



Comhairle Contae Mhaigh Eo
Mayo County Council



A: Áras an Chontae, Caisleán an Bharraigh,
Contae Mhaigh Eo, F23 WF90

T: 094 9064000 F: 094 9023937

W: www.mayo.ie

Ár dTag./ Our Ref.

Do Thag./ Your Ref.

Your Ref. : ABP-317541-23

18th September, 2023

FAO Ms Karen Hickey,
Executive Officer,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1
D01 V902

RE: Submission on Case Ref. ABP-317541-23

Dear Ms Hickey,

I refer to your letter dated 5th September 2023 and the opportunity offered to Mayo County Council to make submissions or observations in relation to the contents of Mr Hunter's letter, dated 28th August, 2023.

Context

The said development was submitted to Mayo County Council Planning Enforcement Unit by way of a complaint on 13th June 2022. Pursuant to Part VIII of the Planning & Development Act 2000 (as amended), and in particular Section 152 of the Act, a site inspection, report and recommendation on the matter was prepared by an Executive Planner and endorsed by a Senior Executive Engineer. A decision that no further action should be taken as the complaint was without substance or foundation in respect of the Planning & Development Act, 2000 was signed by a Director of Service.

The planning authority was thereafter requested to seek a Section 5 declaration on the matter.

Submission from Mr. Hunter

The letter dated 28th August 2023 from Mr. Hunter appears to be based on civil matters rather than planning matters.

2 /

Of relevance to Planning is that the road on which the subject development (fencing) is located is not a public road. For clarity, the "Breaffy Road" referred to by Mr Hunter, in which he states serves a local national school, a quarry, local meat distribution plant, is not the road on which the development is located on. The development is located on a road with a sign indicating that it is a cul-de-sac.

Submission from Moytechnics Building Services (Enda Jones)

The content of the letter (undated) submitted by Enda Jones MIEI MCABE on behalf of Mr Mike Hunter is dealt with in the Report referenced PE 79/22/R1TW on Planning Enforcement file PE 79/22 which has been forwarded to An Bord Pleanala previously.

See attached copy of Report PE 79/22/R1TW, Memo from Ms Tanya Whyte to Mr Cyril Aitken, dated 24/06/2022, together with and CE Order No. 38/2022 for your convenience.

Yours sincerely,



Mary Gordon
Head of Planning Administration

Encl. (2)



Comhairle Contae Mhaigh Eo Mayo County Council



TO: Cyril Aitken, Senior Executive Engineer, Planning Enforcement
Section

FROM: Tanya Whyte, Executive Planner, Planning Enforcement
Section

DATE: 24/06/2022

FILE REF: PE: 79 /22

RE: Report Reference PE: 79/22/R1TW and Recommendation

Dear Cyril,

Please find attached Report PE: 79/22/R1TW for your consideration.

RECOMMENDATION

In my opinion, the alleged unauthorised development consisting of the erection of a fence along the boundary of a house is development and is exempted development.

I recommend that the representation is without substance or foundation and hence the file be closed.

Tanya Whyte

Executive Planner
Planning Enforcement

COMHAIRLE CONTAE MHAIGH EO

MAYO COUNTY COUNCIL

Enforcement Unit for Planning & Building Control

Tw9
29/06/22
Order No:

38/2022

Re:

***PE79/22 – Alleged unauthorised erection of a fence
along the boundary of a house at Mullans, Ballina,
Co. Mayo***

Submitted:

Internal written complaint received on 13th June, 2022
and report dated 24th June, 2022 from Ms. Tanya
Whyte, Executive Planner, Planning Enforcement Unit,
endorsed by Mr. Cyril Aitken, Senior Executive
Engineer.

Order:

Having considered the above, I hereby authorise that,
under Section 152 of the Planning & Development Act
2000 (as amended), no further action should be taken as
the complaint is without substance or foundation, in
respect of the Planning and Development Act, 2000 (as
amended).

Signed this 04 day of July, 2022

Cula Connell
Director of Services

10 year permission on a site is bounded to the east and south by Grange Castle Golf Club, to the north by Nangor Road (R134) and to the west by an estate road known as Falcon Avenue) for modifications to the permitted data centre granted under SDCC Reg. Ref. SD21A/0186 comprising the following, reconfiguration and alterations to the data centre building to include removal of front of house offices at third floor level, alterations to floor levels at second floor to provide consistency between front of house and data halls, parapet height increase of front of house to c.16.8m, provision of storage at second floor level in lieu of relocated internal generators to the external generator yard and associated elevational alterations; extension of loading dock at ground floor level by c.60sqm in area with minor height increase to c.5.3m; removal of 3 air plenums to the front (north) elevation and provision of screening to generator flues in lieu of omitted plenums; alterations at roof level to include removal of 2m high gantry screening; alterations to the permitted generator plant yard to the north of the data centre to include the removal of fuel tanks, reconfiguration of plant and generators, provision of 2 additional external generators (increase from 5 to 9 external generators), provision of 4 additional external plant rooms, provision of diesel pump tank cabinets and stepover, relocation of generator yard doors and enlarged generator yard to accommodate the proposed modifications; increase in plant areas by c.77sq.m; reconfiguration of plant within the permitted chiller plant yard to the south of the data centre; removal of 1 sprinkler/water tank and removal of stairs and door to the side of the waste compound; reconfiguration of car parking and motorcycle spaces and removal of 1 accessible space. 64 total number of car parking spaces; the proposal also includes provision of on-site gas power generation compound (c.2,604sq.m in area) in the area previously reserved for a future data centre; the compound comprises 7 modular plant rooms (totalling c.180sq.m in area), 10 gas fired generators and associated flues c.14.7m high, gas skid, associated modular plant, boundary treatment surrounding the compound c.6.5m high and 2 vehicular access points including general and emergency access; all associated site development works, services provision, drainage works, access, landscaping and boundary treatment works; no buildings are proposed above the existing ESB and SDCC wayleaves to the west and north of the site; the overall Gross Floor Area of the development is reduced by c.44sq.m to c.9,795sq.m from previously permitted under SDCC Reg. Ref. SD21A/0186; the application is accompanied by a Natura Impact Statement.

Plot 100, Profile Park, Nangor Road, Clondalkin Dublin 22.

Contents of box.

- Maps received with application to P.A. 30/5/22 pouches 1-5 see pouches for full details.
- Maps received with F.I. 21/10/23 pouches 1-2 see pouches for full details.

10 year permission on a site is bounded to the east and south by Grange Castle Golf Club, to the north by Nangor Road (R134) and to the west by an estate road known as Falcon Avenue) for modifications to the permitted data centre granted under SDCC Reg. Ref. SD21A/0186 comprising the following, reconfiguration and alterations to the data centre building to include removal of front of house offices at third floor level, alterations to floor levels at second floor to provide consistency between front of house and data halls, parapet height increase of front of house to c.16.8m, provision of storage at second floor level in lieu of relocated internal generators to the external generator yard and associated elevational alterations; extension of loading dock at ground floor level by c.60sqm in area with minor height increase to c.5.3m; removal of 3 air plenums to the front (north) elevation and provision of screening to generator flues in lieu of omitted plenums; alterations at roof level to include removal of 2m high gantry screening; alterations to the permitted generator plant yard to the north of the data centre to include the removal of fuel tanks, reconfiguration of plant and generators, provision of 2 additional external generators (increase from 5 to 9 external generators), provision of 4 additional external plant rooms, provision of diesel pump tank cabinets and stepover, relocation of generator yard doors and enlarged generator yard to accommodate the proposed modifications; increase in plant areas by c.77sq.m; reconfiguration of plant within the permitted chiller plant yard to the south of the data centre; removal of 1 sprinkler/water tank and removal of stairs and door to the side of the waste compound; reconfiguration of car parking and motorcycle spaces and removal of 1 accessible space. 64 total number of car parking spaces; the proposal also includes provision of on-site gas power generation compound (c.2,604sq.m in area) in the area previously reserved for a future data centre; the compound comprises 7 modular plant rooms (totalling c.180sq.m in area), 10 gas fired generators and associated flues c.14.7m high, gas skid, associated modular plant, boundary treatment surrounding the compound c.6.5m high and 2 vehicular access points including general and emergency access; all associated site development works, services provision, drainage works, access, landscaping and boundary treatment works; no buildings are proposed above the existing ESB and SDCC wayleaves to the west and north of the site; the overall Gross Floor Area of the development is reduced by c.44sq.m to c.9,795sq.m from previously permitted under SDCC Reg. Ref. SD21A/0186; the application is accompanied by a Natura Impact Statement.

Plot 100, Profile Park, Nangor Road, Clondalkin Dublin 22.

- Maps received with C.F.I. 26/4/23 see pouch for full details.
- Reports received with C.F.I. 26/4/23 Environmental impact assessment report folders 1/2
- Reports received with C.F.I. 26/4/23 VOLUME 2 Environmental impact assessment report folder 2

FILE REFERENCE NUMBER:

PE 79/22

REPORT ARISING FROM SECTION 152(1)(B)

UNDER PART VIII OF THE PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)

FILE REFERENCE NUMBER:

PE 79/22

REPORT REFERENCE NO:

PE 79/22/R1TW

REPORT AUTHOR:

Tanya Whyte, Executive Planner

DATE OF REPORT:

24/ 06/2022

WRITTEN REPRESENTATION

A written complaint was received by the Planning Enforcement Unit on 13th June 2022 via the Ballina MD office.

