022

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

AN BORD PLEANÁLA	
LDG-	<u>084 751-77</u>
ABP-	_____
24 JUN 2022	
Fee: €	<u>220</u> Type: <u>Cheque</u>
Time: _____	By: <u>post</u>

**Re: Section 5 declaration in respect of placing on land of machinery at Cloonnacartan, Recess,
Co. Galway**

Dear Sir/Madam,

Pursuant to Section 5(3)(a) of the Planning and Development Act, 2000 ("the Act"), I wish to refer the declaration of the planning authority issued on 16 June 2022 in respect of the above development for review by An Bord Pleanála ("the Board") and I enclose the fee of €220.

I enclose a copy of the application form and letter addressed to Galway County Council ("the Council") and attachments dated 17 May 2022 (Attachment 1) which sets out the basis for the declaration sought together with a copy of the planning authority declaration issued on 16 June 2022 (Attachment 2).

In my experience, a section 5 declaration issued by the Council is accompanied by a Planner's Report which sets out the reasons and considerations required by Section 5(2)(a) of the Act on which the Council's decision is based but the single page declaration is all I received.

The Council's decision is that the "placing on land of construction machinery at Cloonnacartan, Recess, Co 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)".

Class 16, which comes under the heading 'temporary structures and uses' states: "The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery

needed temporarily in connection with that development during the period in which it is being carried out."

Class 16 also requires that: "Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act."

My understanding of this exemption is that it applies only to construction plant and machinery needed temporarily in connection with authorised or exempt development which is being or is about to be carried out on the land where the machinery is placed, or the adjoining land, and must be removed as soon as the authorised or exempt development is complete.

The Council, in deciding that the placing of the construction plant and machinery is exempted development, has concluded, without any expressed reasons or considerations, that Class 16 applies.

The history of this issue is that I made a complaint to the Council on 12 July 2021 pursuant to section 152(1) of the Act regarding the machinery. A copy of the Complaint Form, letter and attachments is attached (Attachment 3).

I explained that the part landowner of the commonage on which the machinery is placed is a builder and that the photographs I enclosed with my complaint showed his construction machinery. I said that the parking of the tractor unit, low loader and earth dumper either combined or singly on the site commenced in 2020 and it was only rarely that the site was free of machinery. I submitted photographs taken on 18 September 2020, 15 May 2021, 4, 5 and 19 June 2021 and 7 July 2021 by way of example and advised that I could supply additional photographs if required.

I submitted that the placing of the machinery on the land constituted "development" and that it was not "exempted development" as it did not satisfy either Class 16 or Class 18 of the Planning and Development Regulations 2001.

The Council replied to me on 20 July 2021 that the complaint related "to the parking of three pieces of farm machinery on lands owned/jointly owned by a farmer" and they would not be investigating the matter as it was not considered to be an unauthorised development (Attachment 4).

I responded to the Council on 2 August 2021 and a copy of that letter and its attachments is at Attachment 5. I explained in detail as to how this machinery, and another trailer used for the transportation of peat, could not come within the agricultural use exemption. I received no reply. I sent a reminder on 27 September 2021 but no further action was taken by the Council in relation to my appeal.


In my application for the section 5 declaration dated 17 May 2022, I enclosed further photographs of the machinery on the land. At no stage, when any of these photographs were taken, was any approved or exempt development work being carried out on the land on which the machinery was placed or on any adjoining lands, as required by Class 16 if the exemption was to apply.

I have photographs of this machinery on this site taken on 18 September 2020, 15 May 2021, 4, 5, 19, 21, 29, and 30 June 2021, 1, 3, 6, 7, 17, 28, 29, 30 and 31 July 2021, 16 and 24 August 2021, 1, 11, 19, 26 and 30 September 2021, 1 and 27 October 2021, 17 November 2021, 16 and 17 December 2021, 24 January 2022, 10 February 2022, 9 and 10 March 2022, 11 and 22 April 2022, 4, 5, 6 and 7 May 2022, 19 June 2022 and 21 June 2022. The only day since September 2020 that I observed no machinery on the site was 27 May 2021.

For the above reasons, I request a declaration that the use of the commonage land at Cloonnacartan, Recess, Co. Galway shown in Appendix 1 of my letter to the Council dated 17 May 2022 for the storing and/or placing of construction equipment is development and is not exempted development.

My email address is clearyp9@gmail.com. Mobile: 086 8233797.

Yours sincerely,



Patrick Cleary

Iarratas ar dhearbhu maidir le
forbairt dhíolmhaithe faoi Alt 5
den Acht um Pleanáil agus
Forbairt 2000



Comhairle Chontae na Gaillimhe
Galway County Council

Application for Declaration of ~~Development~~ **AND NOT** Exempted Development under
Section 5 of the Planning and
Development Act 2000

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. Mionsonraí faoin iarratasóir

Ainm	Name	Patrick Cleary
Seoladh	Address	Derryclare Cottage Cloonnacartan Recess, Co. Galway
Cód Poist	Postcode	H91YP6X
Teileafón	Telephone	[REDACTED]
Ríomhphost	Email	[REDACTED]

1. Applicant details

2. Mionsonraí faoin bhforbairt bheartaithe

Tuairisc iomlán	Full description	2. Proposed Development details placing on land of construction machinery (see attached letter)
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2. Proposed Development details

Más méadú ar theach cónaithe atá i gceist, cuir isteach
achair urláir

If an extension to a dwellinghouse, please include
floor areas

(i) méadú beartaithe	(i) Proposed extension	n/a	mcr/sqm
(ii) struchtúir reatha	(ii) Existing structure	n/a	mcr/sqm
(iii) spás oscailte príobháideach ar gcúl	(iii) Rear private open space	n/a	mcr/sqm

Más forbairt í a bhaineann le Garáiste/Bothán/Stóras
etc a chur in airde, luaigh an méid seo a leanas, le do
thoil:

If for the erection of Garage/Shed/Store etc.,
please include the
following:

