



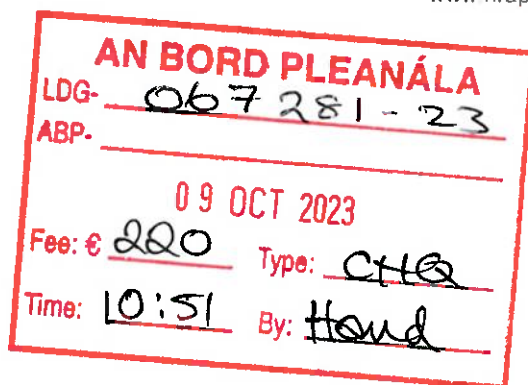
HRA | PLANNING
chartered town planning consultants

Our Ref: 23040/061023

The Secretary
An Bord Pleanála
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6th October 2023

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RE: Referral on Section 5 Declaration

Description:

Whether works comprising:

- Construction of 3 no. structures at Lettergesh East, Renvyle
- Construction of new access track at Lettergesh East, Rebveyle
- Construction of a conservatory at Lettergesh East, Renvyle

Is development and is exempted development.

Planning Authority: Galway County Council

Planning ref: ED23/89

Referrer: Mr. Sean Harington

Date of Declaration: 13th September 2023

Dear Sir/Madam,

HRA PLANNING Chartered Town Planning Consultants DAC, 3 Hartstonge Street, Limerick City, has been retained by Mr. Sean Harington of 43 Synge Street Dublin 8, and of Lettergesh East, Renvyle Co. Galway ("**the referrer**") to refer the (Section 5) Declaration issued to him from Galway County Council ("**the Council**") in respect to the aforementioned development works to, An Board Pleanála ("**The board**") for review pursuant to the provisions of Section 5(3)(a) of the Planning and Development Act 2000 (as amended).



RTPI
mediation of space · making of place

Please find attached herewith, a copy of the declaration issued by Galway County Council, and a cheque for the sum of €220 made payable to An Bord Pleanála.

A copy of the book of plans and drawings (as submitted to the Council with the Section 5 request) is also enclosed herewith for the convenience of the Board for reference and referral.

1.0 Grounds of Referral

The Referrer contests the Section 5 Declaration ("**the Declaration**") issued by Galway County Council that has determined that all of the aforementioned works are "not exempted development".

In making this referral, the Referrer respectfully submits that the subject works are exempted development as they comply with exempted development provisions set out in The Planning and Development Act 2000 (as amended) ("**the Act**"), and the Planning and Development Regulations 2001-2022 ("**the Regulations**").

The Referrer considers that sufficient evidence in support of its case was presented to Galway County Council in its request for a Section 5 declaration to demonstrate that the subject works was exempted development. However, the Referrer submits that the Declaration issued by the Council does not appear to have applied the exempted development provisions in the ordinary reading or reasonable interpretation of them, and, that the Declaration has failed to present sufficient reasons and considerations on which its decision was based contrary to the manner in which it is required to do in accordance with Section 5(2)(a) of the Act.

The Board is advised that the referrer is a qualified architect and has achieved several RIAI, RIBA and Opus awards for both new build and conservation projects in Ireland and the UK based on a professional ethos of providing contemporary design solutions based on sound environmental principles and a deep understanding of technical site-specific matters. The Referrer seeks to inform the Board that they had applied careful and methodical consideration to the exempted development provisions which they had thought were applicable to the works, in the ordinary meaning and from their professional interpretation of those provisions.

2.0 The Referral

The requirement to seek a Section 5 Declaration from Galway County Council came about consequent to an enforcement notice issued by that Authority to the Referrer. The Referrer had no belief that the works were unauthorised development and certainty, that the works would not and did not, in any shape or form, give rise to significant effects on the environment or adverse effects on the integrity of a European site.

2.1 Rationale for Development Works

The rationale for development works was set out in the Section 5 submission submitted by the Referrer to Galway County Council. The rationale for the development works is relevant for the

purpose of this referral in the context of the decision of the Declaration and mentioned again briefly for contextual understanding;

The property in which the subject works have taken place was purchased by the Referrer in 2021 and included a small farmstead measuring circa 2.5 acres encompassing a traditional residential farm dwelling house, and a number of agricultural outbuilding, some in a ruinous state but with walls intact.

Since, then and pursuant to construction of the new wetland system (pursuant to planning permission ref: 21/312), the Referrer and his partner (a horticulturist) have used the dwelling for their private residential use and intend to use the farmstead for their own private agricultural and horticultural use in a similar manner consistent with the historical and established use of the property as a farmstead, albeit without any livestock.

Whilst the localised (Connemara) soil and conditions lend itself to particular crops, some additional planting comprising a specific mix of native trees was undertaken by the Referrer within the property to enhance further, natural land management and drainage. This was necessary in preparation of agricultural and horticultural plantation and to achieve the correct soil structure that will support a small green tea plantation and market vegetables (neither activity which is intended for or will result in commercial retailing of goods on the property). Planted species include native Irish trees including; Sessil Oak (*Quercus petraea*), Pedunculate Oak (*Quercus robur*), Alder (*Alnus glutinosa*), Downy Birch (*Betula pubescens*), Scots Pine (*Pinus sylvestris*) and Hazel (*Corylus avellana*).

The dwelling (including the conservatory), the outbuildings and the access road are intended solely for the residential and private agricultural/horticultural use of the property. This agricultural/horticultural use of the property will form part of the referrer's personal pursuit of an environmentally sustainable low-impact, and non-commercial agricultural venture reflecting their interests in effective land management, biodiversity and re-wilding.

The provision of the access track came about pursuant to a need to provide access to the property following termination of the right-of-way vehicular across the neighbouring proper to the immediate north. That right of way was dependant on the existence of a small concrete bridge crossing, over the boundary stream from the boundary to the north, which the Referrer understands was purposefully removed by others at a time, to prevent access to the property from third party lands.

To maintain access to the property, the Referrer sought to use an established gated agricultural entrance to his property identified on the enclosed site plan situated along the eastern boundary to the property, and accessed via the existing access road that runs past his property along the shore and which serves the adjacent residential property.

2.2 Referral Queries

The following queries are the same as those set out by the Referrer in its Section 5 submission to the Council. Each are considered in turn;

QUERY 1: Whether the 3 no structures at Lettergesh Eash, Renvyle is exempted development.

The three no. structures the subject to this query are illustrated on the 'existing site plan' enclosed within the Supporting Documentation as "**Replacement Shed no.1**", "**Replacement Shed no. 2**" and "**former cottage reroofed as a greenhouse**".

In respect to these structures, the Declaration states the opinion of Planning Authority that; "*construction of 2 agricultural storage sheds and the reroofing of existing stone shed would not satisfy the criteria set out in the Planning and Development Act 2000: Section 4(1)(h)*"

Section 4(1)(h) states that;

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

.....

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

(bold emphasis added)

However, the Referrer respectfully submits that the Council has erroneously applied the provisions of Section 4(1)(h) to all of the structures in its Declaration. Whilst the provisions of Section 4(1)(h) might apply to one of the three structures – the structure described as 'former cottage reroofed as a greenhouse', the provisions of Section 4(1)(h) does **not** apply to the other two structures that is – "**Replacement Shed no.1**" and '**Replacement Shed no.2**' given that works in relation to the provision of those latter 2 structures did not involve "*the carrying out of works for the **maintenance, improvement** or other **alteration** of any structure*".

'Replacement Structure no.1' and 'Replacement Structure no.2'

'Replacement Structure no.1' and 'Replacement Structure no.2' are as described, 'replacement' buildings for agricultural use. They comprise stores provided for the express purpose of housing agricultural/horticultural and forestry machinery and equipment. Those stores include a 2-wheel tractor and attachments, tools, tree planting equipment, fertilizer, fence posts, fencing wire, wind screening fabric etc, that are necessary to develop, enable and manage the horticultural plantation. They are not provided for residential or commercial use.

The Referrer understands and respectfully submits that the stated agricultural and forestry use for which the 2 structures – 'Replacement shed no. 1' and 'Replacement shed no.2' - were provided and specifically use of the land for plantation and propagation of seedlings, is *exempted development* pursuant to:

- the definition of "**agriculture**" as set out in the provisions of Section 2 of the Planning Act which describes agriculture as follows:

*"agriculture" 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;*

(bold emphasis added)

And,

- the definition of 'Exempted Development' set out in Section 4(1) of the Planning Act as follows:

*"4.—(1) The following shall be exempted developments for the purposes of this Act— (a) development consisting of the use of any land for the purpose of **agriculture and development consisting of the use for that purpose of any building occupied together with land so used**";*

(bold emphasis added)

Further to the aforementioned provisions of Section 2 and Section 4 of the Act, the Referrer respectfully submits that the exempted development provisions set out under 'Class 9' of Schedule 2 PART 3 of Article 6 (*Exempted Development — Rural*) are also the relevant exempted development provisions applicable to the replacement sheds no.1 and no.2'.

Submitted with its request for the Section 5 request, the Referrer demonstrated how the provision of those replacement sheds meets the definition of development set out under Class 9 as well as the 'conditions and limitations' associated with that Class. This is still relevant for the purpose of this referral. The table below sets out; the provisions of Class 9 (Column 1); the 'Conditions and Limitations' of that Class (Column 2); and, the Referrer's consideration of how the development works complies with those provisions in column 3.

Column 1 Description of Development	Column 2 Conditions and Limitations	Compliance with the submission
"CLASS 9 <i>Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres."</i>	<i>"1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.</i>	None of the structures are intended for use other than agricultural use.
	<i>2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.</i>	The gross floor space of structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex do not exceed 300 square metres gross floor space in aggregate. The combined aggregate floor space of the sheds is 106m² (including the re-roofed structure).
	<i>3. No such structure shall be situated within 10 metres of any public road.</i>	No structure is situated within 10m of the public road.
	<i>4. No such structure within 100 metres of any public road shall exceed 8 metres in height.</i>	No such structure exceeds 8 metres in height.
	<i>5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.</i>	The structure is within 100m of another house and the Referrer does have the written consent for same from the owner of the adjacent property which is enclosed with this submission.
	<i>6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure".</i>	No unpainted metal is used for external finish.

In respect to Condition and Limitation' no. '5' (above), the Board will be mindful, that the Referrer had lodged with its Section 5 request to the Planning Authority, the necessary documentary evidence of consent from the third party consenting to same.

Save for the provisions of Article 9 of the Planning and Development Regulations 2001 (as amended) (which will be discussed later in relation to restrictions on exemption development provisions), there is no other basis to dismiss or rule out of consideration, the provisions of Class 9 to the provision of these structures. On this basis, the Referrer submits that the 2 structures

are consistent with the exempted development provisions of Class 9 Schedule 2 PART 3 of Article 6 (Exempted Development — Rural).

Former cottage reroofed as a greenhouse'

The consideration of the third structure - that is the former cottage type structure as greenhouse - did not involve the construction of a structure *per-se*, but rather renovation to, and the re-roofing a derelict farmstead building. This included use of the same established wall studs, weather tightening of structure including replacement roof with modern material. No increase in footprint or scale of the structure occurred. The use of the structure is not for habitation but for propagation and nurture of agricultural seedlings prior to external planting and agricultural use.

The Declaration states that the works to this structure are not exempted development because it would not comply with those provisions of Section 4(1)(h) of the Planning Act. In essence, it is understood that the position of the Council is that the works undertaken have affected the external appearance of the structure such to render the appearance inconsistent with the character of the structure or of neighbouring structures.

Whilst the application of modern roof material might have been used, the Referrer respectfully submits that it is somewhat of a stretch of imagination to suggest that the works affect the external appearance of the structure to such a degree that it becomes inconsistent with the character of the structure or the neighbouring properties which existed before the works.

The structure, as a consequence of works, maintains the gable end, pitched roof rectilinear footprint and character exactly as what the structure would have traditionally looked like, and, bearing in mind that the roof material may have changed over time and may have included different materials including slate and/or grey or red corrugated metal.