The following details accompanies the complaint:

ALLEGED DEVELOPMENT:

Illegal fence

ALLEGED DEVELOPMENT ADDRESS:

Mullans, Ballina

ALLEGED DEVELOPER:

Miss Hart

SITE INSPECTION

I inspected the site on Wednesday 22nd June 2022, 11:13am with Tommie Gill.

On site I noted:

- A post and rail fence erected along the north western boundary of the site.
- Access to the house is along the north western (side) site boundary off a narrow road.

Tommie Gill took measurements about halfway between north eastern (front) boundary and the gateway on north western (side) boundaries of to Ms. Harte's site. The measurements were:

Top of post to ground = 1.247m

Top of rail to ground = 1.185m

Width of tarred private road = 2.58m

I spoke to Ms. Harte and her brother-in-law Gerry Clarke. She told me that she had moved into the house around 2012 - and the hedgerow and some trees were removed along with the relocation of a large stone recently and in her opinion provided more space and safety in areas along the road. She stated she has put potted trees along the new fenced boundary, but they were removed by someone. Ms Harte stated she would take down the fence if required. Tommie Gill informed her that she may not need to. I informed her that I would do a desktop study on my return to the office

and determine if the new fence needed planning permission. If it did not need planning permission, it could remain; if it did need planning permission that I noted that she was willing to take it down. If it needed planning permission, Mayo County Council would write to her (a Warning Letter). I informed her that she could take it down either way too if she wished to.

I took a photograph of the fence which is included in Appendix 1 of this report.

DESKTOP STUDY

I carried out a desktop study on 23rd and 24th June 2022. The following relevant information was gathered.

Location

The site of the alleged unauthorised property is located in the townland of Mullauns, Ballina, approximately 400m off the R294 Ballina to Bonnickonlon Road. The site is on a crossroads between a local road L-5116 and a private road. The status of the roads has been confirmed by inspecting the PMS Viewer. The site is marked on the PMS Viewer map in Appendix 2 of this report.

Ownership details

I inspected landdirect.ie to investigate land ownership. The land is owned by Patrick Harte, Mullauns, Ballina - Folio MY5783F. This Folio contains 7 properties. This site is located within property No. 3 on the Folio. There is a burden associated with property No. 3 relating to fishing rights. Property 3 of the Folio includes the roadway on which this boundary of this site under investigation is located. There is a Right of Way illustrated along the private road serving Folio MY60647F (formally MY25744F), Ms. Harte's sister's and brother-in-law's property. Two dealings are pending on this Folio, but I have no information relating to these dealings or to what properties in the Folio they relate to. Images of the Folio and map are contained in Appendix 3 of this report.

Planning History

I viewed the planning register and noted planning permission was granted for a house and PETU in 2010, planning reference no P09/672 refers. The layout plan and conditions of the planning permission are contained in Appendix 4 of this report.

Imagery

I inspected Google Maps and Google Street View and took images of the site from same. These images are contained in Appendix 5 of this report.

OPINION

Planning permission is required for any development of land or property, unless the development is specifically exempted development. The term development is set out in the Planning & Development Act 2000 (as amended) and includes the carrying out of works on, in, over or under any land or buildings, and making a material (i.e. significant) change of use of land or buildings.

Planning permission has been granted for a dwelling house and PETU on the land. The elements relating to this boundary are only being assessed in this instance. Conditions No. 1, 6, 7 & 18 are relevant to this case.

Condition 1

1. The development shall be carried out in accordance with the plans, elevations and documentation submitted to Mayo County Council on 30/06/09, 01/12/09 and 23/12/09 except as amended by Conditions hereunder.

Reason: In the interests of proper planning and development.

Condition 6

6. The existing fence at the front (roadside) of the site shall be removed as per site layout received by Mayo County Council on 23/12/09. The new wall shall be re-constructed of stone from the wall to be removed/local stone and shall be at least 4.5m (14 ft.) from the nearer edge of the adjoining tarred carriageway and the area between the new wall line and the carriageway shall be excavated out, filled up, levelled and made suitable for parking motor vehicles. Surface of lay by shall be of a bound material to prevent carriage of debris onto the public road. Roadside drainage shall be maintained at all times. The new front boundary fence/wall shall not exceed 1.2 m. The hedgerows shall be reinstated with a new front boundary (using the same species of hedgerows which are to be removed) along the new set back as agreed with the Ballina Area Engineer.

Reason: In the interests of traffic safety and to provide parking spaces for vehicles associated with the house.

Condition 7

7. The vehicular entrance gate to the site shall be located as shown on the site layout plans submitted to Mayo County Council on the 23/12/09. Gates shall open inwards only.

Reason: To reduce traffic hazard.

Condition 18

18. All existing trees / hedgerows shall be retained on site. Additional screen planting of native deciduous trees and shrubs shall be planted along all site boundaries save at the entrance where adequate sight visibility shall be retained. Such planting shall be carried out in the first planting season following commencement of development and shall be maintained.

Any unsuccessful or damaged specimens shall be replaced.

Reason: In the interests of residential amenity.

Part 2 Article 6 of the Planning & Development Regulations 2001-2022 stated that development in certain classes shall be exempted development for the purposes of the Planning & Development Act 2000 (as amended) subject to conditions and limitations and subject to Article 9 (restrictions on exemptions).

Of relevance to this case are Class 5 and 13 of Article 6 Schedule 2 Part 1:

CLASS 5 The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or	1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any
wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.	garden or other space in front of a house, 1.2 metres. 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered. 3. No such structure shall be a metal palisade or other security fence.
CLASS 13 The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving.	The width of any such private footpath or paving shall not exceed 3 metres.

And relevant restrictions on exemptions are:

Restrictions on exemption.	<p>9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—</p> <p>(a) if the carrying out of such development would—</p> <p>(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,</p> <p>(ii) consist of or comprise 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,</p> <p>(iii) endanger public safety by reason of traffic hazard or obstruction of road users,</p>
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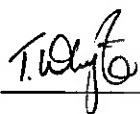
From site inspection, review of planning conditions and Goggle street view imagery, it appears that the developer complied with planning permission granted in relation to the boundary on which this fence is now located.

The road along this boundary is a private road, this section appears to be owned by the developer, with a Right of Way over it in favour of nearby property in the ownership of her sister and brother-in-law.

The developer has now carried out development consisting of the removal of the hedgerow along the north western site boundary and erected a fence in its place. The fence rails are under the exempt development height conditions (1.2m), with the fence posts slightly over but not considered significant at 0.047m); and when compared with what was there previously does not create a traffic hazard. It possibly increases the sightlines from her exit onto the private road and from the private road onto the local road L-5116. It may also remove any obstacles for pulling in including the large stone and tree roots. However, I did not see these obstacles along the roadside as they were removed to facilitate the development. The developer did point out a large stone inside the garden which she said came from the original hedgerow and she retained it for her garden.

It could be argued that the development contravenes Conditions in the planning permission. However as the development appears to have been developed in the first instance in accordance with the conditions of the grant of permission, it is logical to interpret the development exemptions in planning law as intended for developments that are completed in accordance with the plans and particulars submitted/agreed by way of condition in the first instance. I do not know think it was the spirit of the planning law that that conditions would de-exempt every development thereafter on developments that were completed in accordance with their original planning permission, and thereafter wish to be further developed in line with planning exemptions.

In my opinion, the alleged unauthorised development consisting of the erection of a fence along the boundary of a house is development, and is exempted development.