(i) garáiste/bothán/stóras etc beartaithe	(i) Proposed garage/shed/store etc	n/a	mcr/sqm
(ii) struchtúir reatha	(ii) Existing structure	n/a	mcr/sqm
(iii) spás oscailte príobháideach ar gcúl	(iii) Rear private open space	n/a	mcr/sqm

I gcás aon foirgneamh /fhoirgnimh atá le coimeád ar an
láithreán, nó i gcás athraithe ar úsáid na maoine

For any building(s) to be retained on site, or for a
change of use of the property

Léirigh an úsáid reatha	Please indicate the existing use	commonage for sheep grazing
-------------------------	-------------------------------------	-----------------------------

Doiciméid atá le cur in éineacht leis an bhfoirm iarratais seo (cuir isteach tic (✓) le do thoil)	Documents to be included with this application form (please tick✓)
Léarscáil de shuíomh an láithreáin Scála 1:1000 nó 1:2500	Site location map Scale 1:1000 or 1:2500 <input checked="" type="checkbox"/>
Léarscáil de leagan amach an láithreáin Scála 1:200 nó 1:500	Site layout map Scale 1:200 or 1:500 <input checked="" type="checkbox"/>
Pleananna urláir & ingearchlónna	Floor plans & elevations <input type="checkbox"/>
Táille (€80)	Fee (€80) <input checked="" type="checkbox"/>

Dearbhaím leis seo go bhfuil an fhaisnéis a thugtar ar an bhfoirm seo ceart		I hereby declare that the information given on this form is correct
Síniú (iarratasóir/gníomhaire)	Signature (applicant/agent)	<i>Patrick Clery</i>
Dáta	Date	17 May 2022

Seol an fhoirm ar ais chuig: An tAonad Pleanála & Forbartha Inmharthana Comhairle Chontae 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
H91YP6X

17 May 2022

Planning and Sustainable Development Unit
Galway County Council
Áras an Chontae
Prospect Hill
Galway

**Re: Development at Cloonnacartan, Recess, Co Galway
Request for Section 5 declaration**

Dear Sir/ Madam

I request a declaration in accordance with section 5 of the Planning and Development Act, 2000 that the use of the commonage land shown on Appendix 1 for the storing and/or placing of construction equipment is development and is not exempted development. I enclose the fee of €80.

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

By virtue of Folio GY47628, David and Elizabeth Burke, Cloonnacartan Recess, Co. Galway H91D2EW, own one undivided 3rd part of the plot of ground hatched blue on the map attached (Appendix 1) and the registered owners of Folios GY46745 and GY46746 own the remaining two-thirds undivided shares.

Mr. Burke is a builder who owns construction machinery and equipment for the purposes of his trade. Since about September 2020, Mr. Burke has been placing construction machinery on part of the land hatched blue on Appendix 1. I attach a selection of photographs showing Mr. Burke's construction machinery (Appendices 2.1 and 2.2) and the items placed on the land at different times (Appendix 2.3 – 2.8). At no stage in the recent past has the land been free of machinery. I attach a site location map Scale 1:2500 (Appendix 3) and a site layout map Scale 1:500 (Appendix 4) on which the machinery placing area is hatched in red.

The attached copy of a National Parks & Wildlife Service Map (Appendix 5) shows the proximity of the machinery parking area to the Maumturk Mountains SAC and the Twelve Bens/Garraun Complex SAC. The site has a Landscape Value Rating of 'Outstanding', a Landscape Sensitivity Rating of 'Class 4 - Special' and is within a Protected Focal Point/View in the Galway County Development Plan 2015 – 2021. In the Draft Galway County Development Plan 2022 – 2028, it has a Landscape Sensitivity Rating of 'Class 4 - Iconic: Unique Landscape with high sensitivity to change.'

My understanding of commonage is that it is land in common ownership for the grazing of sheep or cows. I submit that the placing of this machinery on the land constitutes a material change in the use of the land and is "development" within the meaning of section 3(1) of the Planning and Development Act 2000 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.

Yours sincerely,

Patrick Cleary

APPENDIX 1

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. While maps are printed at a scale that is larger than the OSI public accuracy is limited to that of the original OSI Map Scale.

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

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(centre-line of parcel(s) edged)