In terms of affect to the *character*, the functional preservation of the building as a consequence to the works, reinforces the traditional rural clachan typology -i.e. the cluster of farmstead buildings including the farmhouse and associated buildings which did and does exist on this site. The introduction of modern roof material enables maximum permeability of light into the structure (for horticultural purposes) whilst respecting and preserving the external character of the structure, in terms of the scale and form of the structure as it had probably existed for several decades. The external appearance of that new roof material in terms of its effect on the character of neighbouring structures, is imperceptible given the inconspicuous position of this structure within the western part of the site, to the rear of the existing dwelling house.

The consequential use of the structure does not give rise to any intensification of use or activity for which the property has been used for previously - as an ancillary building to this established agricultural farmstead.

For these reasons, the Referrer respectfully submits that the works to the structure and the use of same are considered exempted development pursuant to the provisions of Section 2, Section 4(1)(a) and Section 4(1)(h) having regard to the horticultural use of the structure associated with the established agricultural use of the land, and given that the works do not materially affect the

external appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structures.

Cumulative consideration of agricultural structures

The combination of the three structures for agricultural use, which comprise a total area of 106m², is significantly below the 300m² gross threshold for exempted development for the provision such structures set out under the provisions of Class 9 (tabulated earlier).

QUERY 2: The Construction of new access track at Lettergesh East, Renveyle

The rationale and details (including construction details) relating to the provision of the access road were set out by the Referrer in the Section 5 submission to the Council.

The case was presented in that submission that the entrance works and carriageway width of 3m are exempted development on the basis that the works does not meet the stated criteria set out in Article 9(1) of the Planning and Development Regulations 2001 (as amended) which would restrict exempted development, given that those works; (i) did not contravene a condition attached to a permission, and/or is inconsistent with any use specified in a permission; and (ii) does not consist of or comprise the formation, layout out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4m. These points appear to have been acceded by the Council given that they have not been disputed or referenced in the Declaration.

That said, the point of dispute regarding the access road as stated in the Declaration relate to the restrictions on exempted development and specifically that: the access road would endanger public safety by reason of traffic hazard or obstruction of road user – pursuant to the provisions of Article 9(1)(a)(iii) of the Planning Regulations. (The additional points of dispute set out in the Declaration in respect to interference with 'character of landscape' and with the 'Twelve Bens/Garraun Complex SAC' are dealt with separately later).

The Referrer respectfully submits that the access road has not nor would not give rise to traffic hazard and has not, and would not, give rise to obstruction to road user such that would endanger public safety. In its consideration, the Board will note that the access road and its entrance does not give rise to any increase in traffic generation. The provision of the new entrance replaces the previous access to the property which accessed the same access road albeit at a location a short distance to the north of the new access point. Thus, no additional traffic has or would occur that would give rise by itself, to traffic hazard or obstruction of road user.

The new access was provided at a location which prior to the works, accommodated a gated agricultural access to the property. In terms of its location and format, the new entrance could only reasonably be considered to give rise to 'traffic hazard' or 'obstruction of road user' if and where the use of the entrance would cause hazard or obstruction to road users at that location. In considering this, the Board is advised that heretofore, no traffic hazard has occurred. The

Board will note also that the potential for traffic hazard and/or obstruction to road user in the future, as a result of the entrance/egress point onto the shore side road, is highly unlikely given that only one other property uses this access road beyond the Referrer's property.

The new access/egress does not obstruct or interfere with the use of the shoreline access road to access that other third-party property which remains unobstructed. Vehicles access/egressing the Referrer's property have sufficient visibility north and south along the shoreline road to ensure that it can access onto the shoreline road without obstructing traffic travelling toward, or from the third-party property. The potential for additional traffic using the shoreline road as a result of future development, is also, highly unlikely having regard to the spatial policy applicable to the area. To substantiate this position, the Referrer encloses with this referral, a professional engineering opinion which submits (upon evaluation of the entrance arrangement) that the entrance *"does not in anyway represent a danger to public safety by reason of traffic hazard or obstruction"*.

For these reasons, the Referrer respectfully submits that the restriction on exempted development as set out under Article 9(1)(a)(iii) of the Planning Regulations as referenced in the Declaration does not apply given that the works would not endanger public safety by reason of traffic hazard or obstruction of road user.

QUERY 3: Construction of a conservatory to the side of the existing dwelling is exempted Development

The Declaration fails to provide any meaningful reason for its consideration that the conservatory to the side of the dwelling *"does not fall within Class 1 of the Planning and Development Regulations 2001 (as amended)"*.

Thus, for the purpose of this referral, the Referrer maintains the position it presented in its Section 5 submission that the provision of the conservatory complies with the exempted development provisions set out under Class 1 of PART 1 (Exempted Development – General) the Planning and Development Regulations 2001 (as amended) in respect to *'Development within the curtilage of a house'*.

The table below sets out; the provisions of Class 1 (Column 1); the 'Conditions and Limitations' of that Class (Column 2); and, the Referrer's consideration of how the development works complies with those provisions in column 3.

Column 1 Description of Development	Column 2 Conditions and Limitations	Column 3 Compliance
<i>Development within the curtilage of a house</i> CLASS 1 <i>The extension of a house, by the</i>	<i>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</i>	The proposed single-storey conservatory, which does not comprise any upper floor use, situated on

<p>construction or erection of an extension (including a conservatory) to the rear of the house <u>or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.</u></p>	<p>(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.</p> <p>(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</p>	<p>the site elevation of a detached house, arising from the conversion of the former lean-to building on that side elevation (13.5m²) does not, when combined with any other extension to the property (15m²), exceed 40m² in area.</p>
	<p>2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.</p> <p>(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.</p> <p>(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.</p>	

	3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.	No above ground floor extension occurs.
	<p>4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.</p> <p>(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.</p> <p>(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.</p>	<p>The height of the walls of the conservatory do not exceed the height of the side walls of the house.</p> <p>The height of the highest part of the roof of the conservatory extension does not exceed the height of the highest part of the roof of the dwelling.</p>
	5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.	The construction of the conservatory did not reduce the area of private open space.
	<p>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</p> <p>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</p> <p>(c) Where the house is detached and the floor area of the extension above ground level</p>	<p>No window is provided less than 1m from the boundary it faces.</p> <p>Non Applicable.</p> <p>Non Applicable.</p>

	<i>exceeds 12 square metres, any window proposed at above ground level shall not be less than 11</i>	
	<i>7. The roof of any extension shall not be used as a balcony or roof garden.</i>	The roof of the conservatory/extension is not used as a balcony or roof garden.

On the basis of compliance with conditions and limitations of Class 1 above, the Referrer is satisfied that the works associated with the provision of the conservatory benefit from the exempted development provisions set out under Class 1 and is thus exempted development.

4. Other Matters Arising in the Declaration

4.1 Article 9(1)(a)(viiB) Restrictions on exempted Development

The Declaration cites the restrictions on exempted development set out specifically in Article 9(1)(a)(viiB) and states that:

"given that the proposal is surrounded by and partially on the Twelve Bens/Garraun Complex SAC, means that the proposal would not satisfy Article 9(1)(a)(viiB)".

Further to that statement, it is noted that there is no other specific or scientific reason or rationale presented in the Declaration to qualify why the provisions of Article 9(1)(a)(viiB) apply in this instance or any evidence presented to confirm the basis for a requirement for appropriate assessment.

However, and with respectful regard to the provisions of Article 9(1)(a)(viiB) and the underlining provisions of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ('The Habitats Directive') from which that provision derives, there is no automatic presumption that appropriate assessment is a mandatory requirement merely because the works *"is surrounded or partially on"* a designated SAC site. If that was the intention of the planning code, then the Referrer submits that the provisions of Article 9(1)(a)(viiB) would have been drafted very differently from the current text.

The specific intent of Article 9(1)(a)(viiB) is very clear from ordinary reading of it. The restriction on the exemption set out in Article 9(1)(a)(viiB) applies only *where the development would require an appropriate assessment*. This suggests clearly, that there might be instances to the contrary - i.e. where development would *not* require appropriate assessment. Further to that, and mindful of the ecological integrity and function of conservation features within designated sites, the mere siting of works within designated sites does not automatically dictate a mandatory requirement for appropriate assessment.

Whilst the Referrer acknowledges that the trigger for appropriate assessment might be a light one, it respectfully submits that that trigger it is not so *light* that it precludes the opportunity to determine whether there is, or is not, a requirement in the first instance for appropriate assessment in the proper manner – i.e. in the form of screening for appropriate assessment. It is then on the basis of that screening assessment and consideration of the scientific evidence presented or considered, that determines the requirement for appropriate assessment and whether or not the provisions of Article 9(1)(a)(viiB) may then apply.

With that in mind, the Referrer is satisfied that it has given the requisite level of examination of the potential for significant effects that the works might have had on the Twelve Bens/Garraun SAC to determine the necessity or otherwise for appropriate assessment. With its Section 5 submission, the Referrer included a screening assessment for the purpose of *appropriate assessment*. That assessment, undertaken in accordance with standard and recognised national and European guidance, and, based on best scientific evidence, considered the potential for effects of the works on designated Natura 2000 sites arising from the works individually, cumulatively and with any other projects, at the time those works would have occurred in order to establish the potential for significant adverse effect at that time, to any conservation feature for which the SAC was designated.

The screening assessment confirmed that the works associated with the structures and the extension have and had no relationship with the designated site. The consequential use of the structures has no adverse affect as it results in the continuation of the habitual use of the site which predates the designation of the SAC site as a rural farmstead. Those works would not have given rise to a requirement for appropriate assessment.

The screening assessment notes that works in relation to the access road were undertaken at an appropriate dry period to prevent potential for sedimentary run off into the adjacent lake waters. Materials involved were dry without need for any wet curing agents or chemical binding. The access road was finished in clean loss stone which gives rise to minimal impact and allows for natural percolation of rainwater directly to ground without necessity for run off. Use of the access road will be minimal and reflective of the historic and established use of the property and use of the land. The access road can and will revegetate overtime and thus is not permanent but reversible. The small section of land within the SAC site resulted in the loss only of improved agriculture grassland habitat which is of low ecological value prior to works. No loss of qualifying habitats occurred. The works did not give rise to fragmentation, displacement, disruption to qualifying habitats, or habitats of supporting qualifying features nor would the works have resulted in potential significant impact to water quality given the absence of hydrological connection between the works and the lake either then, or now.

The Referrer maintains that the conclusions set out in the submitted appropriate assessment screening assessment are relevant to this referral despite the findings of the Declaration. However, and for the purpose of this referral, the Referrer has enclosed herewith, additional ecological commentary prepared by the author of the (AA) screening report (Corrib Environmental Services) further to reference in the Declaration to Article 9(1)(a)(viiB).

This commentary reaffirms in the context of the Declaration, that there is no ecological relationship between the qualifying features of the SAC and the site upon which the works were

undertaken; that the ecological value of the small area of land situated within the SAC was of low ecological value and did not and does not present any of the qualifying features of the designated SAC site; and, that there is no evidence that this project had or will have any significant negative effect on the integrity of the designated site.

The ecological opinion and scientific evidence has confirmed that there is no basis to conclude that the works did or would give rise to potential significant adverse effects such that would cause the requirement for appropriate assessment at that time. On that basis, there is no material reason why the restrictions on exempted development as set out under article 9(1)(a)(viiB) would apply. Therefore, the Referrer respectfully submits that to suggest that those provisions do apply, would be unreasonable in the context of the scientific evidence and judgement presented, and beyond express intention of the stated provisions of Article 9(1)(a)(viB).

4.2 Article 9(1)(a)(vi) Restrictions on exempted Development

The Declaration cites the restrictions on exempted development set out specifically in Article 9(1)(a)(vi) and states that that provision *"is relevant in the Context of Class 4 Landscape (Iconic) setting and Galway County Development Plan Policy Objectives LCM1, LCM2, LCM3"*.