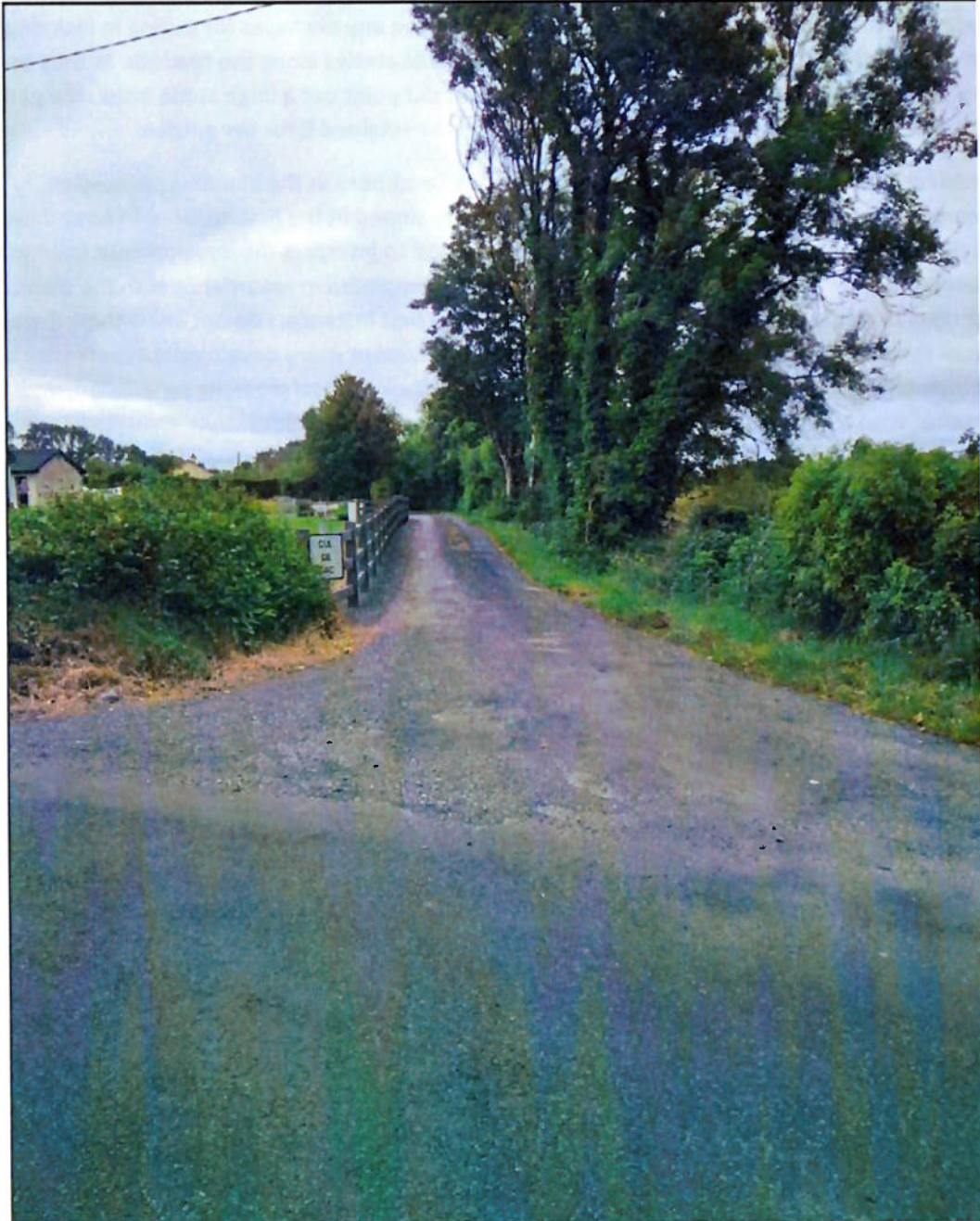
Tanya Whyte

Executive Planner

Date: _____

APPENDIX 1

Photo taken by T. Whyte on Wednesday 22nd June 2022



APPENDIX 2

Site location map on PMS Viewer – site marked X



APPENDIX 3

Land Ownership details from Land Registry (land direct)

<https://www.landdirect.ie/promap/>

Property Details

> Back

Folio Number MYS783F
Title Level Freehold
Plan Number 10
Property Number 3
Area of selected plans 3.46 hectares.
Number of Plans on this folio: 7
Address Not Available

Highlight All Plans
View Folio PDF
Request Certified Copy

The following Applications are Pending on this Folio
D2021LR027692Y Mapped
D2022LR004718Y Mapping

*PPA Boundaries and Plan Area are not conclusive. See Section 62(2) of Registration of Title Act 2006 and Rule 8(2) of the Land Registration Rules 2012.

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Help

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16:57

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Land Registry**County Mayo****Folio 5783F****Part 2 - Ownership**

Title of property no. 4 POSSESSORY

Title of property no. 1, 2, 3 ABSOLUTE

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965	
1	25-JAN-1986 E5121/86	ELIZABETH HARTE of MULLAUNS, BALLINA, COUNTY MAYO is limited owner. The Title is subject to the provisions of the Land and Conveyancing Law Reform Act 2009. D2009LR221844W, 1-DEC-2009 Cancelled D2018LR056862D 25-APR-2018
2	25-APR-2018 D2018LR056862D	PATRICK HARTE of Mullauns, Ballina, County Mayo is full owner.

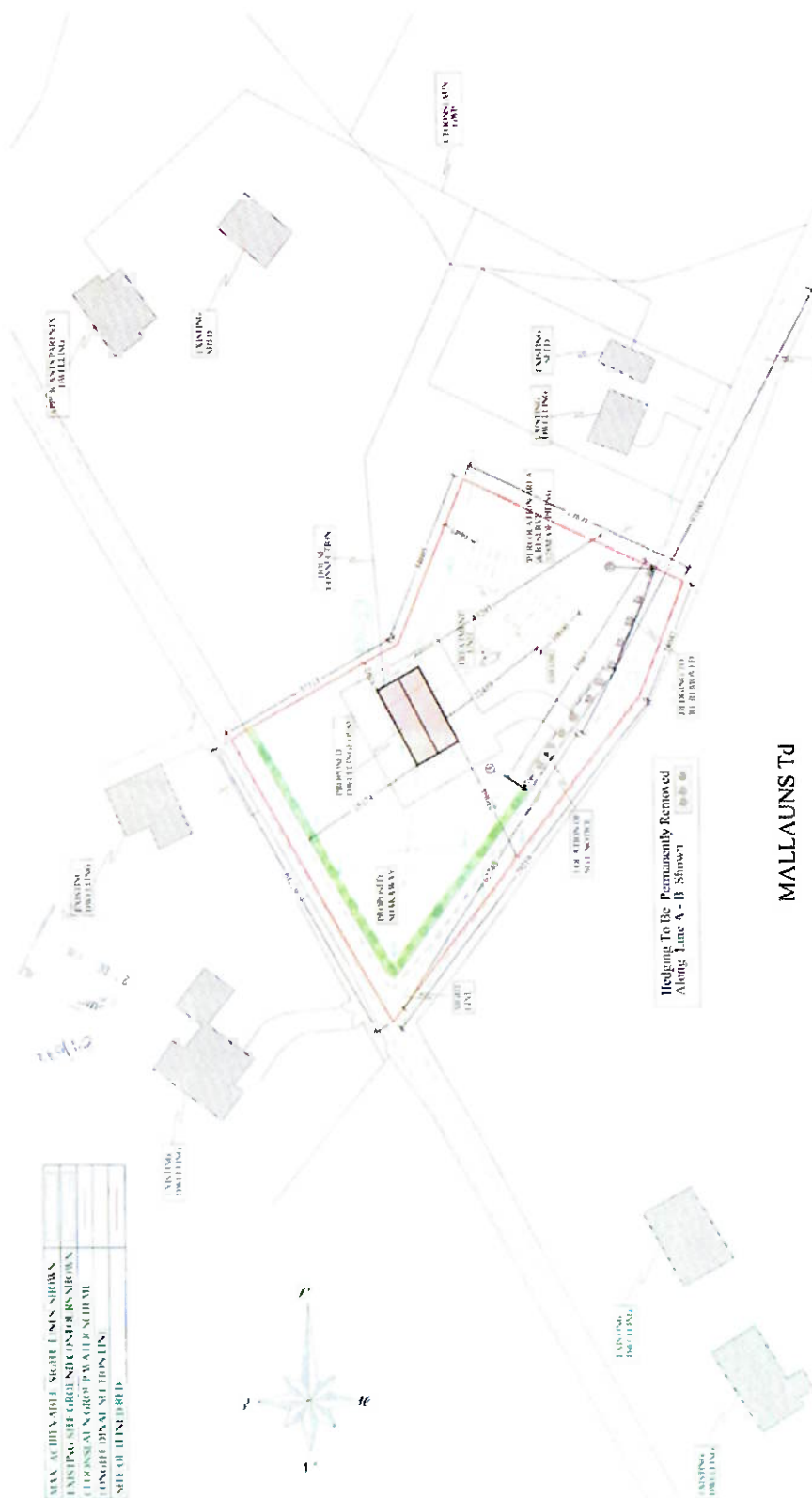
Landdirect.ie Pending Applications Report**Search Criteria**

Folio	MY5783F
Date	23/06/2022

Applications Pending

Application Number	Date Lodged	Application Types	Application Status	Applicant	Lodged By	Reference	Associated Folios
D2021LR027692Y	24/02/2021 00:00:00	Charge, Deed of Rectification, Transfer (Sale)	Mapped	DEIRDRE CONAGHAN, KENNETH LAWRENCE	BOURKE CARRIGG & LOFTUS SOLICITORS	m1/cm970/lawrence	MY954F, MY41063F, MY5783F
D2022LR004718Y	12/01/2022 00:00:00	Grant of Wayleave/Right of Way	Mapping	KATHLEEN WALKER	CLARKE FLYNN NICCOLE, SOLICITORS	0899744	MY5783F

Planning Permission relevant documents – site layout plan and conditions



SECOND SCHEDULE - SCHEDULE OF CONDITIONS - P09/672

1. The development shall be carried out in accordance with the plans, elevations and documentation submitted to Mayo County Council on 30/06/09, 01/12/09 and 23/12/09 except as amended by Conditions hereunder.

Reason: In the interests of proper planning and development.

2. The house shall be finished in nap plaster or dash with no colour components. Any stone used shall be a local stone indigenous to the area. No cladding shall be permitted. Roof slates/tiles shall be blue black in colour. No brick shall be permitted as a finish to any part of the dwelling. Windows shall have vertical emphasis, divided simply, centrally divided once horizontally and once vertically. The window frames shall be finished in timber effect. No white PVC shall be permitted. Front door shall be of simple design in hardwood.

Reason: In the interests of visual amenity.

3. a) The proposed dwelling when completed shall be first occupied as the place of residence of the applicant, members of the applicant's immediate family or their heirs and shall remain so occupied for a period of seven years thereafter, unless consent is granted by Mayo County Council for its occupation by other persons who belong to the same category of housing need as the applicant.

b) Before development commences, the applicant shall enter into an agreement with Mayo County Council, pursuant to Section 47 of the Planning and Development Act 2000 providing for the terms of this occupancy requirement.

c) Within two months of the occupation of the proposed dwelling, the applicant shall submit to Mayo County Council, a written statement of the confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

(d) This condition shall not affect the sale of the dwelling by a mortgagee in possession or by any person deriving title from such a sale.

Reason: In the interests of proper planning and development.