- Freehold
- Leasehold
- Subleasehold
- 'S' Register

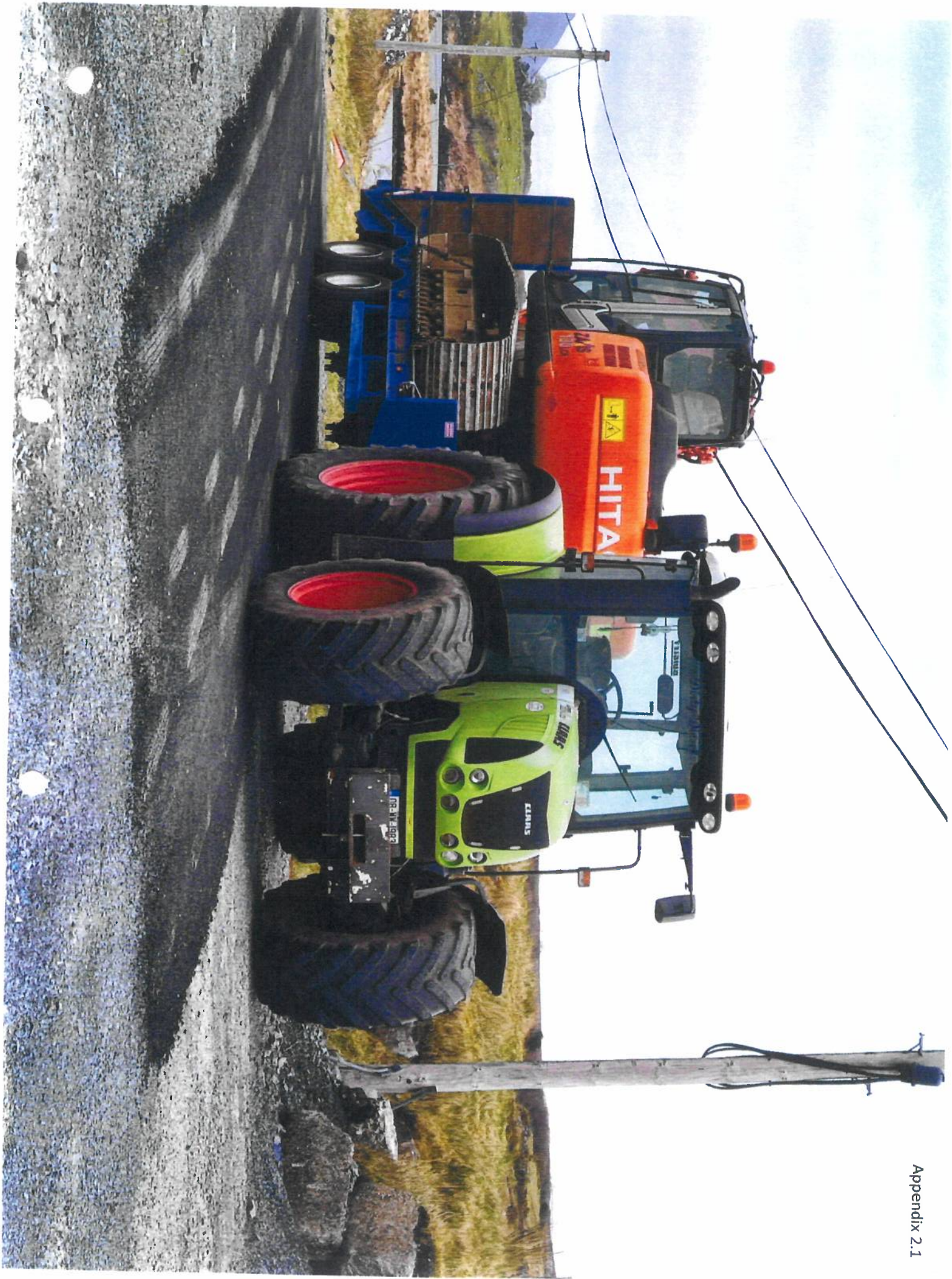
(see Section 81(b)(ii) of Registration of Title Act 1964 and Rule 224 & 225 Land Registration Rules 1972 - 2010).

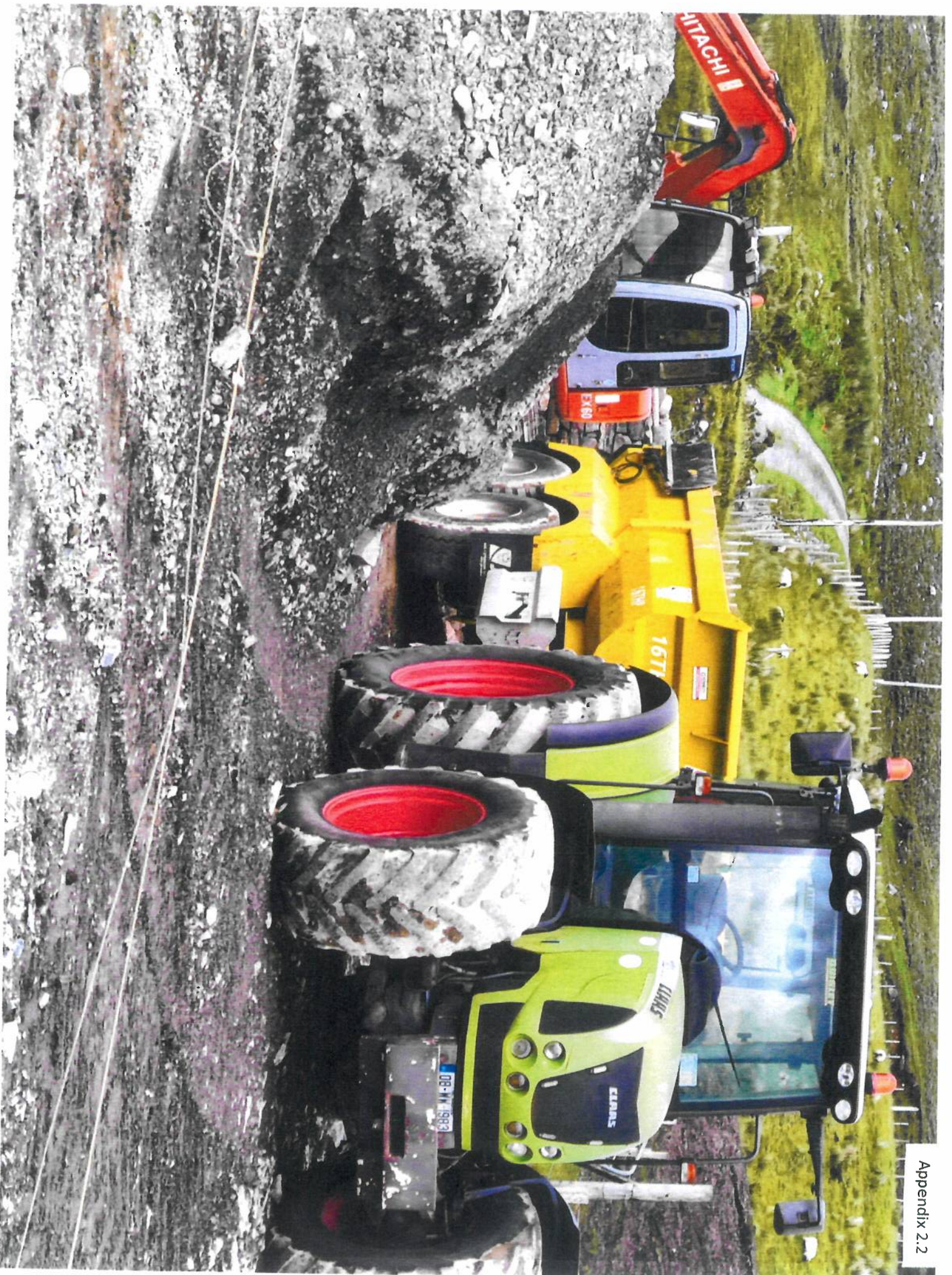
- Burdens (may not all be represented on map)
 - Right of Way / Wayleave
 - Turbary
 - Pigeonhole
 - Well
 - Pump
 - Septic Tank
 - Soak Pit