Whilst the Referrer acknowledges the provisions and objectives of the Galway County Council mentioned in the Declaration, the Referrer notes that the Declaration is without any specific *main reasons and considerations* for its determination of how and why the provisions of Article 9(1)(a)(vi) apply in this instance.

Similar to the case made earlier in this referral, the Referrer respectfully submits that the provisions of Article 9(1)(a)(vi) does not apply merely because there are objectives in the development plan to preserve landscape sensitivity as the Declaration would have suggest. It applies only when and if it is determined that the works (in this case) *did* interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is located.

The Referrer is and was fully cognisant of landscape sensitivity and the associated development plan objectives applicable to the site. Applying his professional judgement (as a qualified architect) the Referrer was satisfied that the works either individually or cumulatively and having regard to the simplistic scale and form of development, their position and visual assimilation within the established farmstead did not, and has not, interfered adversely with the character of a landscape, or a view or prospect of special amenity value or special interest the preservation of which is an objective of a development plan for the area.

Just like the other provisions of Article 9, there is a test to be undertaken and judgement to be made (and presented) to determine whether or not the provisions of Article 9(1)(a)(vi) do or do not apply.

In support of this claim, the Referrer had enclosed with his Section 5 submission, a series of clear and unobstructed images taken from the opposite northern side of the adjacent Lough Fee orientated directly at the subject property. These viewpoints were selected due to the amenity designation of that road which presents the opportunity to identify with ease, clear and unobstructed views of the development works to determine the extent, type and magnitude of visual change to the character of the landscape that may have arisen consequently.

The visual appearance of each and all development works as viewed from the selected locations, is on balanced consideration and judgement, imperceptible in the context of its landscape context and setting, and is visually indistinguishable from the established building pattern of this and adjacent farmsteads, and the juxtaposition of their rural buildings and historic field boundaries at the foot of the mountain.

The visual assessment demonstrated that no part of the development works gave or gives rise to any strident or obtrusive feature that is at clear variance to the established and historic landscape character such that gives rise to the conclusion that it *interferes* in any sense, with the character of a landscape, or a view or prospect of special amenity value of the area or to any amenity objective in the development plan.

For this reason, the Referrer maintains that it is only reasonable and logical to conclude that the restriction on exempted development pursuant to Article 9(a)(vi) of the Regulations would not apply in this instance.

CONCLUSION

The Referrer submits that having regard to the provisions of Section 2, 3 and 4 of the Planning and Development Act 2000 (as amended) and the provisions of Article 6 and Schedule 2, PART 1 (Exempted Development - General) and PART 3 (Exempted Development - Rural) of the Planning and Development Regulations 2001 (as amended) the subject works at Lettergesh East, Renvyle namely:

- Construction of 3 no. structures and their intended agricultural function;
- Construction of the access track; and
- Construction of a conservatory

are 'exempted development'.

This opinion has been informed by the findings of the screening assessment for appropriate assessment and having regard to the minimal and compatible scale and form of the development works which has assimilated into the landscape without effect caused to the character of a landscape, or to a view or prospect of special amenity value or special interest.

For these reasons, the Referrer respectfully requests that the Board on its review of the Declaration, determines that each part of the aforementioned works is development and is **exempted development**.

The Referrer would request an expediently consideration of this matter to enable full planning and regulatory compliance of on-site works.

Yours sincerely,



Gary Rowan MRTPI MIPI
Director HRA | PLANNING

Enclosed:

- *The Declaration issued by Galway County council*
- *Professional Ecological Opinion on the Declaration*
- *Professional Traffic Engineering Opinion on the Declaration*
- *The Traffic Opinion*
- *Copy of the book of plans, drawings and images as submitted to Galway County Council with the Section 5 request.*

Professional Opinion.

Client: Sean Harrington

Property: Lug na Neach, Lettergesh East, Renvyle, Co. Galway

I, Alan Kay, B.Sc., T/A ASK Solutions, Lettergesh East, Renvyle, Co. Galway hereby certify as follows:


1. I am an Engineer having qualified as such at London University in the year 1966.
2. I have been in independent private practice on my own account since the year 2004 or thereabouts.
3. I am the Engineer retained by Sean Harrington to provide a report related to the Galway County Council letter dated 13th September 2023 with respect to the reference to Article 9(1)(a)(iii) of the Planning and Development Regulations 2001- 2022,
Namely: (iii) to endanger public safety by reason of traffic hazard or obstruction of road users

OPINION

See attached marked up PRAI map

Access to the land owned by Sean Harrington, Folio GY128501F, is by means of boreen off the local road (D5102). The development of a revised access off this boreen across Folio GY128501F to Sean Harrington's dwelling has no effect on this junction, because there have not been any changes to the amount of traffic able to use the boreen. The boreen serves to provide private access only for the owners of the land over which the boreen passes, Folios GY128646, GY34836, GY118633F, GY128501F and GY128512F and it is only the owners of these folios who have a right of way over the boreen. which has not changed. Therefore, access is limited for the agricultural use of the lands over which the boreen passes and for access to the two old established dwellings located on Folios GY128501F and GY128512F. From the local road (D5102) after a distance of approximately 60 metre, the boreen is gated. After this gate, the boreen continues along the side of Lough Fee for approximately 500 metre to the revised junction created on Folio GY128501F. The revised junction is gated. For the whole of this distance the boreen is single track width with an uneven none tarred surface and vehicular traffic can only proceed at a very low speed. Any vehicle approaching this revised junction can be seen for a distance of more than 200m. Beyond this revised junction, to the south, the boreen continues for a further 25 m only to a second gate which gives access to Folio GY128512F where it then terminates at the neighboring dwelling. This second gate is clearly visible from the revised junction. The revised junction has not altered visibility from the previous junction which was gated access to the field forming part of Folio GY28501F. Visibility for access to or egress from this revised junction is unchanged from the previous situation and in my opinion does not in any way represent a danger to public safety by reason of traffic hazard or obstruction. The only persons who have a right of way to or past this revised junction are the two owners of the dwellings.

Signed


Alan Kay B.Sc. (Eng). ASK Solutions, Dated this 4th day of October 2023

Alan Kay Trading as ASK Solutions



The Property Registration Authority An tÚdarás Clárúcháin Maoine

Official Property Registration Map

This map should be read in conjunction with the following:

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

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

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

(centre-line of parcel(s) edge)

- Freehold
- Leasehold
- Subleasehold
- 'S' Register

(see Section 4(1)(b) of Registration of Title Act 1964 and Section 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.pra.ie/land

The registry operates a non-conclusive boundary system. The Registry Map identifies properties and boundaries meaning neither the description 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 by Section 62 of the Registration of Deed and Title Act 2006.



Creation Date: 01 October 2023 16:35:13

October 4, 2023

Planning ref. EN no. 22/130

Copy: Sean Harrington.

Garry Rowan. MIPI MRTPI

Clarity on Appropriate Assessment Screening.

Ref. Lettergesh East.

To whom it concerns,

As the Ecologist that prepared the Appropriate Assessment Screening Report for this development, I would like to expand further on the reasons why it screens out for Appropriate Assessment.

1. The access route existed pre designation as there are two properties along the route.
2. The area has been the subject of anthropogenic influence over time. There has existed several buildings on site. The land surrounding the properties with its mineral soil enclosed meadows is significantly different from the Twelve Bens/ Garraun conserved area overall which is mainly open peatlands. There is no habitat or species for which the area is conserved within the project area.
3. The area where the entrance was widened is not integral to the conserved area and is of low ecological value with typical agricultural grassland species. There is no habitat or species for which the Natura area is conserved present there. It is a very small area with marginal ecological value on the margins of the conserved area.
4. The upgrading of the lane to the property with gravel poses no significant risk to the conserved area as natural porous material was used allowing colonisation and regeneration of grass and other species and avoiding sealing of the area. The area is also part of the grassland meadow of low ecological value that is not integral to the integrity of the site as a whole.
5. The only risk that could have or that may arise as a result of the development is to water from the production of domestic wastewater. The installation of a modern tertiary treatment system to replace a Septic tank system is a positive change in this respect.

The above is to affirm that in my opinion having considered all of the scientific and ecological factors, and the on- site evidence, it must be concluded as per the report findings and the conclusions therein, that there is no evidence that this project had or will have any significant negative effect on the integrity of the adjacent conserved area. The management of the conserved area has nor will not have to be modified as a result. It is a finding of no significant effect. It therefore is dubious to conclude that it has had or will have significant negative effect.

I cannot see any evidence to conclude such.

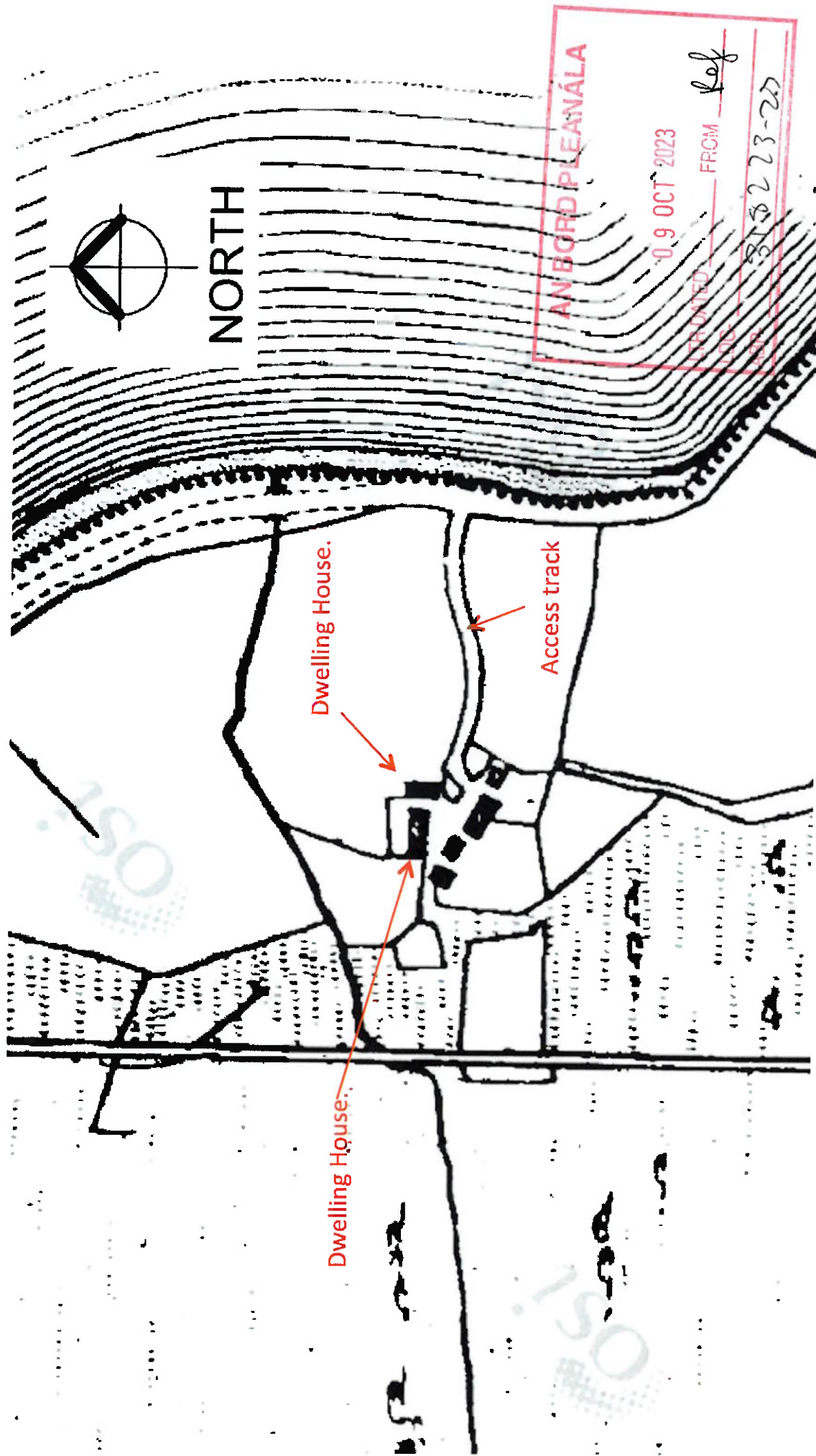
Emmet Mc Gloin 04/10/2023

Emmet Mc Gloin B.Agr Sc. M.Sc. RECM Fetac. Cert.
Site suitability Assessor. 087 2559677.