4 The house shall be located as shown on the site layout plans submitted to Mayo County Council on the 23/12/09 except as amended by Conditions hereunder.

Reason: Building line standards / Proper planning and development.

5. The finished floor level of the house shall be at 100.60 as shown on the site layout plans submitted to Mayo County Council on the 23/12/09.

Reason: In the interests of visual amenity.

6. The existing fence at the front (roadside) of the site shall be removed as per site layout received by Mayo County Council on 23/12/09. The new wall shall be re-constructed of stone from the wall to be removed/local stone and shall be at least 4.5m (14 ft.) from the nearer edge of the adjoining tarred carriageway and the area between the new wall line and the carriageway shall be excavated out, filled up, levelled and made suitable for parking motor vehicles. Surface of lay by shall be of a bound material to prevent carriage of debris onto the public road. Roadside drainage shall be maintained at all times. The new front boundary fence/wall shall not exceed 1.2 m. The hedgerows shall be reinstated with a new front boundary (using the same species of hedgerows which are to be removed) along the new set back as agreed with the Ballina Area Engineer.

Reason: In the interests of traffic safety and to provide parking spaces for vehicles associated with the house.

7. The vehicular entrance gate to the site shall be located as shown on the site layout plans submitted to Mayo County Council on the 23/12/09. Gates shall open inwards only.

Reason: To reduce traffic hazard.

8. No surface water shall be discharged from the site onto the public road. Surface water shall be discharged to soakways on site.

Reason: To avoid flooding.

9. The effluent from the house shall be treated in a proprietary effluent treatment unit capable of producing effluent of 20/30 standard which shall be discharged to an elevated percolation area constructed of material having a T-value of 15-30 in accordance with S.R.6 of 1991. There shall be at least 1 metre of material between the percolation pipes and the existing ground level.

Reason: For the protection of public health and to avoid water pollution.

10. If the sewage treatment system includes a septic tank, it shall be designed and constructed in accordance with S.R.6 1991 by Eolas – Septic Tank Systems, Recommendations for Domestic Effluent Treatment and Disposal for a Single Dwellinghouse and shall be located at least 7m (23 ft) from the house served, 20m (66 ft) from any other house, 3m (10 ft) from site boundaries.

Reason: For the protection of public health and to avoid water pollution.

11. A percolation area and reserve percolation area shall be designed and constructed in accordance with S.R. 6 of 1991 by Eolas.

Reason: For the protection of public health and to avoid water pollution.

12. The percolation area and reserve percolation area shall be at least 20m (66 ft.) from any house, 10m (33 ft.) from roads, streams, drains, 3m (10 ft.) from site boundaries, 100ft. (30.5m) from any well.

Reason: For the protection of public health and to avoid water pollution.

13. No water mains, service pipes, access roads, driveways or paved areas shall be located within the percolation area.

Reason: For the protection of public health and to avoid water pollution.

14. Adequate access shall be provided for septic tank and percolation area maintenance / treatment system maintenance.

Reason: For the protection of public health and to avoid water pollution.

15. A contribution of €357 for amenities shall be paid to Mayo County Council prior to commencement of development on the site. This development contribution shall increase in accordance with the Wholesale Price Index for Building and Construction in January of each year from the date of grant of permission up to the date that payment is made to Mayo County Council.

Reason: To comply with Mayo County Council's Development Contribution Scheme.

16. If any ESB lines cross the site, the developer shall inform the E.S.B. of the intention to start work and arrange for diversions of the lines, if necessary.

Reason: To avoid electrocution.

17. Compliance with Mayo County Council Fuel Oil Regulations for single family dwellings. (Copy Attached).

Reason: To reduce fire risk.

18. All existing trees / hedgerows shall be retained on site. Additional screen planting of native deciduous trees and shrubs shall be planted along all site boundaries save at the entrance where adequate sight visibility shall be retained. Such planting shall be carried out in the first planting season following commencement of development and shall be maintained. Any unsuccessful or damaged specimens shall be replaced.

Reason: In the interests of residential amenity.

19. Prior to the commencement of development, a cash deposit of €2,000 shall be paid to Mayo County Council to ensure no damage to the public road and services occurs. In advance of works commencing, the applicant/developer should liaise with Mayo County Council's local Area Engineering Office.

Reason: To ensure satisfactory completion of the development and protection of public infrastructure.

20. Any existing utility poles along site frontage to be removed/under grounded as required.

Reason: In the interests of public safety.

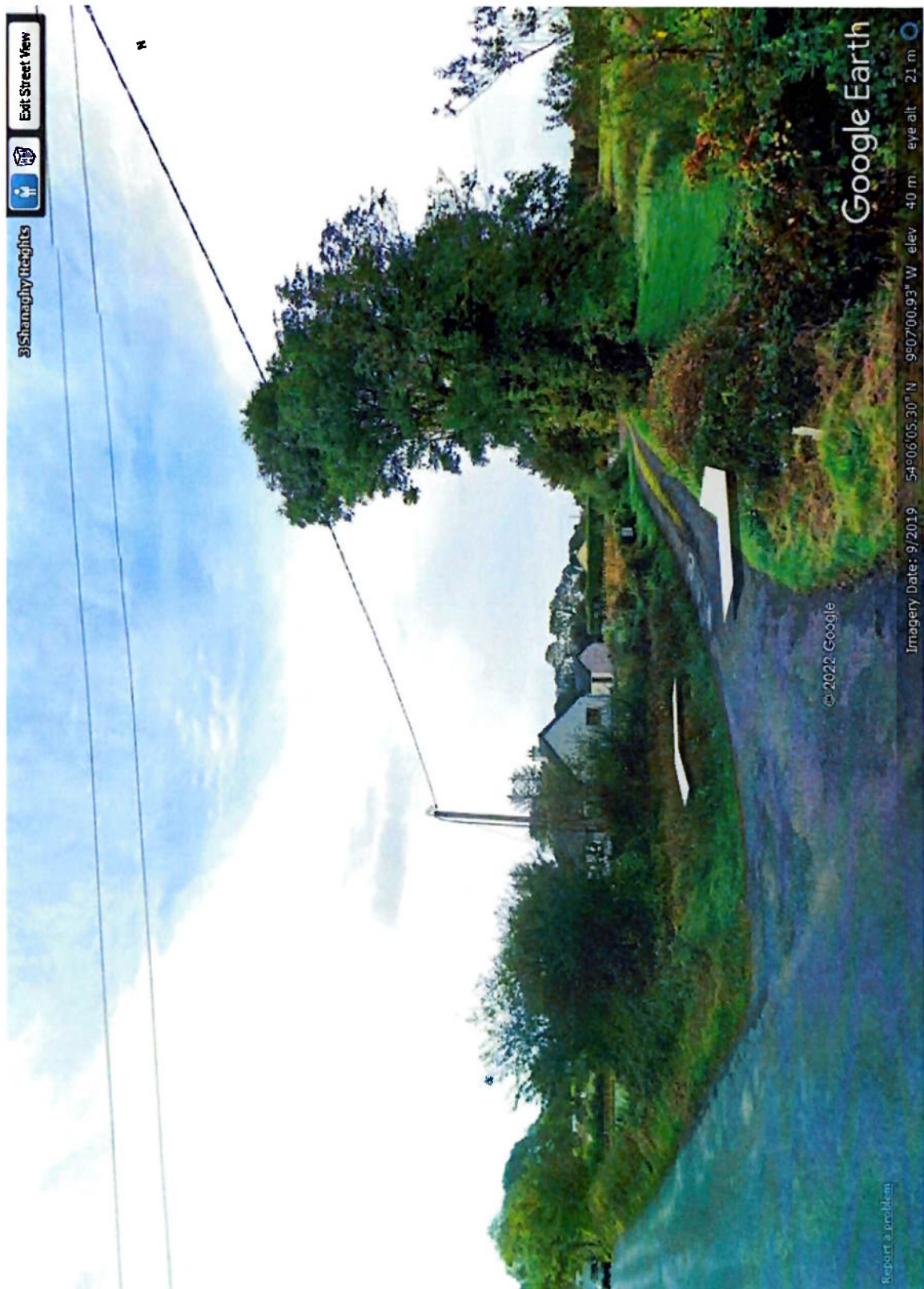
END OF SCHEDULE

APPENDIX 5 – IMAGERY FROM GOOGLE

2009



2019





Comhairle Contae Mhaigh Eo
Mayo County Council



A: Áras an Chontae, Caisleán an Bharraigh,
Contae Mhaigh Eo, F23 WF90

T: 094 9064000 F: 094 9023937

W: www.mayo.ie

Ár dTag./ Our Ref.

Do Thag./ Your Ref.

Your Ref. : ABP-317541-23

18th September, 2023

FAO Ms Karen Hickey,
Executive Officer,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1
D01 V902

AN BORD PLEANÁLA	
LDG- _____	
ABP- _____	
20 SEP 2023	
Fee: € _____	Type: _____
Time: _____	By: _____

RE: Submission on Case Ref. ABP-317541-23

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The letter dated 28th August 2023 from Mr. Hunter appears to be based on civil matters rather than planning matters.

2 /

Of relevance to Planning is that the road on which the subject development (fencing) is located is not a public road. For clarity, the "Breaffy Road" referred to by Mr Hunter, in which he states serves a local national school, a quarry, local meat distribution plant, is not the road on which the development is located on. The development is located on a road with a sign indicating that it is a cul-de-sac.