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

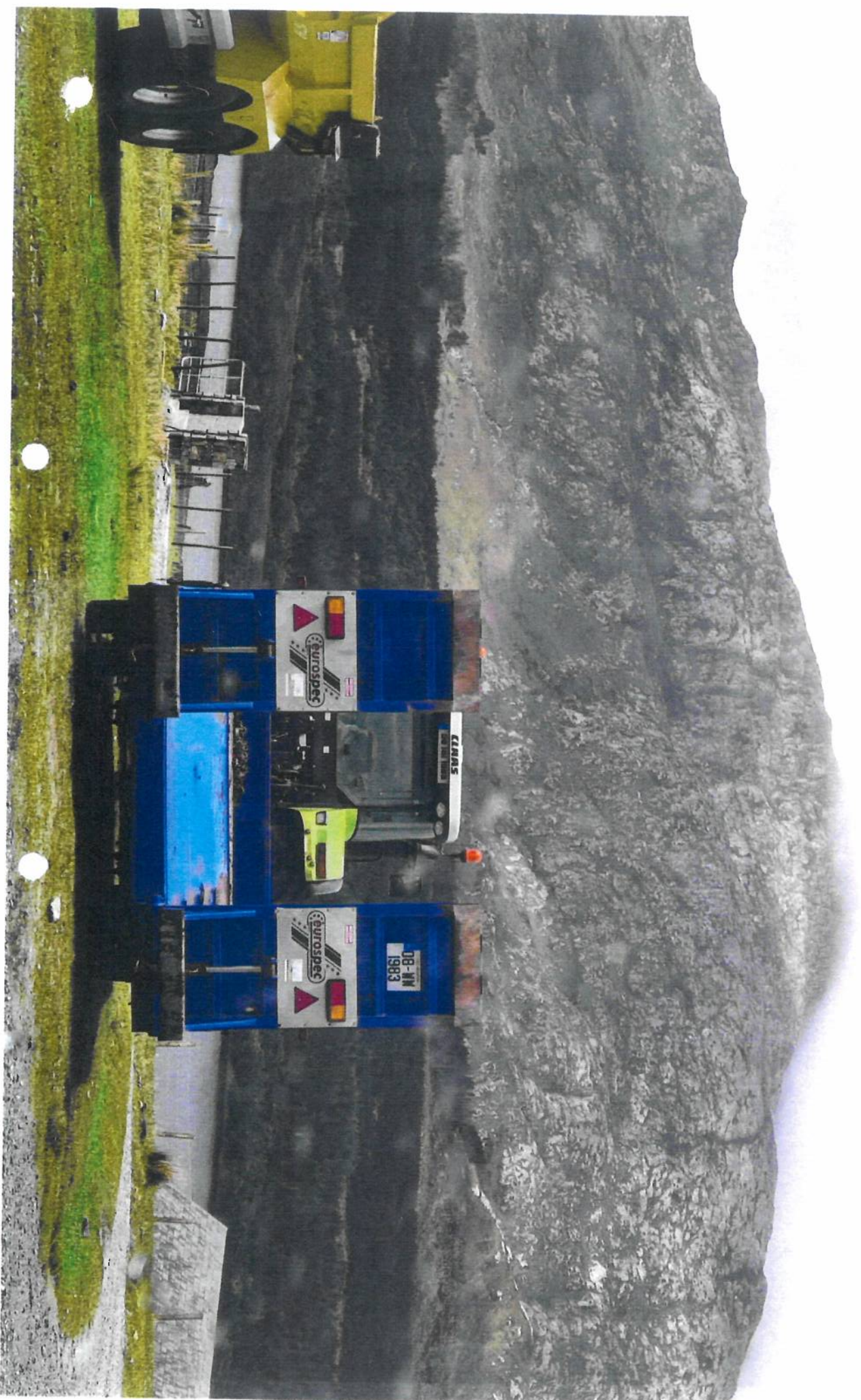


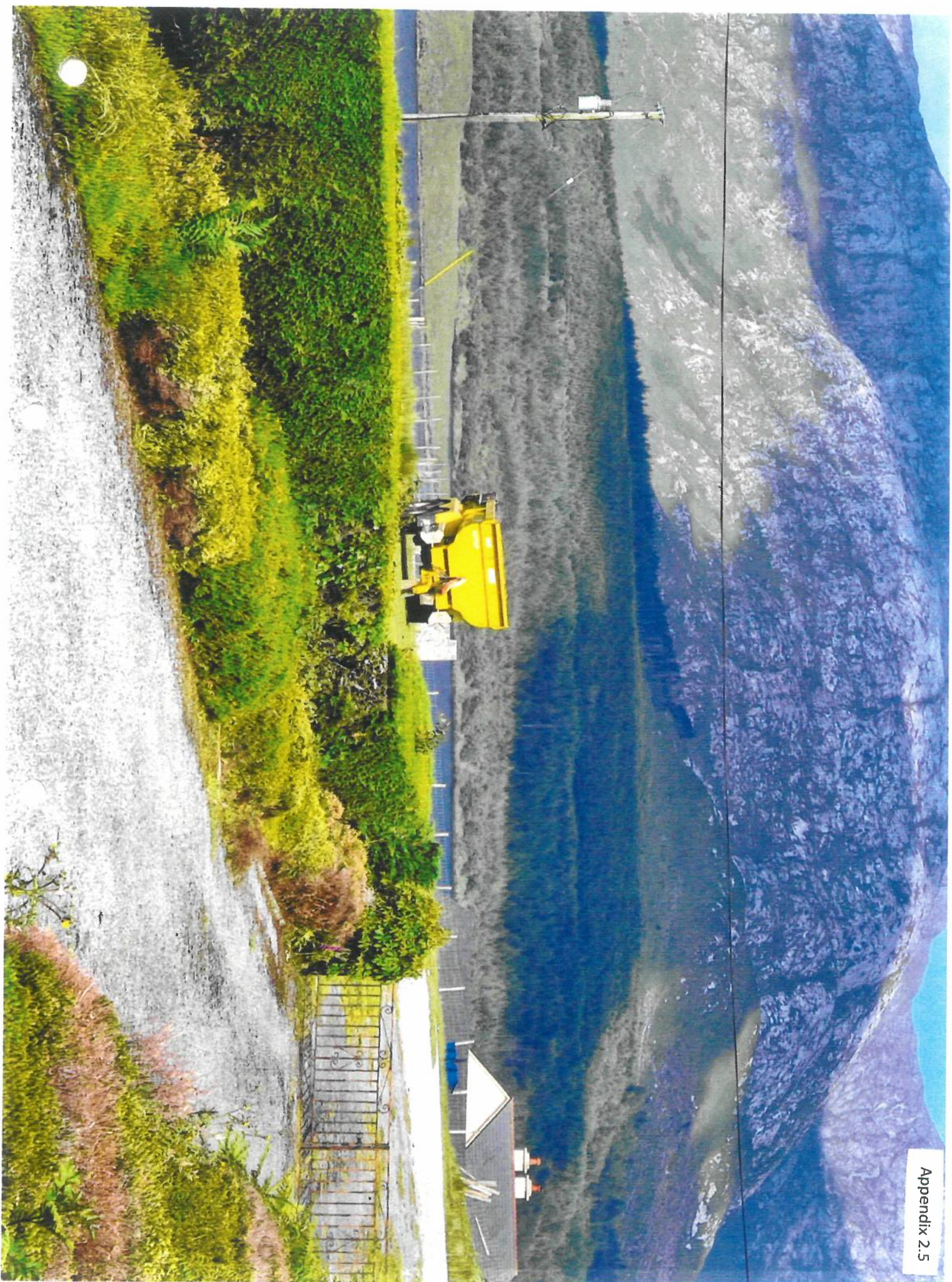
The registry operates a non-conclusive boundary system. The map identifies properties not boundaries meaning neither the map nor its identification by reference to a registry map is conclusive as to the boundaries or extent (see Section 85 of the Registration of Title Act, 1964). As in Section 62 of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