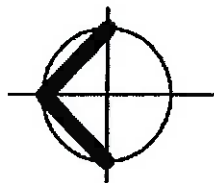
Support Documentation relating to
Application for declaration of Exempted Development

By Sean Harrington
Lettergesh East, Renvyle, Co Galway

AN BORD PLEANÁLA	
09 OCT 2023	
LTR DATED	FROM <u>Leif</u>
LDG-	
ASP-	<u>318223-23</u>



Six inch OS map showing the existing dwelling, and previous dwelling behind, to the west .



NORTH



Aerial photo from approx 2000, showing site.

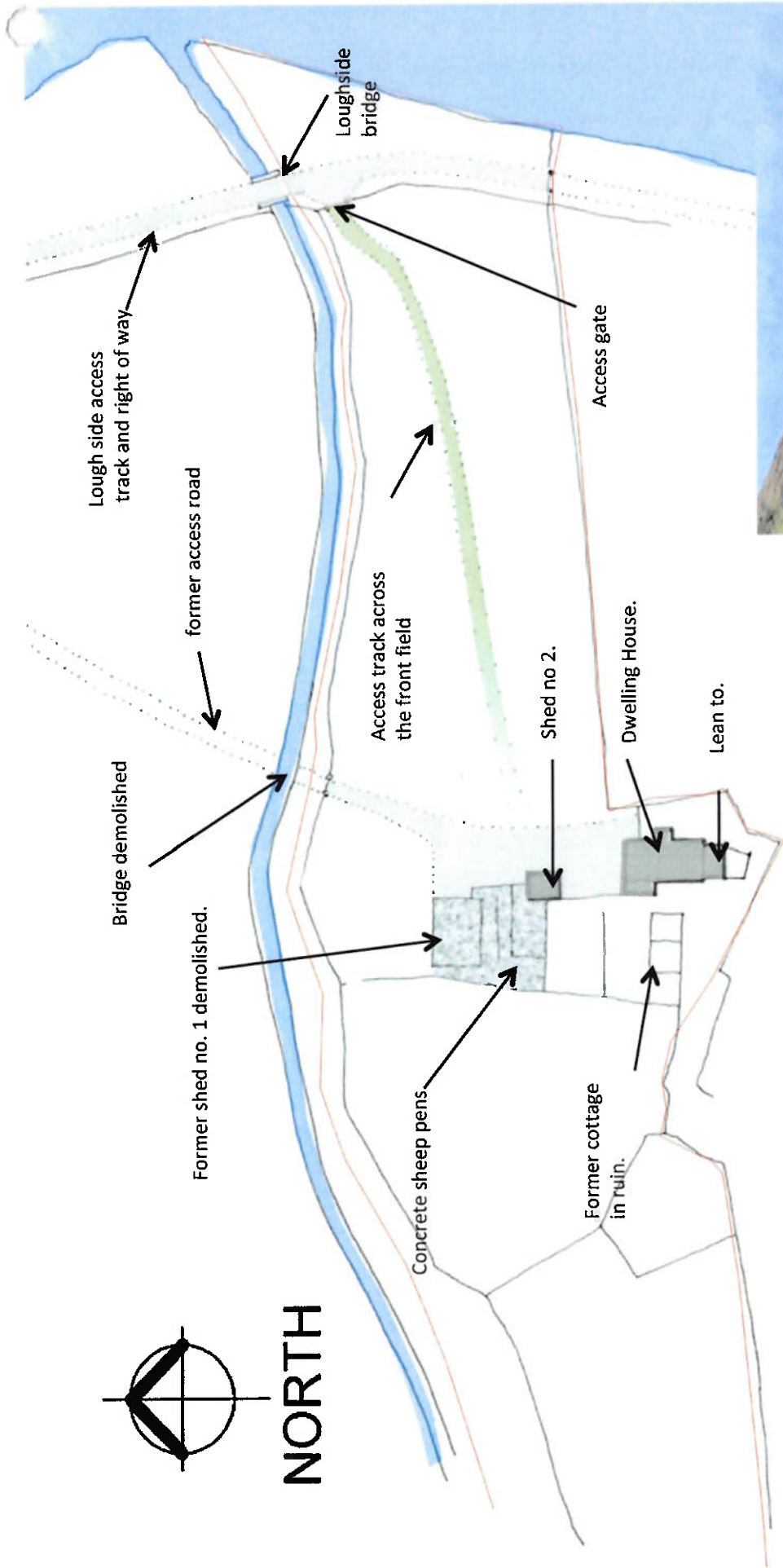
AN BORD PLEANÁLA

09 OCT 2023

LTR DATED 09 OCT 2023 FROM Ref

LDG-

ABP- 318223-23



Site map in 2021, when the site was purchased by the current owner and before any works had taken place.

NB. Existing gate, and access tracks across the front (east) field.

AN BORD PLEANÁLA

09 OCT 2023

LTR DATED 09 OCT 2023 FROM Ref

LDG- 318223-23

ABP- 318223-23

Native woodland consists of the following species;

Alder 90no.

Downy Birch 90no.

Sessile oak 50no.

Pedunculate oak 60 no.

Hazel 80 no.

Scots pine 30no.

TOTAL; 400 trees

6. Replacement shed no. 1.

Native species trees.

Native species trees.

5. Replacement shed no. 2.

4. Concrete sheep pens demolished.

Vegetable growing

3. Former cottage reroofed as greenhouse.

Large mature ash trees

Sheltered garden

1. Dwelling House.

2. Conservatory replaces former lean to.

Sheltered garden

7. Existing gate relocated 8m west.

8. Integrated Constructed wetland Planning ref. 21312.

Native species trees. 7. Access track across the front field

Former access road

Lough side access track and right of way

Loughside bridge

1. Renovation of existing dwelling.

2. Conservatory replacing lean to structure at south gable of house.

3. Former cottage reroofed, to become greenhouse.

4. Redundant and dilapidated concrete sheep pens demolished

5. Demolition and replacement of shed no. 2.

6. Shed no. 1 to replace former barn structure

7. Access track established across front (east) field, and existing front access gate relocated.

8. New septic tank and integrated constructed wetland (planning ref 21312)

AN BORD PLEANÁLA

Existing Site Plan.

09 OCT 2023

LTR DATED

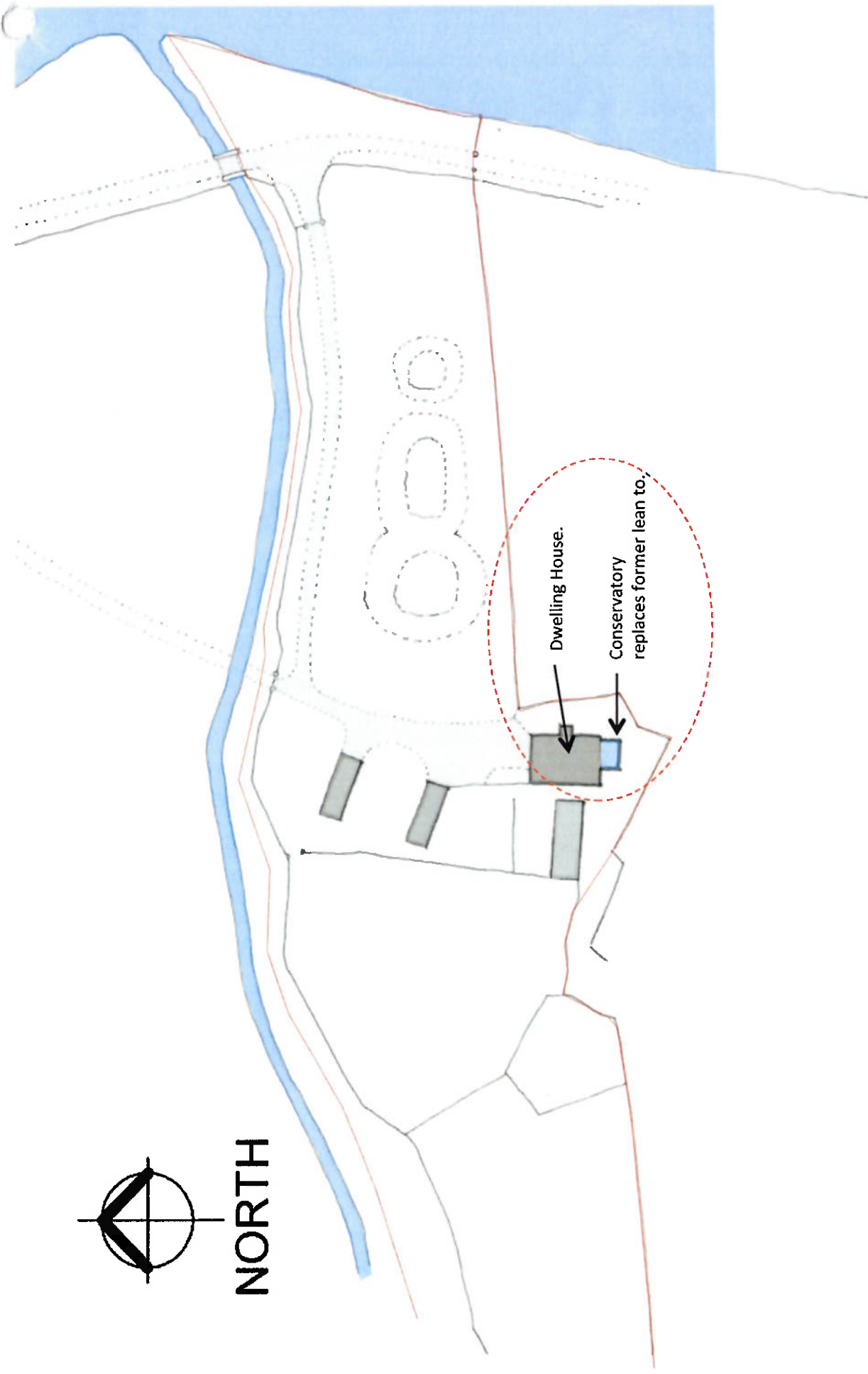
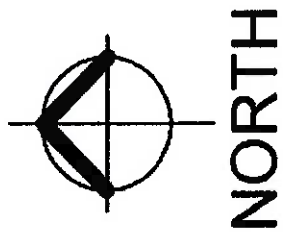
FROM