Submission from Moytechnics Building Services (Enda Jones)

The content of the letter (undated) submitted by Enda Jones MIEI MCABE on behalf of Mr Mike Hunter is dealt with in the Report referenced PE 79/22/R1TW on Planning Enforcement file PE 79/22 which has been forwarded to An Bord Pleanala previously.

See attached copy of Report PE 79/22/R1TW, Memo from Ms Tanya Whyte to Mr Cyril Aitken, dated 24/06/2022, together with and CE Order No. 38/2022 for your convenience.

Yours sincerely,



Mary Gordon
Head of Planning Administration

Encl. (2)



Comhairle Contae Mhaigh Eo Mayo County Council



TO: Cyril Aitken, Senior Executive Engineer, Planning Enforcement
Section

FROM: Tanya Whyte, Executive Planner, Planning Enforcement
Section

DATE: 24/06/2022

FILE REF: PE: 79 /22

RE: Report Reference PE: 79/22/R1TW and Recommendation

Dear Cyril,

Please find attached Report PE: 79/22/R1TW for your consideration.

RECOMMENDATION

In my opinion, the alleged unauthorised development consisting of the erection of a fence along the boundary of a house is development and is exempted development.

I recommend that the representation is without substance or foundation and hence the file be closed.

Tanya Whyte

Executive Planner
Planning Enforcement

FILE REFERENCE NUMBER:

PE 79/22

REPORT ARISING FROM SECTION 152(1)(B)

UNDER PART VIII OF THE PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)

FILE REFERENCE NUMBER:

PE 79/22

REPORT REFERENCE NO:

PE 79/22/R1TW

REPORT AUTHOR:

Tanya Whyte, Executive Planner

DATE OF REPORT:

24/06/2022

WRITTEN REPRESENTATION

A written complaint was received by the Planning Enforcement Unit on 13th June 2022 via the Ballina MD office.

The following details accompanies the complaint:

ALLEGED DEVELOPMENT:

Illegal fence

ALLEGED DEVELOPMENT ADDRESS:

Mullans, Ballina

ALLEGED DEVELOPER:

Miss Hart

SITE INSPECTION

I inspected the site on Wednesday 22nd June 2022, 11:13am with Tommie Gill.

On site I noted:

- A post and rail fence erected along the north western boundary of the site.
- Access to the house is along the north western (side) site boundary off a narrow road.

Tommie Gill took measurements about halfway between north eastern (front) boundary and the gateway on north western (side) boundaries of to Ms. Harte's site. The measurements were:

Top of post to ground = 1.247m

Top of rail to ground = 1.185m

Width of tarred private road = 2.58m

I spoke to Ms. Harte and her brother-in-law Gerry Clarke. She told me that she had moved into the house around 2012 - and the hedgerow and some trees were removed along with the relocation of a large stone recently and in her opinion provided more space and safety in areas along the road. She stated she has put potted trees along the new fenced boundary, but they were removed by someone. Ms Harte stated she would take down the fence if required. Tommie Gill informed her that she may not need to. I informed her that I would do a desktop study on my return to the office

and determine if the new fence needed planning permission. If it did not need planning permission, it could remain; if it did need planning permission that I noted that she was willing to take it down. If it needed planning permission, Mayo County Council would write to her (a Warning Letter). I informed her that she could take it down either way too if she wished to.

I took a photograph of the fence which is included in Appendix 1 of this report.

DESKTOP STUDY

I carried out a desktop study on 23rd and 24th June 2022. The following relevant information was gathered.

Location

The site of the alleged unauthorised property is located in the townland of Mullauns, Ballina, approximately 400m off the R294 Ballina to Bonniconlon Road. The site is on a crossroads between a local road L-5116 and a private road. The status of the roads has been confirmed by inspecting the PMS Viewer. The site is marked on the PMS Viewer map in Appendix 2 of this report.

Ownership details

I inspected landdirect.ie to investigate land ownership. The land is owned by Patrick Harte, Mullauns, Ballina - Folio MY5783F. This Folio contains 7 properties. This site is located within property No. 3 on the Folio. There is a burden associated with property No. 3 relating to fishing rights. Property 3 of the Folio includes the roadway on which this boundary of this site under investigation is located. There is a Right of Way illustrated along the private road serving Folio MY60647F (formally MY25744F), Ms. Harte's sister's and brother-in-law's property. Two dealings are pending on this Folio, but I have no information relating to these dealings or to what properties in the Folio they relate to. Images of the Folio and map are contained in Appendix 3 of this report.

Planning History

I viewed the planning register and noted planning permission was granted for a house and PETU in 2010, planning reference no P09/672 refers. The layout plan and conditions of the planning permission are contained in Appendix 4 of this report.

Imagery

I inspected Google Maps and Google Street View and took images of the site from same. These images are contained in Appendix 5 of this report.

OPINION

Planning permission is required for any development of land or property, unless the development is specifically exempted development. The term development is set out in the Planning & Development Act 2000 (as amended) and includes the carrying out of works on, in, over or under any land or buildings, and making a material (i.e. significant) change of use of land or buildings.

Planning permission has been granted for a dwelling house and PETU on the land. The elements relating to this boundary are only being assessed in this instance. Conditions No. 1, 6, 7 & 18 are relevant to this case.

Condition 1

1. The development shall be carried out in accordance with the plans, elevations and documentation submitted to Mayo County Council on 30/06/09, 01/12/09 and 23/12/09 except as amended by Conditions hereunder.

Reason: In the interests of proper planning and development.

Condition 6

6. The existing fence at the front (roadside) of the site shall be removed as per site layout received by Mayo County Council on 23/12/09. The new wall shall be re-constructed of stone from the wall to be removed/local stone and shall be at least 4.5m (14 ft.) from the nearer edge of the adjoining tarred carriageway and the area between the new wall line and the carriageway shall be excavated out, filled up, levelled and made suitable for parking motor vehicles. Surface of lay by shall be of a bound material to prevent carriage of debris onto the public road. Roadside drainage shall be maintained at all times. The new front boundary fence/wall shall not exceed 1.2 m. The hedgerows shall be reinstated with a new front boundary (using the same species of hedgerows which are to be removed) along the new set back as agreed with the Ballina Area Engineer.

Reason: In the interests of traffic safety and to provide parking spaces for vehicles associated with the house.

Condition 7

.....
7. The vehicular entrance gate to the site shall be located as shown on the site layout plans submitted to Mayo County Council on the 23/12/09. Gates shall open inwards only.

Reason: To reduce traffic hazard.

Condition 18

18. All existing trees / hedgerows shall be retained on site. Additional screen planting of native deciduous trees and shrubs shall be planted along all site boundaries save at the entrance where adequate sight visibility shall be retained. Such planting shall be carried out in the first planting season following commencement of development and shall be maintained. Any unsuccessful or damaged specimens shall be replaced.

Reason: In the interests of residential amenity.

Part 2 Article 6 of the Planning & Development Regulations 2001-2022 stated that development in certain classes shall be exempted development for the purposes of the Planning & Development Act 2000 (as amended) subject to conditions and limitations and subject to Article 9 (restrictions on exemptions).

Of relevance to this case are Class 5 and 13 of Article 6 Schedule 2 Part 1:

CLASS 5 The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or	1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any
wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.	garden or other space in front of a house, 1.2 metres. 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered. 3. No such structure shall be a metal palisade or other security fence.
CLASS 13 The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving.	The width of any such private footpath or paving shall not exceed 3 metres.

And relevant restrictions on exemptions are:

Restrictions on exemption.	<p>9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—</p> <p>(a) if the carrying out of such development would—</p> <p>(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,</p> <p>(ii) consist of or comprise 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,</p> <p>(iii) endanger public safety by reason of traffic hazard or obstruction of road users,</p>
----------------------------	--

From site inspection, review of planning conditions and Goggle street view imagery, it appears that the developer complied with planning permission granted in relation to the boundary on which this fence is now located.

The road along this boundary is a private road, this section appears to be owned by the developer, with a Right of Way over it in favour of nearby property in the ownership of her sister and brother-in-law.

The developer has now carried out development consisting of the removal of the hedgerow along the north western site boundary and erected a fence in its place. The fence rails are under the exempt development height conditions (1.2m), with the fence posts slightly over but not considered significant at 0.047m); and when compared with what was there previously does not create a traffic hazard. It possibly increases the sightlines from her exit onto the private road and from the private road onto the local road L-5116. It may also remove any obstacles for pulling in including the large stone and tree roots. However, I did not see these obstacles along the roadside as they were removed to facilitate the development. The developer did point out a large stone inside the garden which she said came from the original hedgerow and she retained it for her garden.

It could be argued that the development contravenes Conditions in the planning permission. However as the development appears to have been developed in the first instance in accordance with the conditions of the grant of permission, it is logical to interpret the development exemptions in planning law as intended for developments that are completed in accordance with the plans and particulars submitted/agreed by way of condition in the first instance. I do not know think it was the spirit of the planning law that that conditions would de-exempt every development thereafter on developments that were completed in accordance with their original planning permission, and thereafter wish to be further developed in line with planning exemptions.

In my opinion, the alleged unauthorised development consisting of the erection of a fence along the boundary of a house is development, and is exempted development.