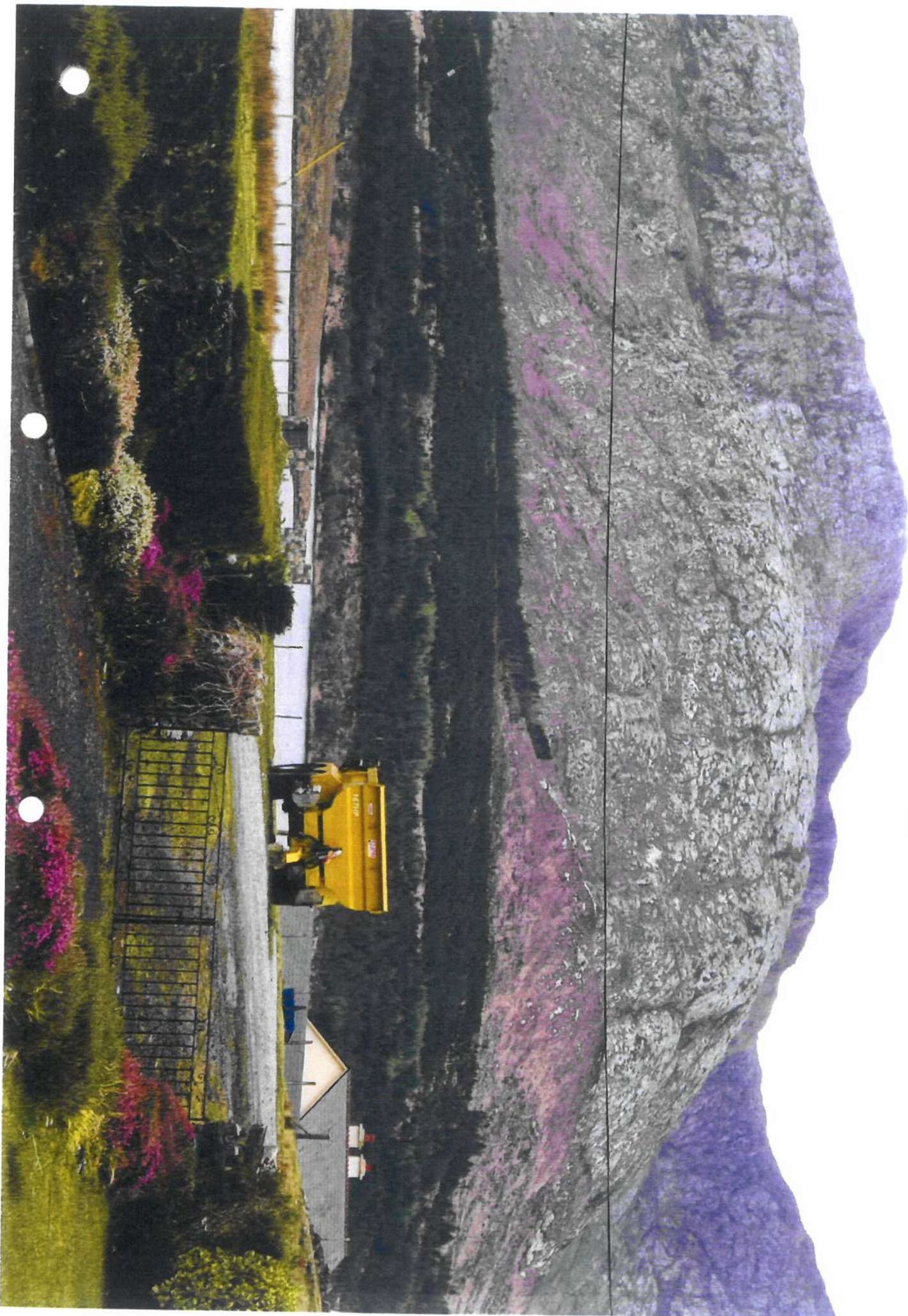




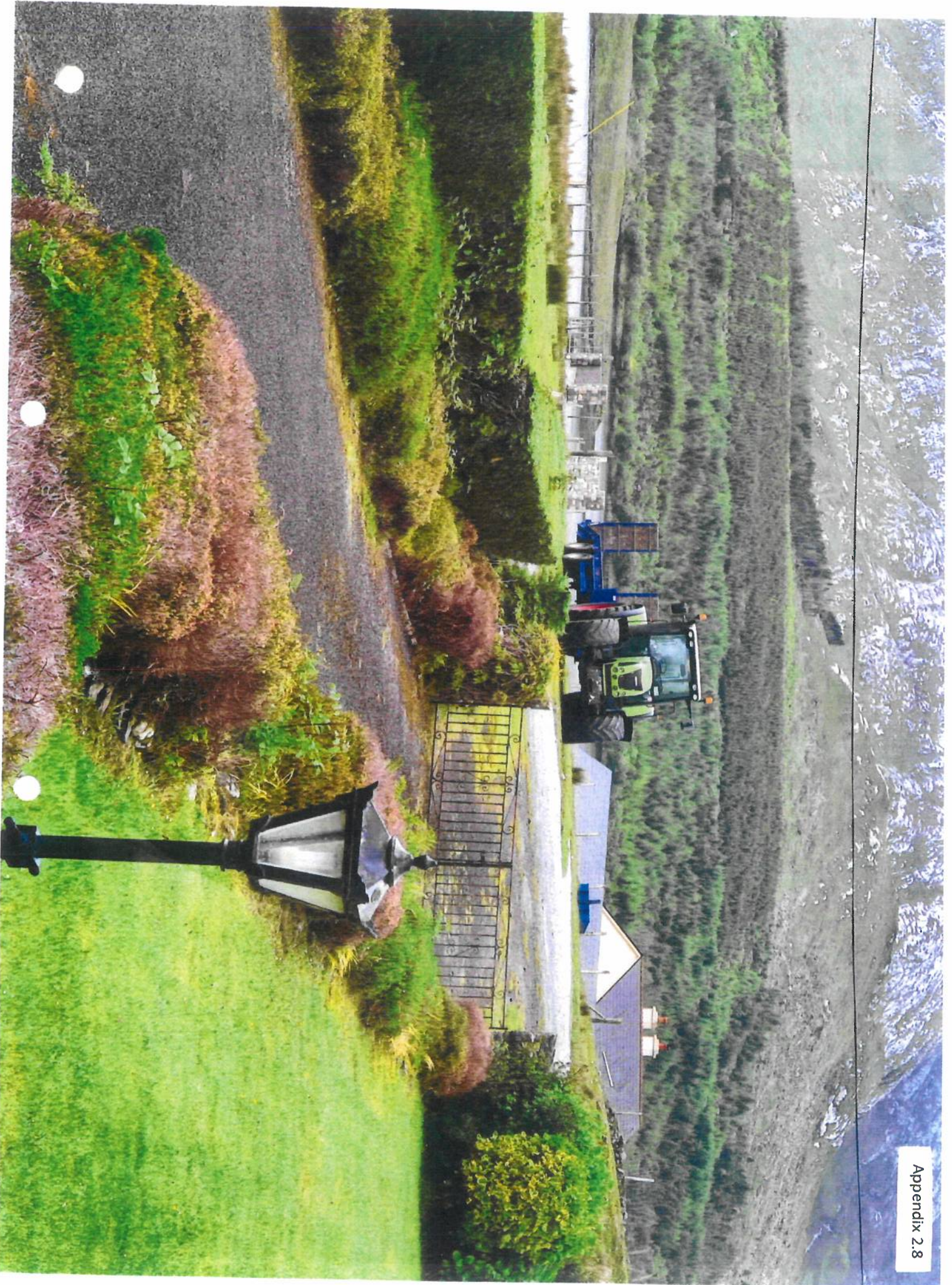




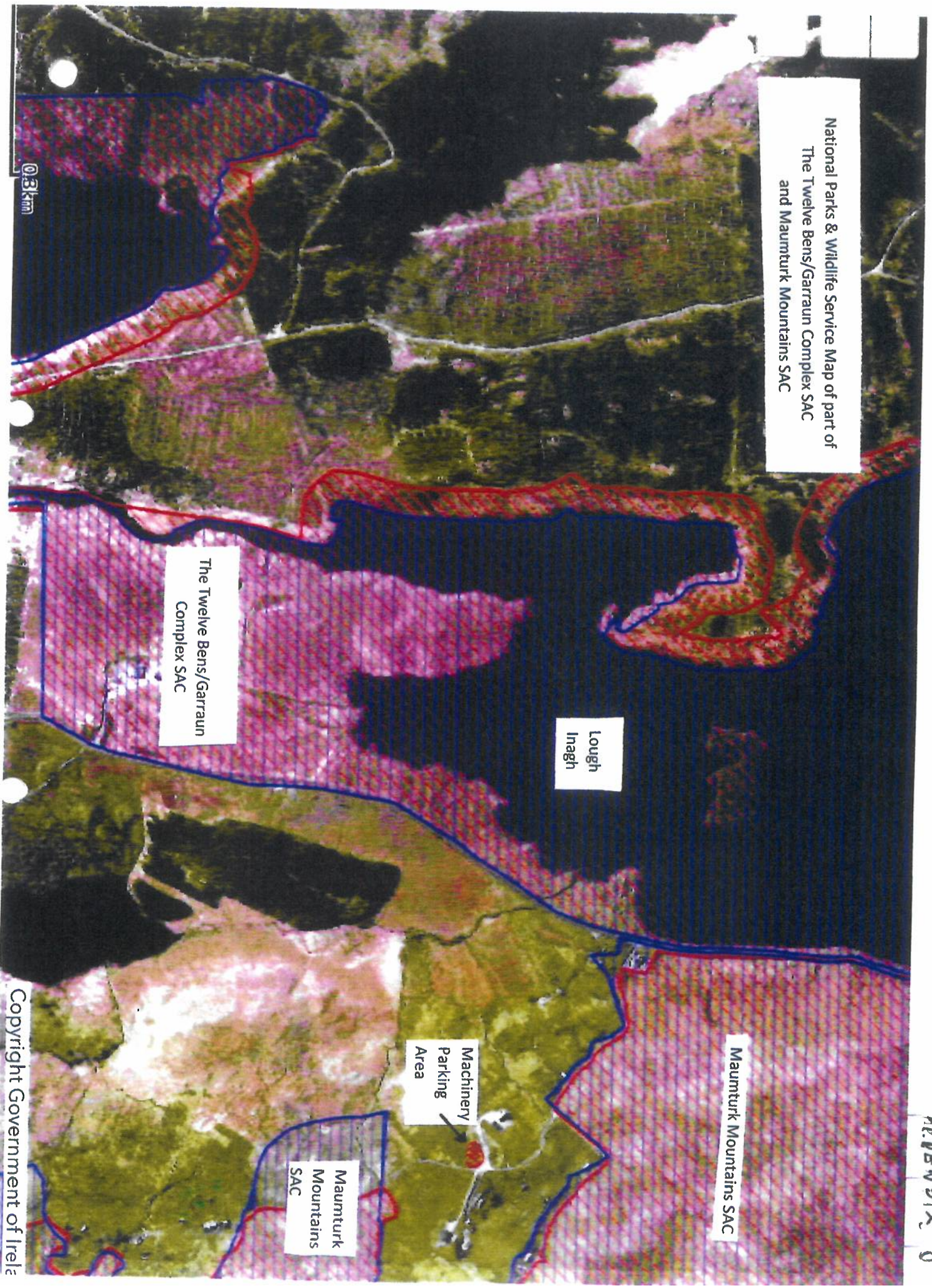








National Parks & Wildlife Service Map of part of
The Twelve Bens/Garraun Complex SAC
and Maumturk Mountains SAC



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

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

Fón/Phone: (091) 509 000
Facs/Fax: (091) 509 010
Idirlíon/Website: www.gaillimh.ie

@GalwayCoCo
GalwayCounty

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Corporate Services
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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

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

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

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

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

Our Ref: ED 22/32



Comhairle Chontae na Gaillimhe Galway County Council

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

16th June, 2022

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

- The definition of "works" set out in Section 2 of the Planning and Development Act 2000 (as amended).
- The definition of "development" set out in Section 3 of said Planning and Development Act.
- Section (3) of said Planning and Development Act.
- Section 4 (1) (h) & (4) of said Planning and Development Acts.
- Article 6(1) of said Planning and Development Regulations.
- Article 9(1)(a) subsections (i), (ii), (iii), (vi), (vi), (viiB) & (viiC) of said Planning and Development Regulations.
- 'Class 16' of Schedule 2 Part 1 of the 2001 Planning and Development Regulations.
- 'Class 18' of Schedule 2 Part 1 of the 2001 Planning and Development Regulations
- 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

Comhairle Chontae na Gaillimhe
Galway County Council

Development Complaint Form

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. Náidúr 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	[REDACTED]
Facs	Fax	[REDACTED]
Ríomhphost	Email	[REDACTED]

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"/>
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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

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(centre-line of parcel(s) edged)