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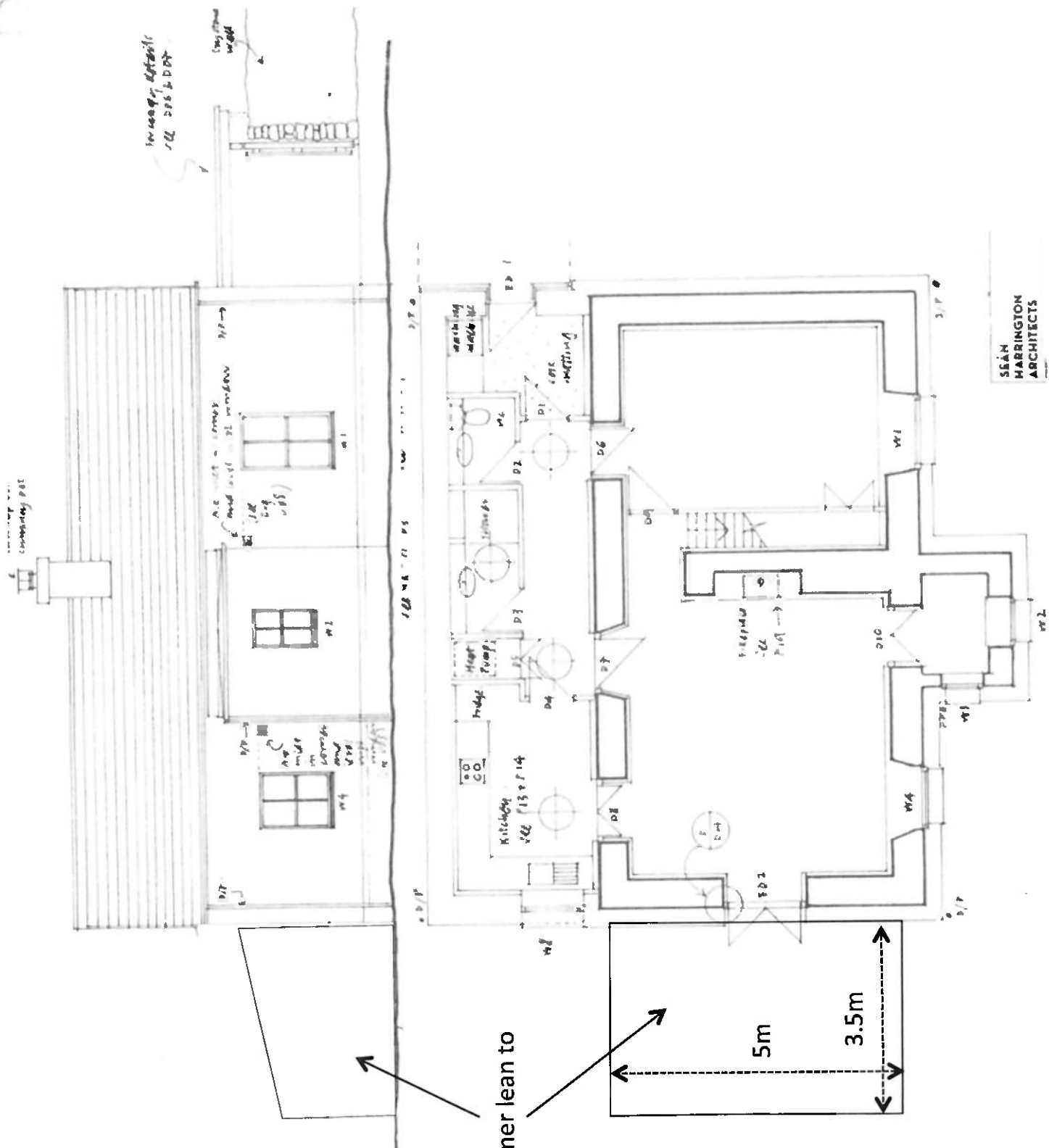
ABP-

318223-23

Ref



The new conservatory replaced a former lean to structure at the south gable of the house.
The conservatory has a floor area of 13.5m², is lower than the eaves of the house, and is a similar volume to the former lean to.



Extent of former lean to

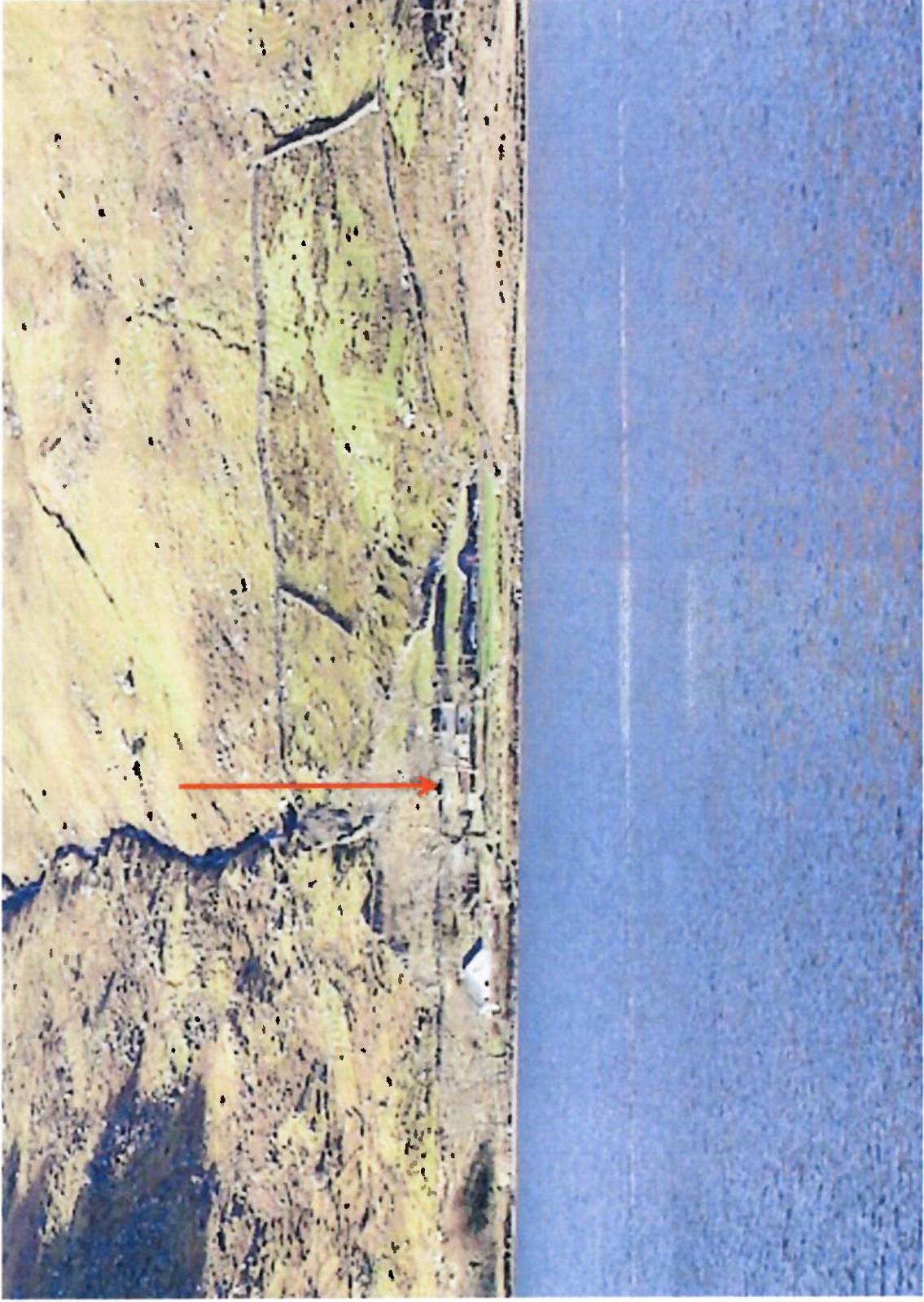
SEÁN
HARRINGTON
ARCHITECTS



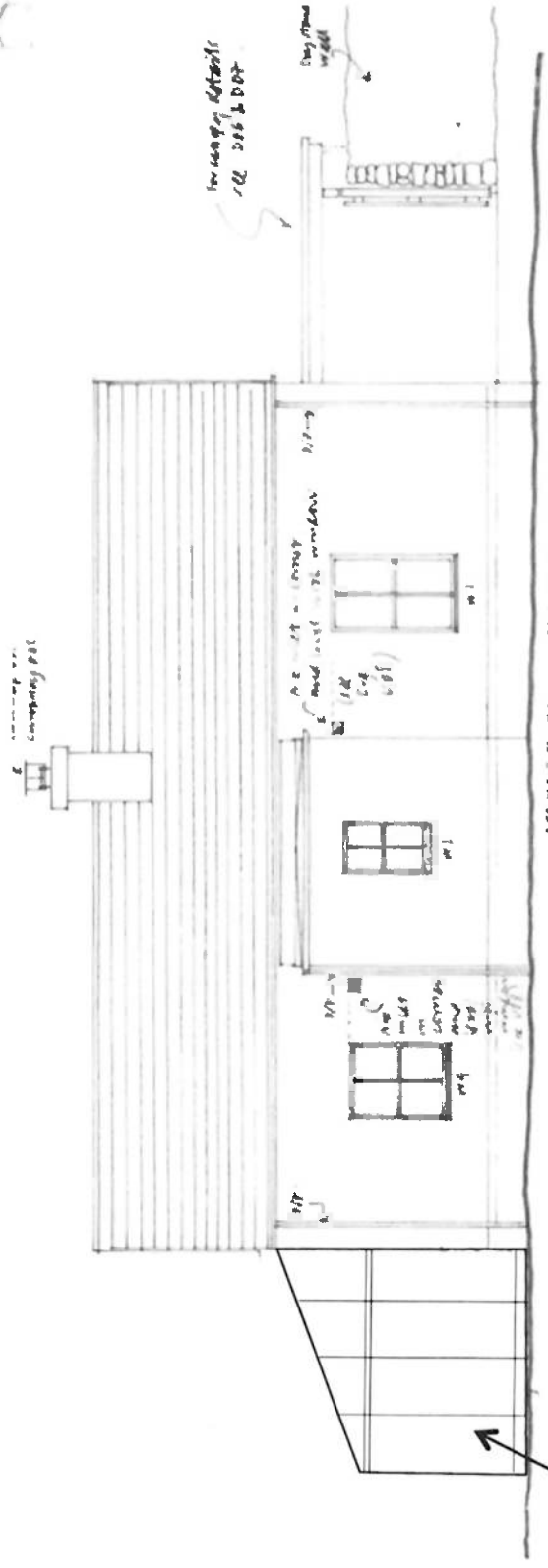
Extent of former lean to



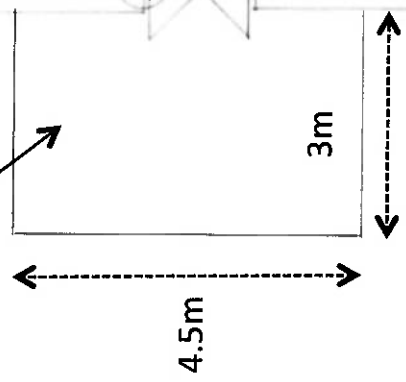
The former lean-to was barely visible from across the lough (ie from the *Maritime Scenic Route*)