Tanya Whyte

Executive Planner

Date: _____

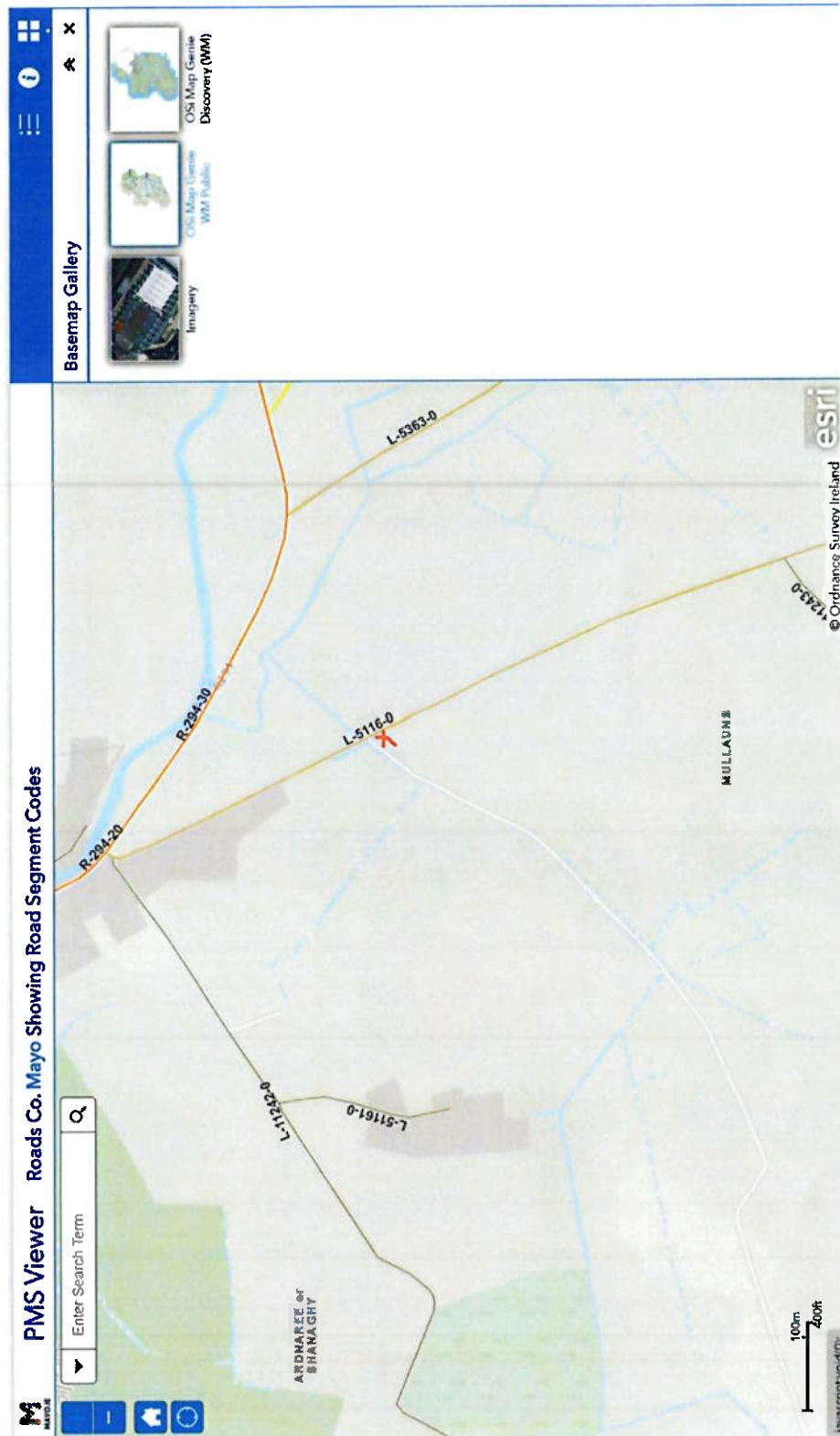
APPENDIX 1

Photo taken by T. Whyte on Wednesday 22nd June 2022



APPENDIX 2

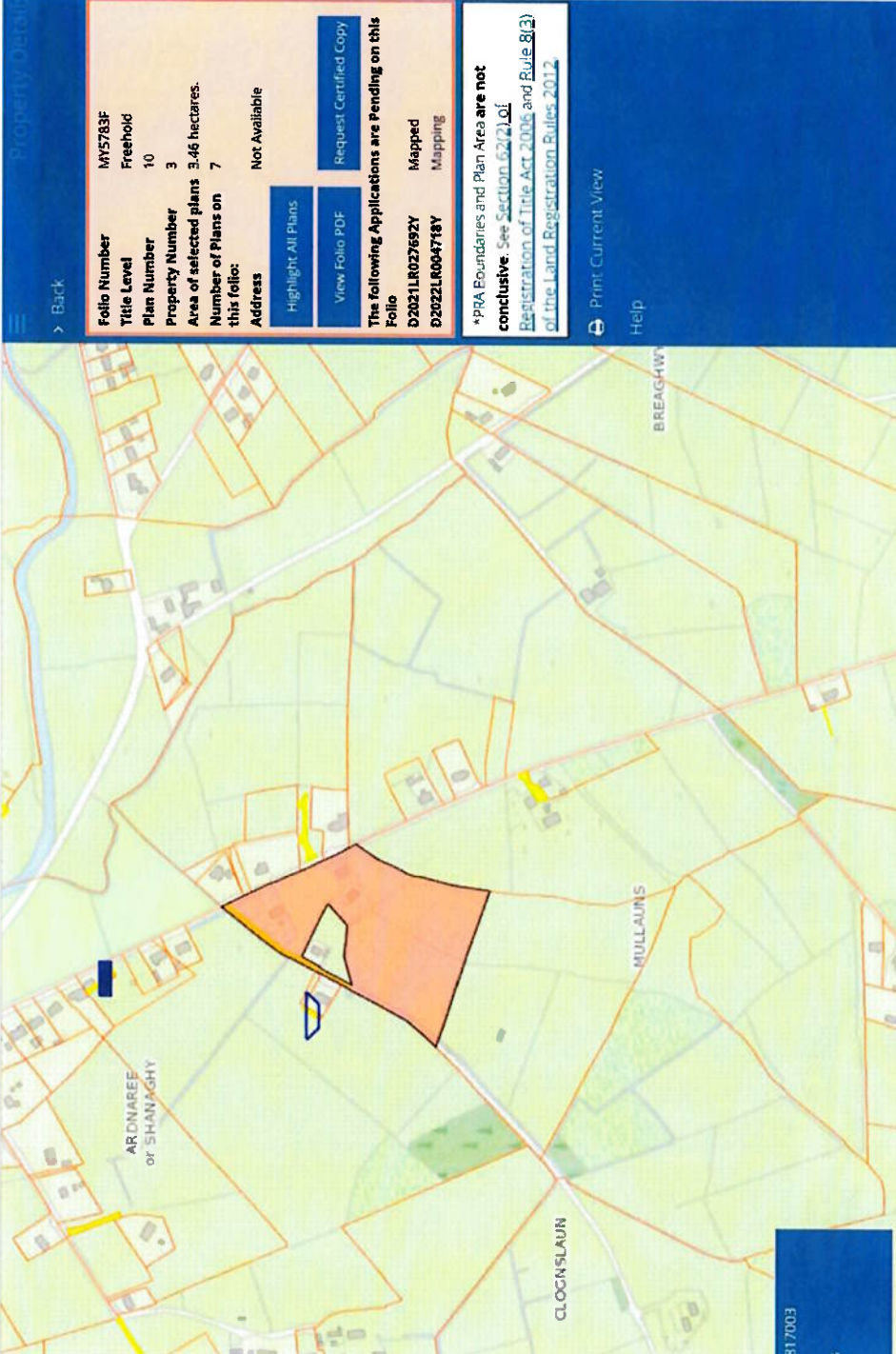
Site location map on PMS Viewer – site marked X



APPENDIX 3

Land Ownership details from Land Registry (land direct)

https://www.landdirect.ie/primap/



Property Details

Folio Number MY5783F
Title Level Freehold
Plan Number 10
Property Number 3
Area of selected plans 3.46 hectares.
Number of Plans on this folio: 7
Address Not Available

[Highlight All Plans](#)
[View Folio PDF](#)
[Request Certified Copy](#)

The Following Applications are Pending on this Folio
D2021LR027692Y Mapped
D2022LR004718Y Mapping

***PRA Boundaries and Plan Area are not conclusive. See Section 6(2) of Registration of Title Act 2006 and Rule 8(3) of the Land Registration Rules 2012.**

[Print Current View](#)
[Help](#)

ARDNAREE or SHANAGHY
MULLAUNS
BREAUGH
CLOGNSLAUN
817003

PE 79 -
Micro...
File Re...
Webex
Excel...
Google...
1657
23/06/2022

Search

Land Registry

County Mayo

Folio 5783F

Part 2 - Ownership

Title of property no. 4 POSSESSORY

Title of property no. 1, 2, 3 ABSOLUTE

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965	
1	25-JAN-1986 E5121/86	ELIZABETH HARTE of MULLAUNS, BALLINA, COUNTY MAYO is limited owner. The Title is subject to the provisions of the Land and Conveyancing Law Reform Act 2009. D2009LR221844W, 1-DEC-2009 Cancelled D2018LR056862D 25-APR-2018
2	25-APR-2018 D2018LR056862D	PATRICK HARTE of Mullauns, Ballina, County Mayo is full owner.