Freehold

Leasehold

SubLeasehold

'S' Register

(see Section 8(b)(ii) 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

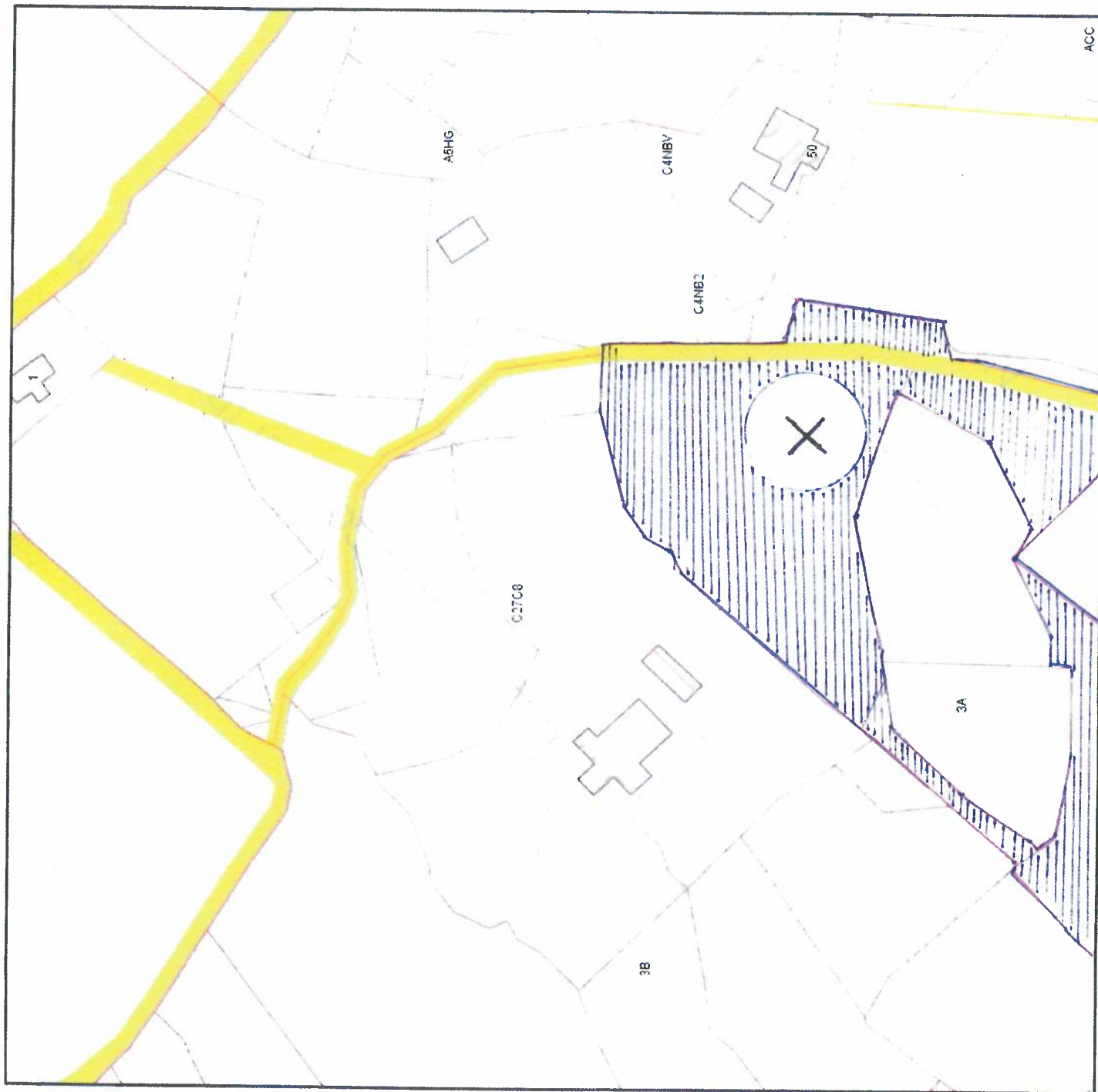
Septic Tank

Soak Pit

A full list of burdens and their symbology can be found at: www.landireland.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 Inse Section 62 of the Registration of Deed and Title Act 2006.

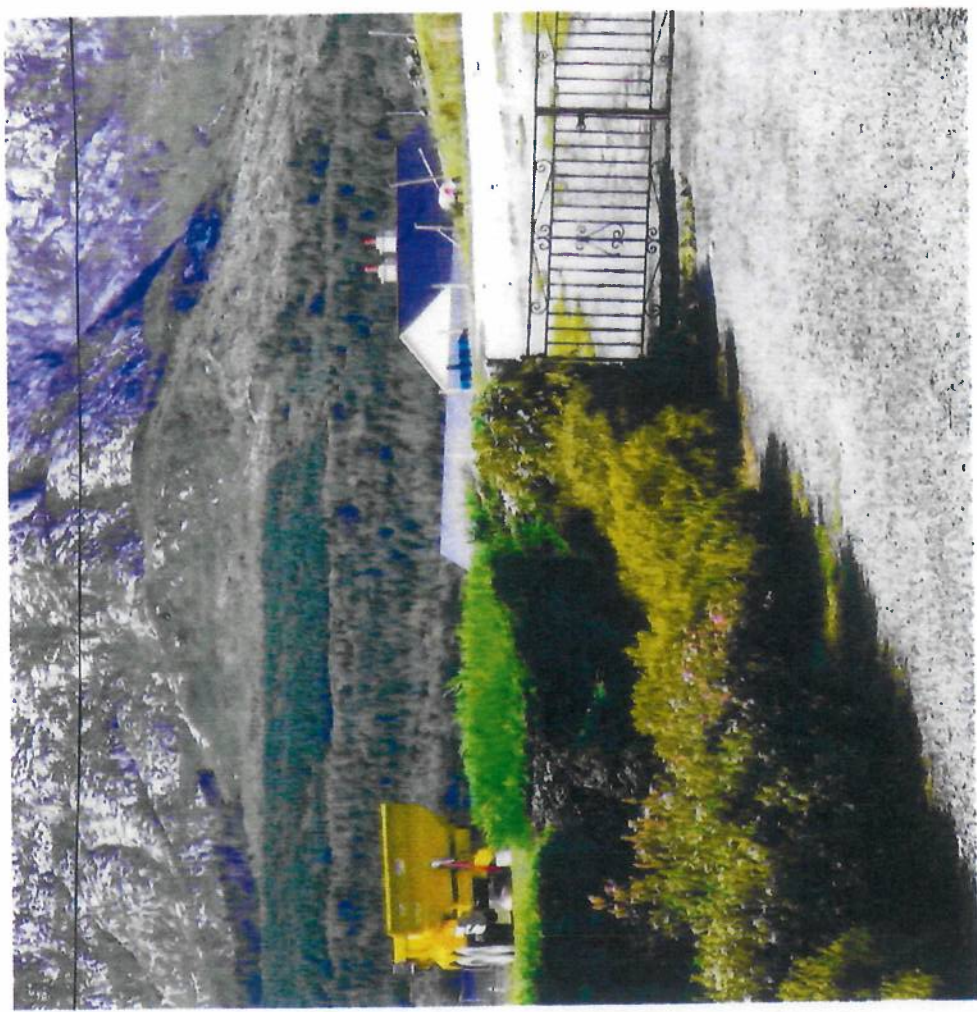
















04.06.2021



08.06.2021



19.06.2021



07.07.2021

Aras an Chontae,
Cnoc na Rachtarc, Gaillimh.
H91 H6KX.

Aras an Chontae
Prospect Hill, Galway.
H91 H6KX.

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www.galway.ie

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Timpeallacht & Tréidiacht
Environment & Veterinary
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environment@galwaycoco.ie

Bóithre, Iompar, Cúrsaí Mara
& Seirbhísi Ginearálta
Roads, Transportation, Marine
& General Services
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roads@galwaycoco.ie

Acmhainní Daonna
Human Resources
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hr@galwaycoco.ie

Mótarcháin
Motor Taxation
(091) 509 099
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Clár Roghthóirí
Register of Electors
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Seirbhísi Uisce
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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 meás

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."

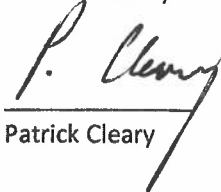
The land is also unfenced commonage. Objective LCM 3: "Preserve the status of traditionally open/unfenced landscape. The merits of each case will be considered in light of landscape sensitivity ratings and views of amenity importance."

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