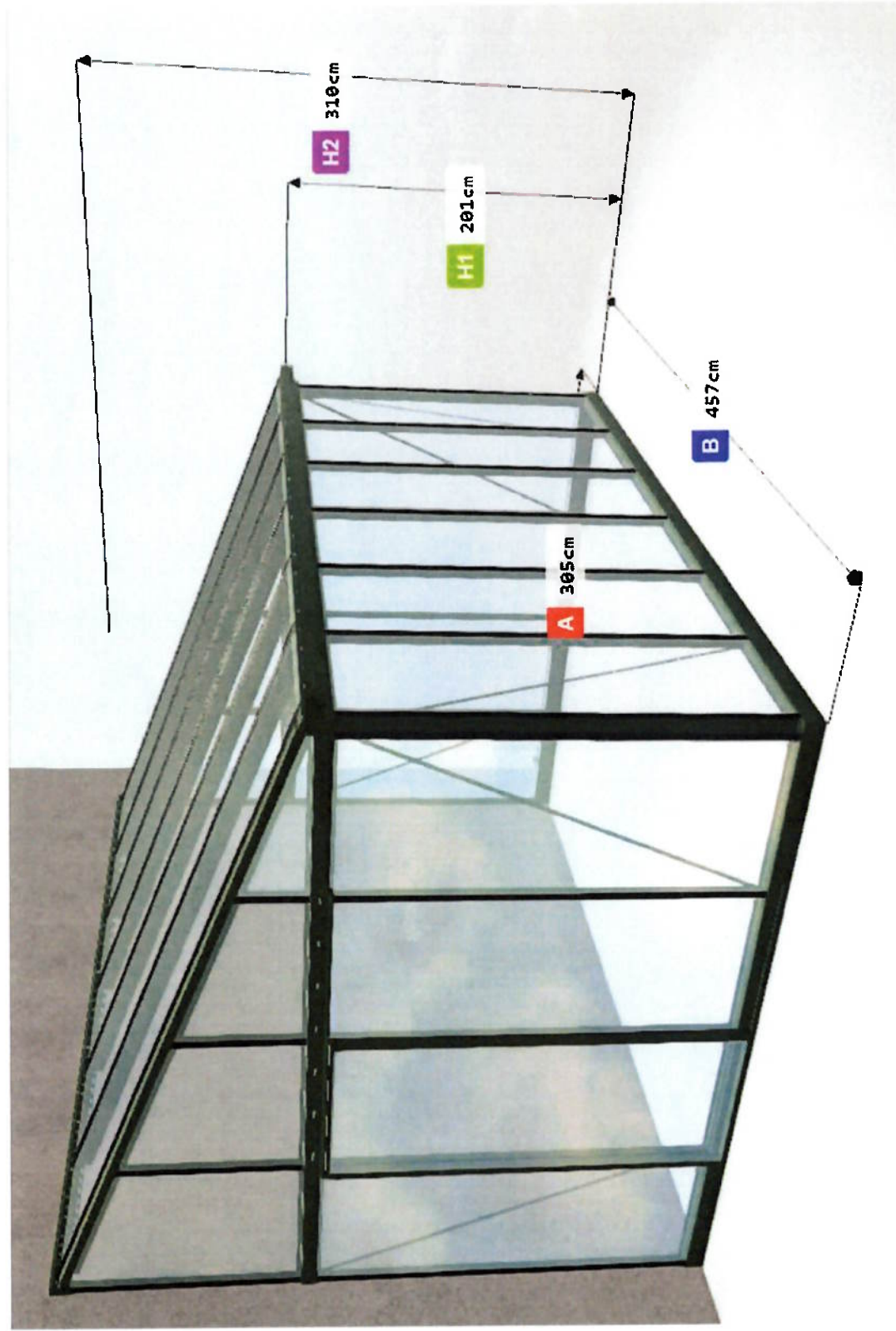
The former lean-to was barely visible from across the lough (ie from the *Maritime Scenic Route*)



Extent of new conservatory



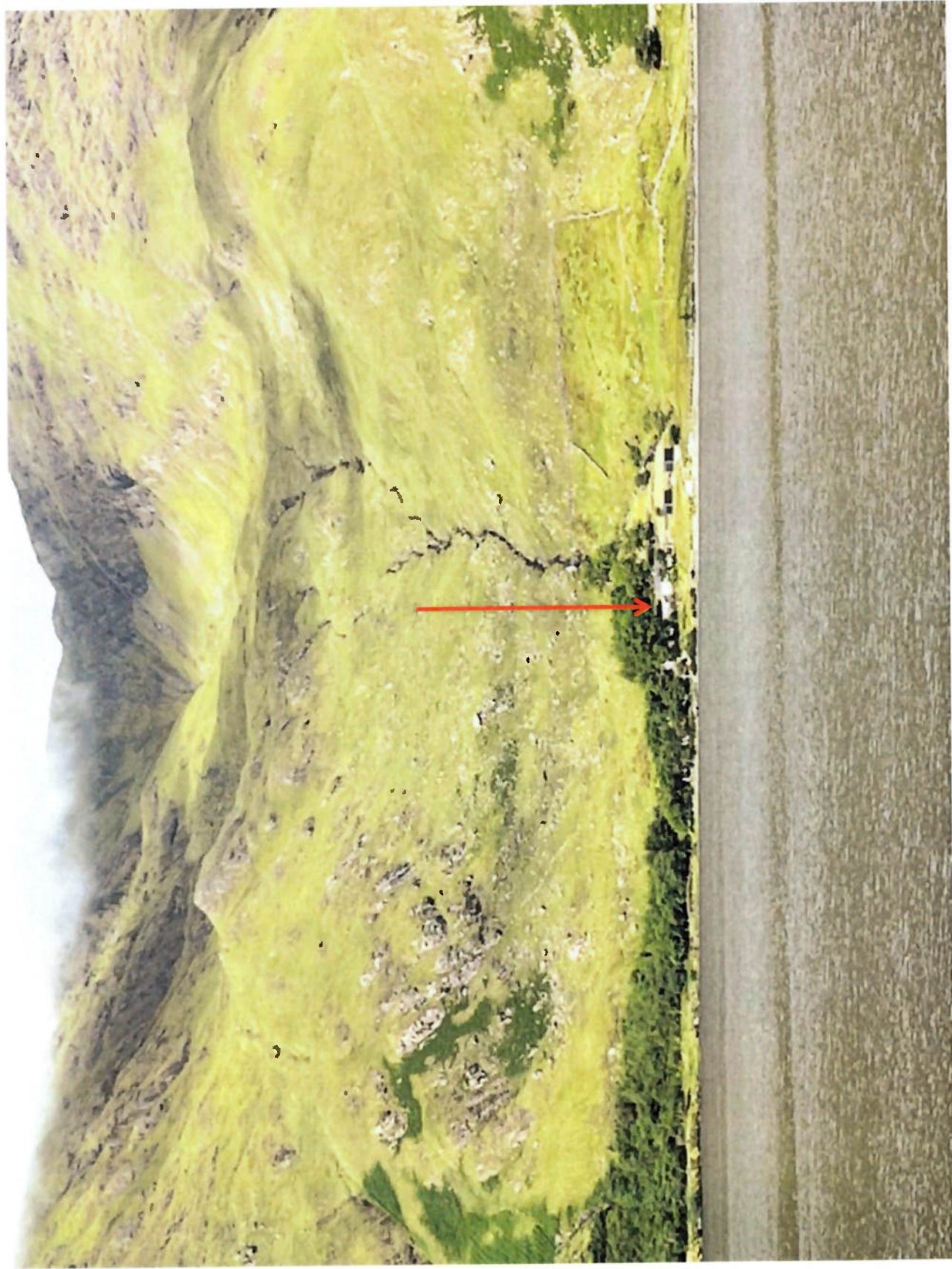
SEAN HARRINGTON ARCHITECTS



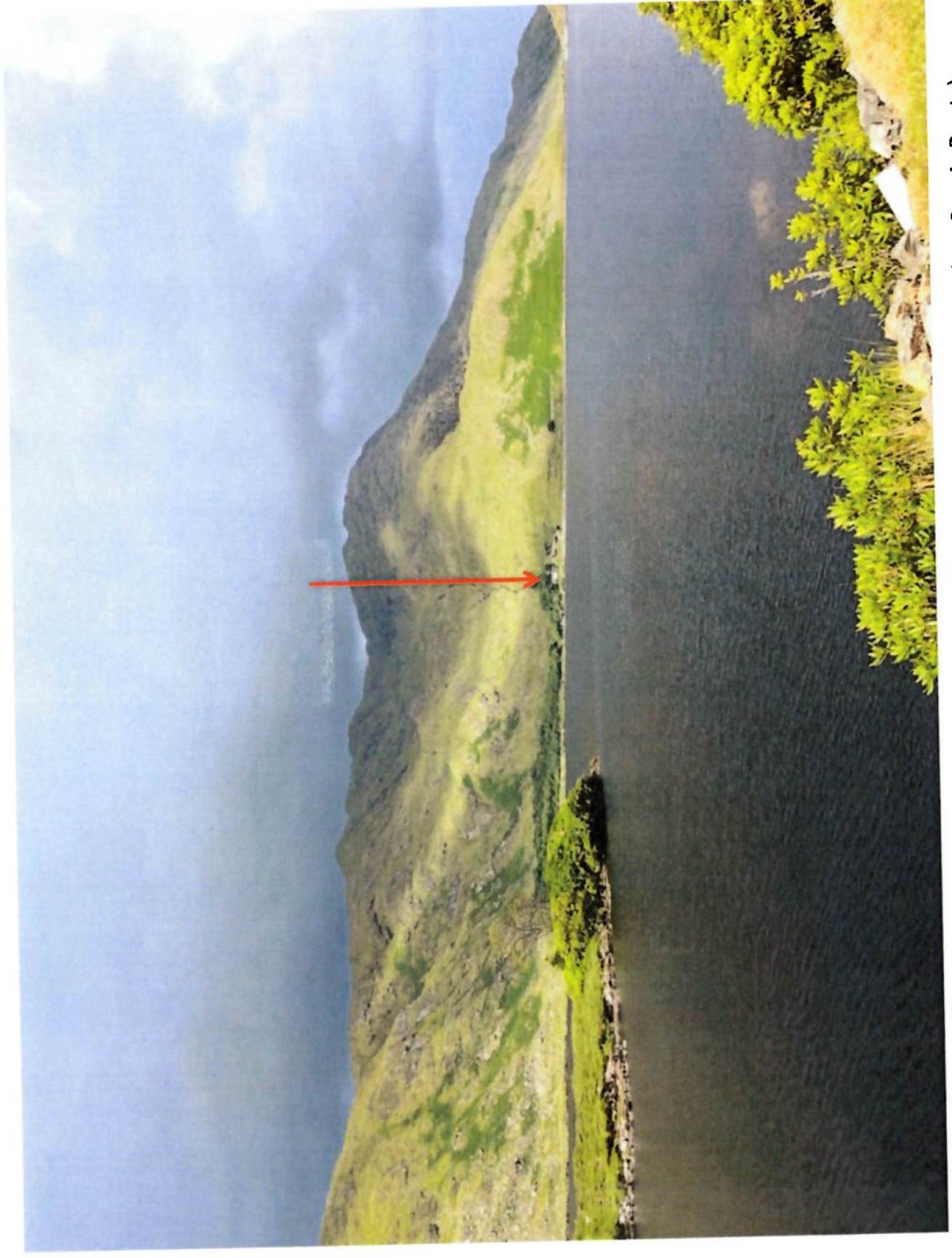
Manufacturers dimensioned drawing of new conservatory