Landdirect.ie Pending Applications Report

Search Criteria

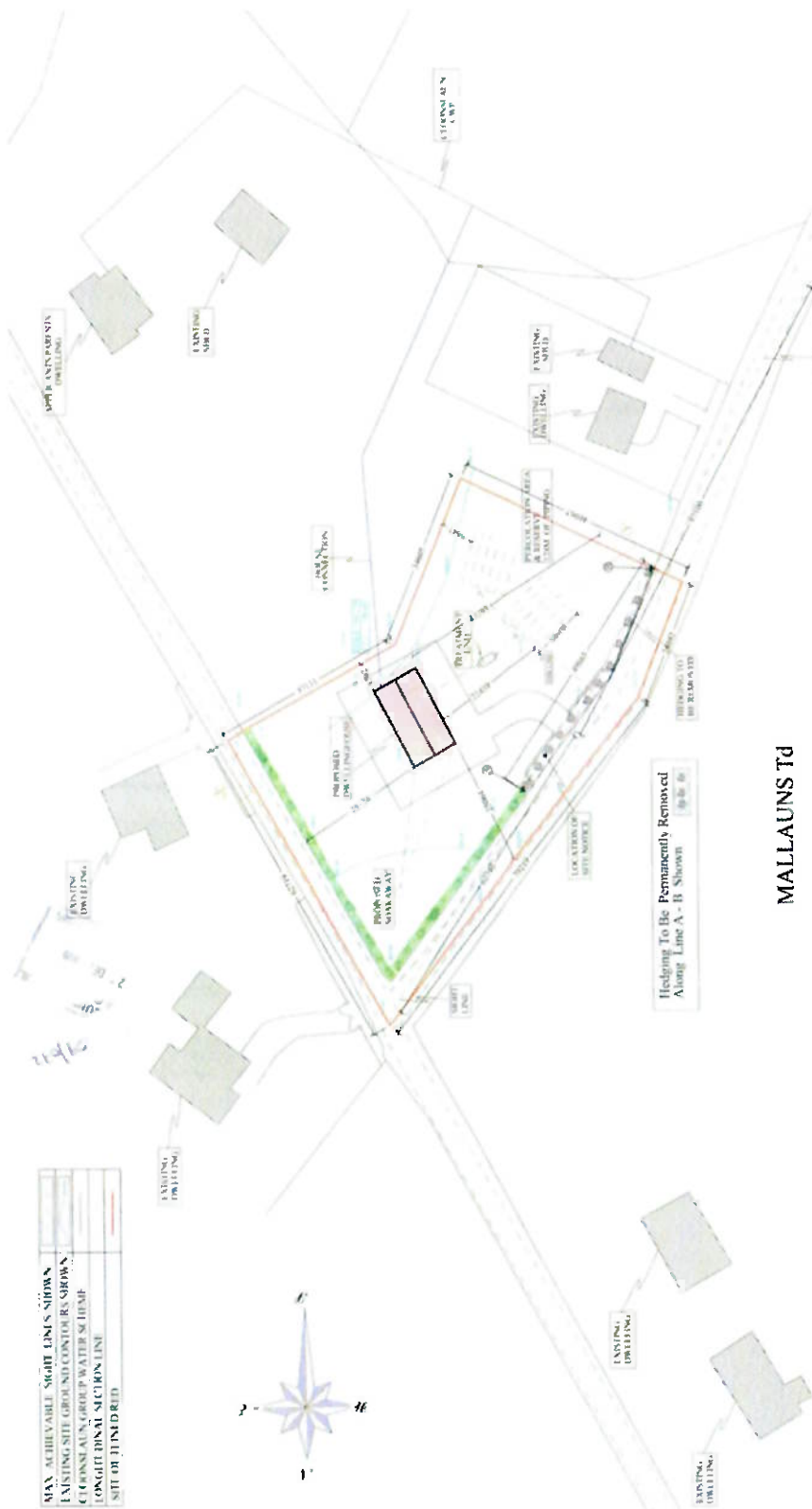
Folio	MY5783F
Date	23/06/2022

Applications Pending

Application Number	Date Lodged	Application Types	Application Status	Applicant	Lodged By	Reference	Associated Folios
D2021LR027692Y	24/02/2021 00:00:00	Charge, Deed of Rectification, Transfer (Sale)	Mapped	DEIRDRE CONAGHAN, KENNETH LAWRENCE	BOURKE CARRIGG & LOFTUS SOLICITORS	m/cm870/lawrence	MY954F, MY41063F, MY5783F
D2022LR004718Y	12/01/2022 00:00:00	Grant of Wayleave/Right of Way	Mapping	KATHLEEN WALKER	CLARKE FLYNN MCCOLE, SOLICITORS	089744	MY5783F

Appendix 4

Planning Permission relevant documents – site layout plan and conditions



SECOND SCHEDULE - SCHEDULE OF CONDITIONS - P09/672

1. The development shall be carried out in accordance with the plans, elevations and documentation submitted to Mayo County Council on 30/06/09, 01/12/09 and 23/12/09 except as amended by Conditions hereunder.

Reason: In the interests of proper planning and development.

2. The house shall be finished in nap plaster or dash with no colour components. Any stone used shall be a local stone indigenous to the area. No cladding shall be permitted. Roof slates/tiles shall be blue black in colour. No brick shall be permitted as a finish to any part of the dwelling. Windows shall have vertical emphasis, divided simply, centrally divided once horizontally and once vertically. The window frames shall be finished in timber effect. No white PVC shall be permitted. Front door shall be of simple design in hardwood.

Reason: In the interests of visual amenity.

3. a) The proposed dwelling when completed shall be first occupied as the place of residence of the applicant, members of the applicant's immediate family or their heirs and shall remain so occupied for a period of seven years thereafter, unless consent is granted by Mayo County Council for its occupation by other persons who belong to the same category of housing need as the applicant.

b) Before development commences, the applicant shall enter into an agreement with Mayo County Council, pursuant to Section 47 of the Planning and Development Act 2000 providing for the terms of this occupancy requirement.

c) Within two months of the occupation of the proposed dwelling, the applicant shall submit to Mayo County Council, a written statement of the confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

(d) This condition shall not affect the sale of the dwelling by a mortgagee in possession or by any person deriving title from such a sale.

Reason: In the interests of proper planning and development.

4. The house shall be located as shown on the site layout plans submitted to Mayo County Council on the 23/12/09 except as amended by Conditions hereunder.

Reason: Building line standards / Proper planning and development.

5. The finished floor level of the house shall be at 100.60 as shown on the site layout plans submitted to Mayo County Council on the 23/12/09.

Reason: In the interests of visual amenity.

6. The existing fence at the front (roadside) of the site shall be removed as per site layout received by Mayo County Council on 23/12/09. The new wall shall be re-constructed of stone from the wall to be removed/local stone and shall be at least 4.5m (14 ft.) from the nearer edge of the adjoining tarred carriageway and the area between the new wall line and the carriageway shall be excavated out, filled up, levelled and made suitable for parking motor vehicles. Surface of lay by shall be of a bound material to prevent carriage of debris onto the public road. Roadside drainage shall be maintained at all times. The new front boundary fence/wall shall not exceed 1.2 m. The hedgerows shall be reinstated with a new front boundary (using the same species of hedgerows which are to be removed) along the new set back as agreed with the Ballina Area Engineer.

Reason: In the interests of traffic safety and to provide parking spaces for vehicles associated with the house.

7. The vehicular entrance gate to the site shall be located as shown on the site layout plans submitted to Mayo County Council on the 23/12/09. Gates shall open inwards only.

Reason: To reduce traffic hazard.

8. No surface water shall be discharged from the site onto the public road. Surface water shall be discharged to soakways on site.

Reason: To avoid flooding.

9. The effluent from the house shall be treated in a proprietary effluent treatment unit capable of producing effluent of 20/30 standard which shall be discharged to an elevated percolation area constructed of material having a T-value of 15-30 in accordance with S.R.6 of 1991. There shall be at least 1 metre of material between the percolation pipes and the existing ground level.

Reason: For the protection of public health and to avoid water pollution.

10. If the sewage treatment system includes a septic tank, it shall be designed and constructed in accordance with S.R.6 1991 by Eolas – Septic Tank Systems. Recommendations for Domestic Effluent Treatment and Disposal for a Single Dwellinghouse and shall be located at least 7m (23 ft) from the house served, 20m (66 ft) from any other house, 3m (10 ft) from site boundaries.

Reason: For the protection of public health and to avoid water pollution.

11. A percolation area and reserve percolation area shall be designed and constructed in accordance with S.R. 6 of 1991 by Eolas.

Reason: For the protection of public health and to avoid water pollution.

12. The percolation area and reserve percolation area shall be at least 20m (66 ft.) from any house, 10m (33 ft.) from roads, streams, drains, 3m (10 ft.) from site boundaries. 100ft. (30.5m) from any well.

Reason: For the protection of public health and to avoid water pollution.

13. No water mains, service pipes, access roads, driveways or paved areas shall be located within the percolation area.

Reason: For the protection of public health and to avoid water pollution.

14. Adequate access shall be provided for septic tank and percolation area maintenance / treatment system maintenance.

Reason: For the protection of public health and to avoid water pollution.

15. A contribution of €357 for amenities shall be paid to Mayo County Council prior to commencement of development on the site. This development contribution shall increase in accordance with the Wholesale Price Index for Building and Construction in January of each year from the date of grant of permission up to the date that payment is made to Mayo County Council.

Reason: To comply with Mayo County Council's Development Contribution Scheme.

16. If any ESB lines cross the site, the developer shall inform the E.S.B. of the intention to start work and arrange for diversions of the lines, if necessary.

Reason: To avoid electrocution.

17. Compliance with Mayo County Council Fuel Oil Regulations for single family dwellings. (Copy Attached).

Reason: To reduce fire risk.

18. All existing trees / hedgerows shall be retained on site. Additional screen planting of native deciduous trees and shrubs shall be planted along all site boundaries save at the entrance where adequate sight visibility shall be retained. Such planting shall be carried out in the first planting season following commencement of development and shall be maintained. Any unsuccessful or damaged specimens shall be replaced.

Reason: In the interests of residential amenity.

19. Prior to the commencement of development, a cash deposit of €2,000 shall be paid to Mayo County Council to ensure no damage to the public road and services occurs. In advance of works commencing, the applicant/developer should liaise with Mayo County Council's local Area Engineering Office.

Reason: To ensure satisfactory completion of the development and protection of public infrastructure.

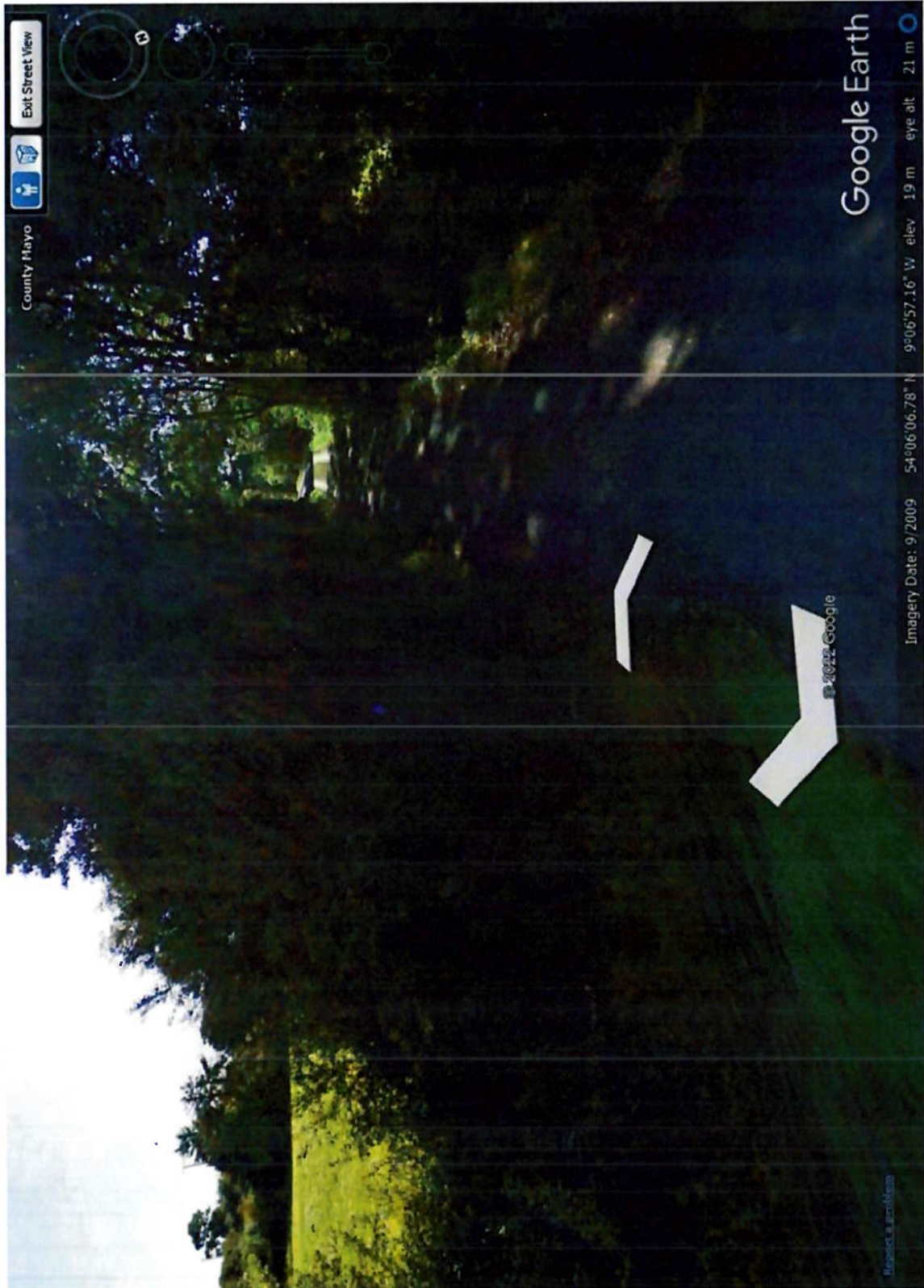
20. Any existing utility poles along site frontage to be removed/under grounded as required.

Reason: In the interests of public safety.

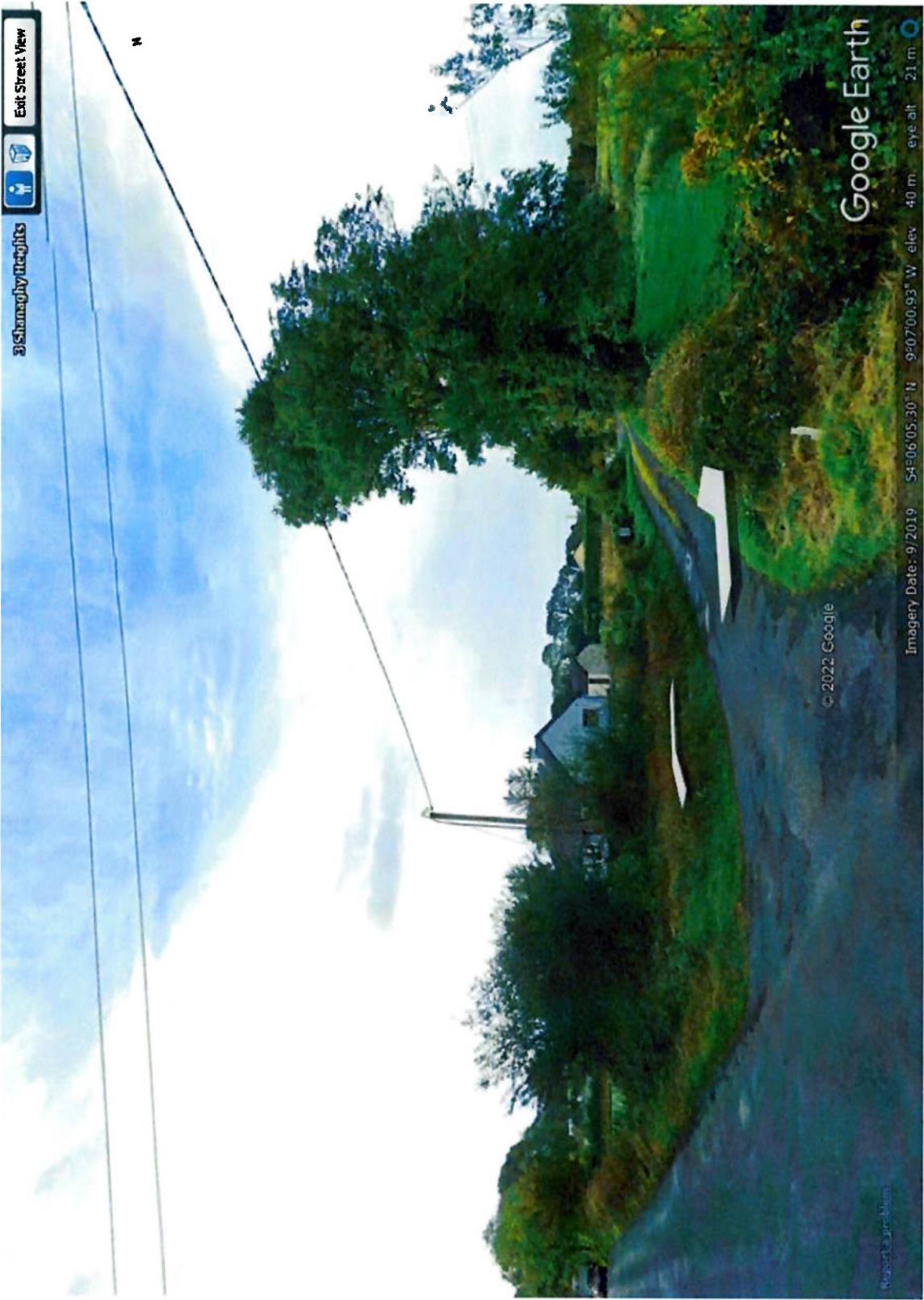
END OF SCHEDULE

APPENDIX 5 – IMAGERY FROM GOOGLE

2009



2019



COMHAIRLE CONTAE MHAIGH EO

MAYO COUNTY COUNCIL

Enforcement Unit for Planning & Building Control

Tw9
29/06/22
Order No:

380/2022

Re:

***PE79/22 – Alleged unauthorised erection of a fence
along the boundary of a house at Mullans, Ballina,
Co. Mayo***

Submitted:

Internal written complaint received on 13th June, 2022
and report dated 24th June, 2022 from Ms. Tanya
Whyte, Executive Planner, Planning Enforcement Unit,
endorsed by Mr. Cyril Aitken, Senior Executive
Engineer.

Order:

Having considered the above, I hereby authorise that,
under Section 152 of the Planning & Development Act
2000 (as amended), no further action should be taken as
the complaint is without substance or foundation, in
respect of the Planning and Development Act, 2000 (as
amended).

Signed this 04 day of July, 2022

Culc Connell

Director of Services