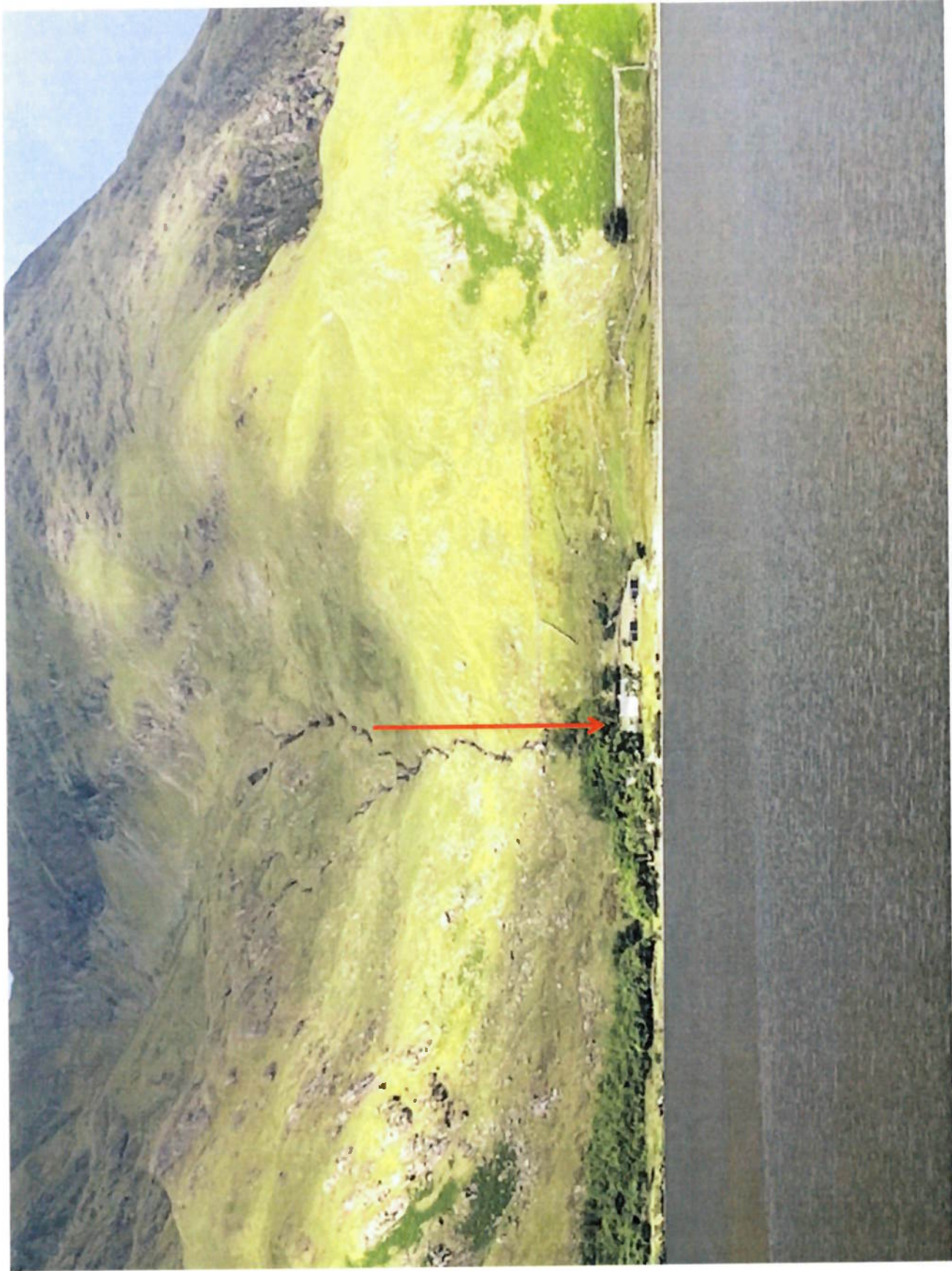
The new conservatory is not visible from across the lough (ie from the *Maritime Scenic Route*)



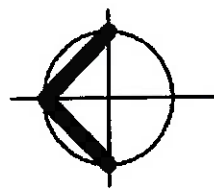
The new conservatory is not visible from across the lough (ie from the *Maritime Scenic Route*)



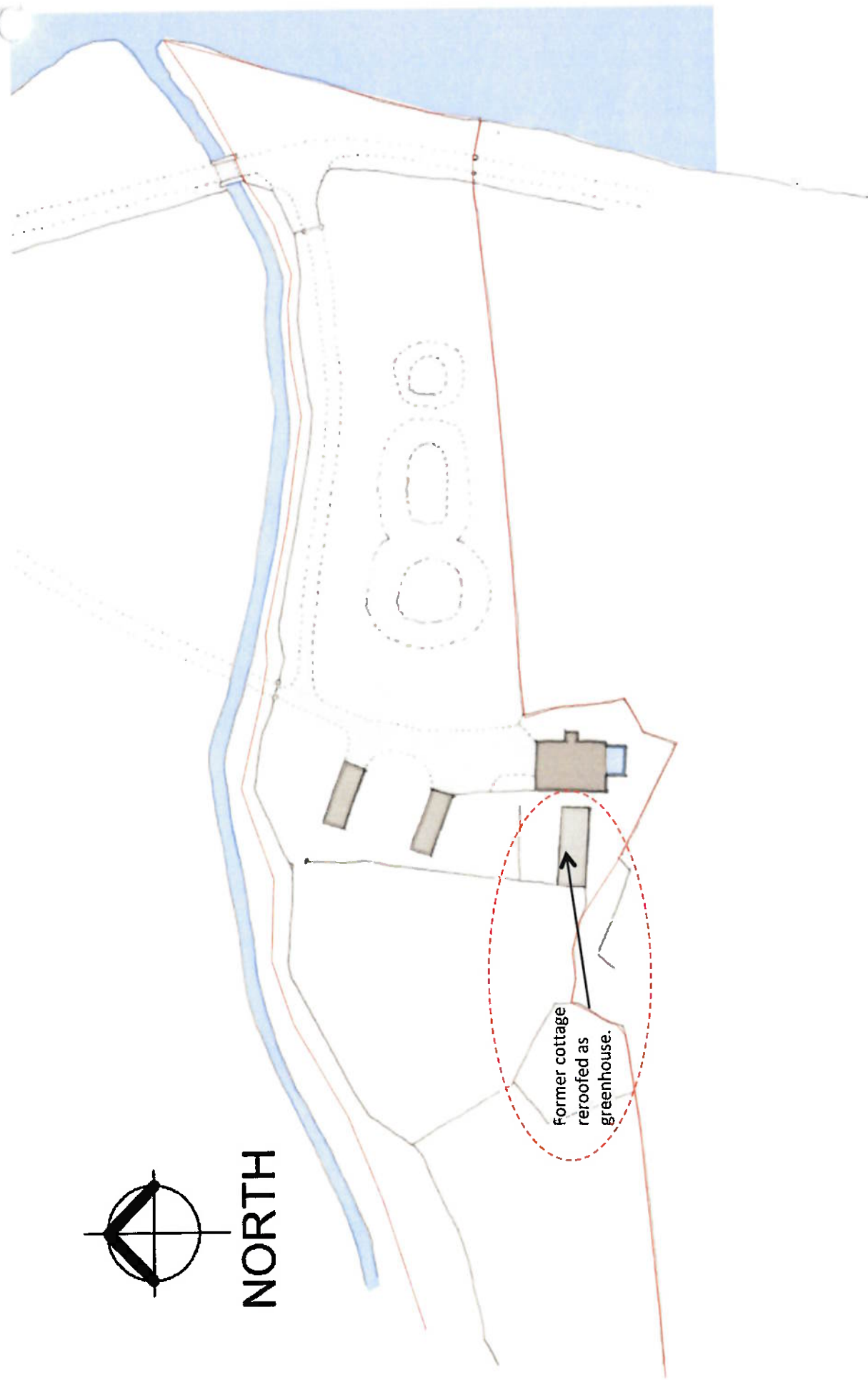
The new conservatory is not visible from across the lough (ie from the *Maritime Scenic Route*)



The new conservatory is not visible from across the lough (ie from the *Maritime Scenic Route*)



NORTH

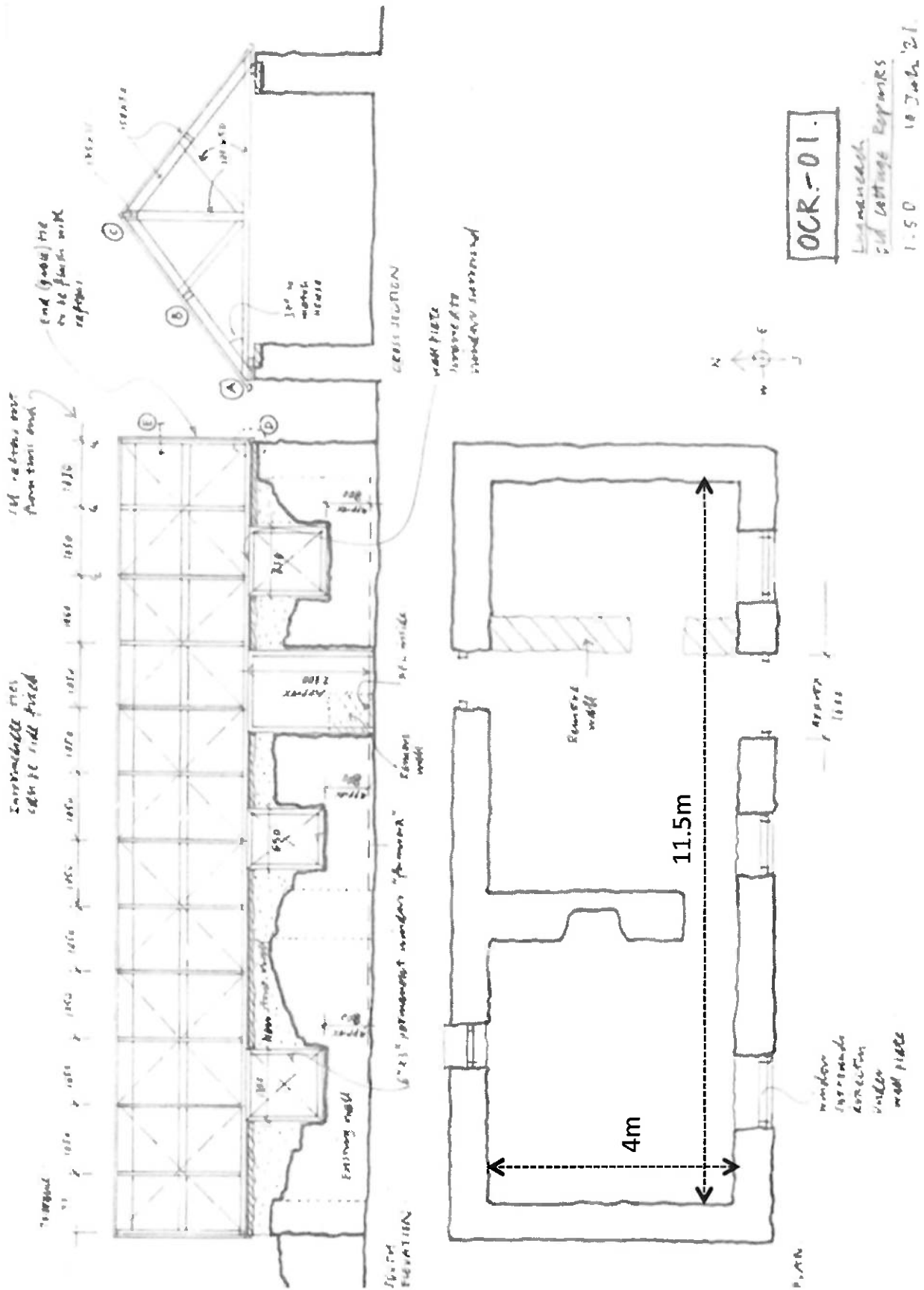


Former cottage
reroofed as
greenhouse.

Behind the house (ie to the west) was a ruin of the old cottage. The wall plates have been repaired, and a new pitched roof installed to the former height and pitch as the original roof. The roof is covered in clear polycarbonate sheeting, and used as a vegetable and plant- growing shed. This reroofed cottage is behind the house, is lower than it and therefore is hidden from view from across the lough.



Behind the house (ie to the west) was a ruin of the old cottage. Condition shown here in 2021.



Plan and elevation of the cottage showing then extent of work carried out in 2021/22.



Photo of the cottage walls showing stonework being sensitively repaired in 2021/22.

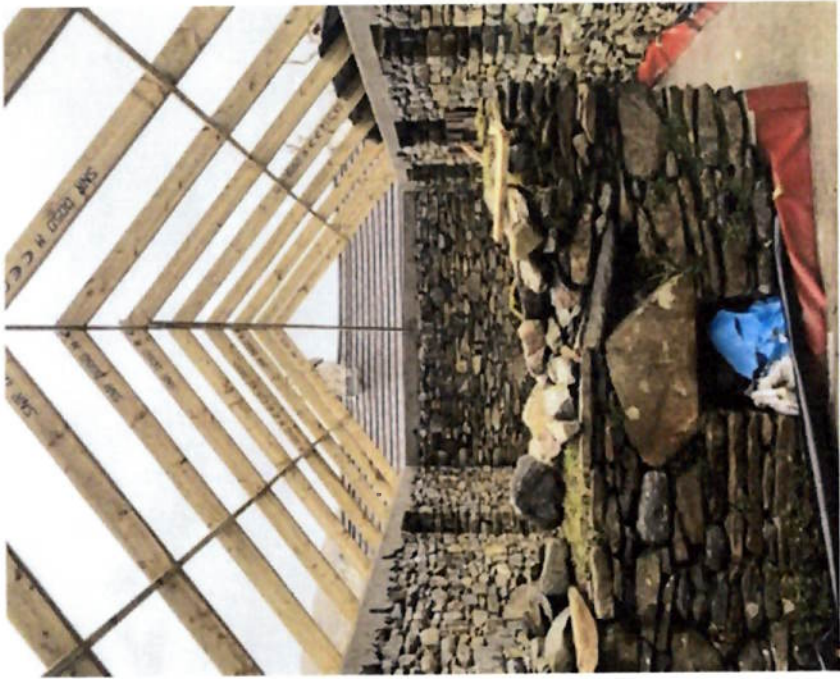
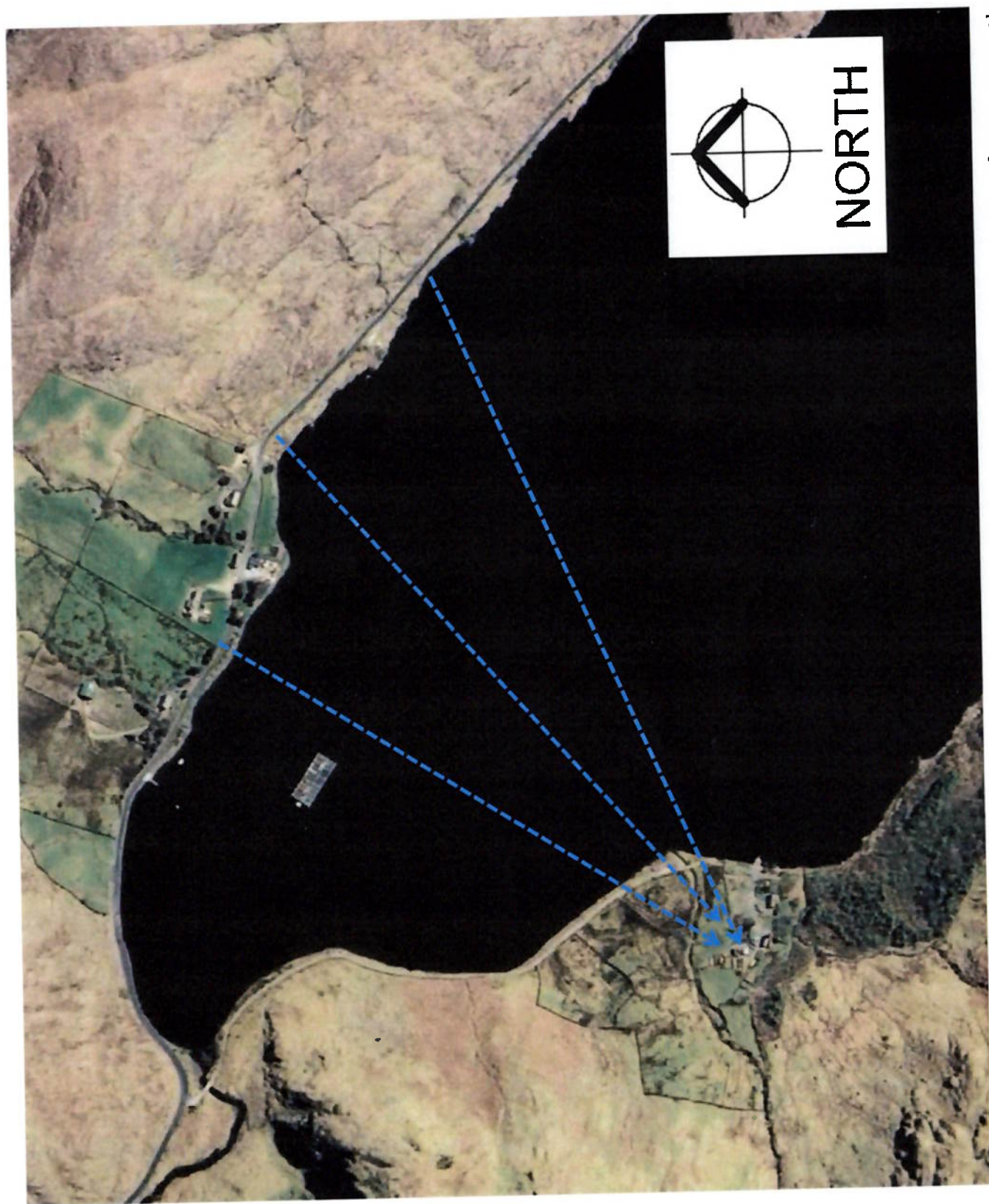


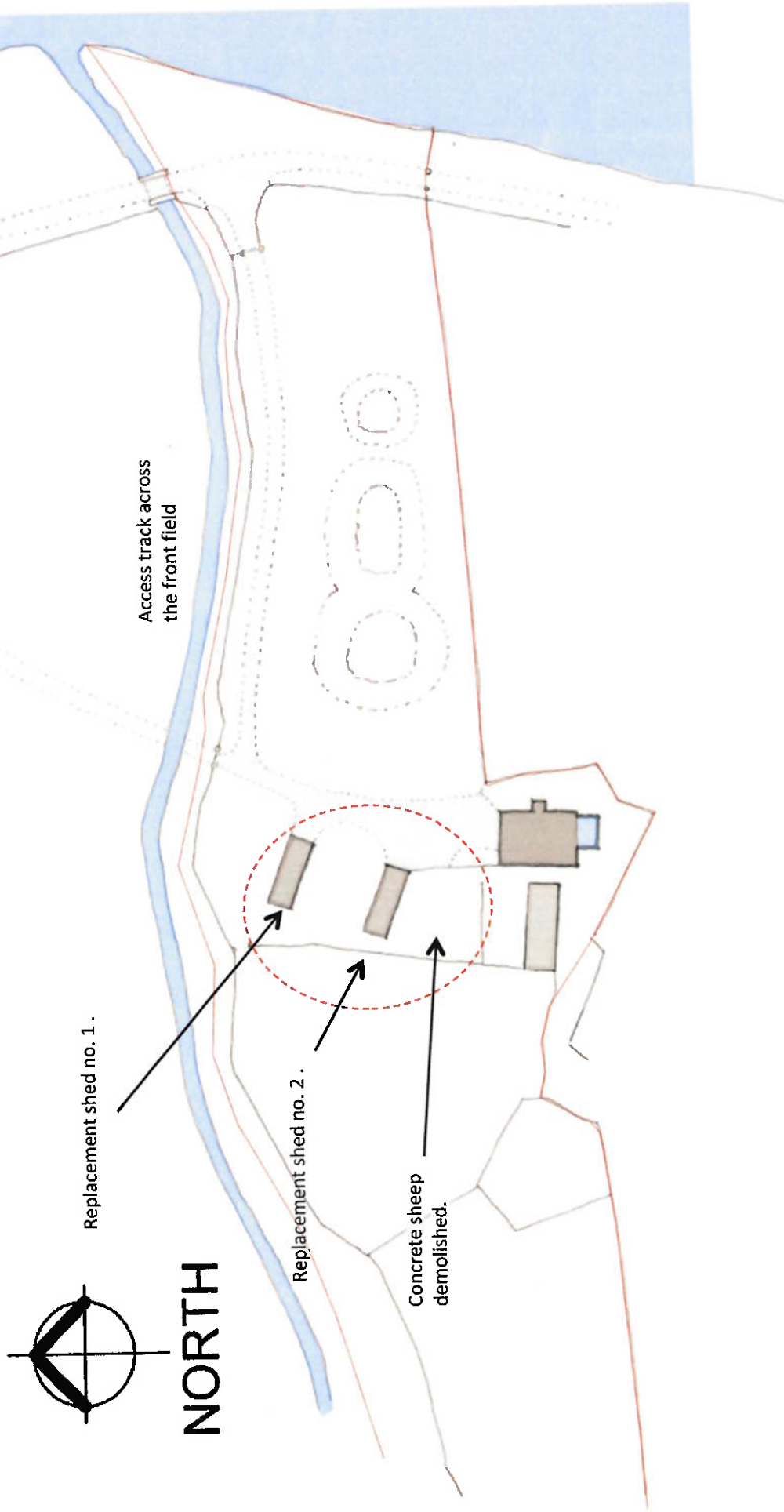
Photo of the former cottage now sensitively transformed into a growing shed .



This reroofed cottage is behind the house, is lower than it and therefore is hidden from view from across the lough.



This reroofed cottage is behind the house, is lower than it and therefore is hidden from view from across the lough.



To the north of the house, but behind the building line of the house, are 2 replacement sheds, for the purposes of maintaining the small- holding ; Shed no 1 (most northerly) replaces a former larger barn structure in approximately the same location Shed no 2 (to the south of shed no 1) replaces a stone shed in approximately the same location. These works included the demolition of redundant and dilapidated concrete block walled shed pens with an extensive concrete slab floor. This area has now been returned to nature as a tended garden.



Photo of shed no 1 and shed no 2 as seen from across the lough. In a similar way to the former shed and barn their visual impact is minimised due to their dark colour set against a dark stone wall immediately behind, that is a retaining wall for the upper field. Native species trees have been planted in front of the new sheds which will obscure the sheds from view.



Bosca Poist Uimhir 27,
Aras an Chontae,
Cnoc na Radharc,
Gaillimh

Telephone: (091) 509308
Email: planning@galwaycoco.ie
Web: www.galway.ie

Comhairle Chontae na Gaillimhe

Galway County Council

Sean Harrington,
C/o HRA Planning Consultants,
3 Hartstone St,
Limerick

09 OCT 2023

LTR DATED _____ FROM *Ref*

LDG-

ABP- *318223-23*



18 SEP 2023

HRA PLANNING

chartered town planning consultants

Limerick | www.hraplanning.ie

13th September 2023

RE: Declaration of Exempted Development under section 5 of the Planning & Development Act 2000

ED23/89 – Construction of 3 no. structures at Lettergest East, Renvyle. Construction of new access track at Lettergest East, Renvyle. Construction of a conservatory at Lettergest East, Renvyle.

DECISION – NOT EXEMPTED DEVELOPMENT

A Chara,

I refer to the above application which was received by this office on the 31st August 2023.

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), (viiB) & (viiC) of said Planning and Development Regulations.
- (g) 'Class 1' Schedule 2 Part 1 of said Planning and Development Regulations.
- (h) 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 construction of 3no. Agricultural Storage shed, Conservatory to Side of Dwelling and new access track and entrance at Lettergest East, Renvyle, Co. Galway is development and is **not exempted development** as per criteria set out in 'Class 1', Article 9(1)(a)(iii), (vi) & (viiB) of the Planning and Development Regulations 2001-2022 & Section 4(1)(h) of the 2000 Planning and Development Act.

Given that the proposal is surrounded by and partially on the Twelve Bens/Garraun Complex SAC, means the proposed would not satisfy Article 9(1)(a)(viiB).

"comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,"
Therefore, the local authority is not satisfied that the proposed works can be screened out based on the AAS report.

Also, with the addition of a new access track and entrance this would trigger the restriction on exemptions:

Article 9(1)(a)

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

Article 9(1)(a)

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

This restriction on exemption is relevant in the context of the Class 4 Landscape (Iconic) setting and Galway County Development Plan Policy Objectives LCM 1, LCM, 2 LCM 3.

In addition, having considered the works proposed the Planning Authority is of the opinion that the proposed conservatory to the side of dwelling would not fall within 'Class 1' of the Planning and Development Regulations 2001 (as amended).

Finally, the construction of 2 agricultural storage shed and reroofing of existing stone shed would not satisfy the criteria set out in the Planning and Development Act 2000:

4(1)(h)

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

Please note that you may appeal this decision to An Bord Pleanála within four weeks of the issue of this declaration on payment of the prescribed fee.

Mise le meas


John O'Connor

Planning & Sustainable Development Unit