



An
Bord
Pleanála

Inspector's Report ABP-307002-20

Question

Whether the construction of a wall, blocking a historic side gate to the Old School House, Blarney, is a development and whether it is exempted development having regard to its location within an ACA and the provisions of Article 9(1)(xii) of the Planning and Development Regulations, 2001 – 2019.

Location

Old School House, Blarney, Cork

Declaration

Planning Authority

Cork City Council

Planning Authority Reg. Ref.

R561/20

Applicant for Declaration

Charles Colthurst

Planning Authority Decision

Development, which is exempted development

Referral

Referred by

Charles Colthurst

Occupier

Blarney Woollen Mills

Observer(s)

None

Date of Site Inspection

25th June 2020

Inspector

Hugh D. Morrison

Contents

1.0 Site Location and Description	4
2.0 The Question	4
3.0 Planning Authority Declaration	4
3.1. Declaration.....	4
3.2. Planning Authority Reports.....	5
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.1. Development Plan.....	5
5.2. Natural Heritage Designations	6
6.0 The Referral.....	6
6.1. Referrer's Case	6
6.2. Planning Authority Response	7
6.3. Owner/occupier's response.....	7
6.4. Further Responses.....	7
7.0 Statutory Provisions.....	8
7.1. Planning and Development Act, 2000	8
7.2. Planning and Development Regulations, 2001	10
8.0 Assessment	12
8.1. Is or is not development.....	12
8.2. Is or is not exempted development	13
8.3. Restrictions on exempted development	14
9.0 Recommendation.....	15

1.0 Site Location and Description

- 1.1. The site is located on the SE corner of The Square in the centre of Blarney.
- 1.2. The site is of irregular shape and it accommodates a two-storey end of row house, which was formerly a schoolhouse, but which is presently in use as a dwelling. This house is accompanied on its southern side and rear by a continuous yard, which is accessed via a pair of solid gates from the said SE corner of The Square.
- 1.3. The yard is enclosed by a wall along its SE boundary. Adjacent to this wall is a pedestrian access route to Blarney Woollen Mills, beyond which runs the River Martin. Within the wall and towards its western end lies a pedestrian gateway within which is hung a wrought iron gate.

2.0 The Question

- 2.1. The question posed by the referrer is as follows:

Whether the construction of a wall, blocking a historic side gate to the Old School House, Blarney, is a development and whether it is exempted development having regard to its location within an ACA and the provisions of Article 9(1)(xii) of the Planning and Development Regulations, 2001 – 2019.

- 2.2. I consider that the inclusion of a reference to an ACA and Article 9(1)(xii) within this question is unnecessary, as these and other considerations will be addressed in seeking to answer it. The question can thus be simplified to the read as follows:

Whether the construction of a wall, blocking a historic side gate to the Old School House, Blarney, is a development and whether it is exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The PA declared that the construction of the subject wall is development, which, under Class 11 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, is exempted development, i.e. this wall comes within the conditions and

limitations attached to this Class and it is not de-exempted by Article 9(1)(xii) of these Regulations. The PA also took the view that the wall does not block any public right of way and so Article 9(1)(xi) is not applicable.

3.2. Planning Authority Reports

3.2.1. Planning Reports

See declaration.

3.2.2. Other Technical Reports

None

4.0 Planning History

None

5.0 Policy Context

5.1. Development Plan

Under the Cork County Development Plan 2014 – 2020 (CDP), the Blarney Architectural Conservation Area (ACA) is designated. Objective HE 4-5 of the CDP addresses ACAs:

Conserve and enhance the special character of the ACAs included in this Plan. The special character of an area includes its traditional building stock and material finishes, spaces, streetscape, shop fronts, landscape and setting. This will be achieved by:

(a) Protecting all buildings, structures, groups of structures, sites, landscapes and all features considered to be intrinsic elements to the special character of the ACA from demolition and non-sympathetic alterations...

Under the Macroom Blarney Municipal District Local Area Plan 2017 (LAP), the site is shown as lying within the town centre and the Blarney ACA. This ACA comprises the town centre and the Blarney Castle Estate. It includes the key buildings/groups of buildings of architectural, historical and cultural merit and public spaces around them in the town centre.

5.2. Natural Heritage Designations

- Blarney Castle Woods pNHA (001039)
- Blarney Lake pNHA (001798)

6.0 The Referral

6.1. Referrer's Case

- In 2019 the Old School House was renovated along with its garden. A historic side wall with a pedestrian iron gate within it bounds the SE side of this garden. As part of the said renovation, vegetation was cleared away from the inside of this gate and a path laid connecting it with the adjacent SE corner of Blarney Square.
- Later in 2019, Blarney Woollen Mills constructed a wall on the outside of the aforementioned wall, which blocks the access to the said pedestrian gate. This wall is constructed of blockwork with a natural stone public face. It is 1.8m high and 1.35m long. In addition, a hedgerow was planted alongside this new wall and the remainder of the pre-existing wall, hiding both from view.
- The new wall was the subject of an enforcement enquiry, which was closed off on the basis of a decision that it was exempted development under Class 11 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations. This decision did not address whether this wall constitutes an alteration to the adjoining unauthorised entrance to Blarney Woollen Mills or whether it materially affects the character of the ACA. It is effectively challenged by the current referral.
- The wall is sited outside the curtilage to the Old School House and so the aforementioned Class 11 is relevant. As this is a new wall in excess of 1.2m in height, it is not exempted development under this Class.
- Alternatively, if the view is taken that the wall is sited in a position whereby it immediately bounds the curtilage of the Old School House, then Class 5 would be relevant. As this Class cites 2m as the applicable height, the wall could be said to be exempted development under it. However, it would de-

exempted under Article 9(1)(xii), as the view is taken that it would materially affect the character of the ACA. This view is based on the following considerations:

- The wall is sited within the Blarney ACA.
- Contrary to Objective HE 4-5(a) of the CDP, the wall blocks a historic pedestrian side gate, which is considered to be an intrinsic element of the ACA and as such one that contributes to its special character.
- The referrer's Architectural Heritage Impact Assessment (AHIA) reports that the said gate is mostly likely to have been installed in the mid-19th century to provide access to an adjoining public area, which was used for washing and the drawing of water from the River Martin. The gate provides physical testimony to such access and the awareness of landlords of their tenants needs to avail of the same. It is thus forms part of the town's social history.
- While the gate denotes a private right of way, there is no suggestion that it was a public one.

6.2. **Planning Authority Response**

None

6.3. **Owner/occupier's response**

Blarney Woollen Mills have made a submission, which does not address the question of development/exempted development posed by the construction of the subject wall but which provides background information as to why the wall was constructed.

6.4. **Further Responses**

None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 3: Development

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

Section 2(1): Interpretation

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and –

(a) where the context so admits, includes the land on, in or under which the structure is situate...

Section 5: Declaration and referral on development and exempted development

(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

(2) (a) Subject paragraphs (b) and (ba), a planning authority shall issue the declaration on the question that has arisen and the main reasons and considerations on which its decision is based to the person who made the request under subsection (1), and, where appropriate, the owner and occupier of the land in question, within 4 weeks of the receipt of the request.

(b) A planning authority may require any person who made a request under subsection (1) to submit further information with regard to the request in order to enable the authority to issue the declaration on the question and, where further information is received under this paragraph, the planning authority

shall issue the declaration within 3 weeks of the date of the receipt of the further information.

(ba)(i) Subject to subparagraph (ii), a planning authority shall not be required to comply with paragraph (a) within the period referred to in that paragraph where it appears to the planning authority that it would not be possible or appropriate, because of the exceptional circumstances of the development or proposed development (including in relation to the nature, complexity, location or size of such development) identified in the request under subsection (1) to do so.

(ii) Where subparagraph (i) applies, the planning authority shall, by notice in writing served on —

(I) the person who made the request under subsection (1), and

(II) each person to whom a request has been made under paragraph (c), before the expiration of the period referred to in paragraph (a), inform him or her of the reasons why it would not be possible or appropriate to comply with that paragraph within that period and shall specify the date before which the authority intends that the declaration concerned shall be made.

(c) A planning authority may also request persons in addition to those referred to in paragraph (b) to submit information in order to enable the authority to issue the declaration on the question.

(3) (a) Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

(b) Without prejudice to subsection (2), in the event that no declaration is issued by the planning authority, any person who made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2).

Section 81: Architectural conservation areas

(1) *A development plan shall include an objective to preserve the character of a place, area, group of structures or townscape, taking account of building lines and heights, that —*

(a) is of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest or value, or

(b) contributes to the appreciation of protected structures,

if the planning authority is of the opinion that its inclusion is necessary for the preservation of the character of the place, area, group of structures or townscape concerned and any such place, area, group of structures or townscape shall be known as and is in this Act referred to as an “architectural conservation area”.

Section 82: Development in architectural conservation areas

(1) *Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.*

7.2. Planning and Development Regulations, 2001

Article 6: Exempted Development

(1) *Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.*

Part 1 of Schedule 2 to Article 6

Column 1

Column 2

Description of development

Conditions and Limitations

Development within the curtilage of a house

<p>CLASS 5</p> <p><i>The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.</i></p>	<ol style="list-style-type: none"> <i>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 garden or other space in front of a house, 1.2 metres.</i> <i>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.</i> <i>3. No such structure shall be a metal palisade or other security fence.</i>
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Sundry Works

<p>CLASS 11</p> <p><i>The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of –</i></p> <p><i>(a) any fence (not being a hoarding or sheet metal fence), or</i></p> <p><i>(b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.</i></p>	<ol style="list-style-type: none"> <i>1. The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.</i> <i>2. Every wall, other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks (other than blocks of decorative finish) which will be visible</i>
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	<p><i>from any road, path or public area, including a public open space, shall be rendered or plastered.</i></p>
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Article 9: Restrictions of exemption

(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act – (a) if the carrying out of such development would –

(xi) obstruct any public right of way,

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

8.0 Assessment

8.1. Is or is not development

8.1.1. Under Section 2 of the Planning and Development Act, 2000 – 2019, (hereafter referred to as the Act), “works” are defined as including “any act or operation of construction”. The subject wall has been constructed and so it comes within this definition.

8.1.2. Under Section 3 of the Act, “development” is defined as meaning, amongst other things, “the carrying out of any works on, in, over or under land”. The subject wall has been constructed on land and so it comes within this definition.

8.1.3. I conclude that the subject wall is development.

8.2. Is or is not exempted development

- 8.2.1. The subject wall has been constructed in a position, whereby it abuts the outward looking faces of the brickwork that denotes either side of the gateway in the SE boundary wall to the site. This wall spans the space in front of the gate in this gateway and so it blocks this gate from being used. It is composed of concrete blockwork with a stone finish to its public face onto the adjacent means of access to the Blarney Woollen Mills. I measured the height of the wall to be 1.370m above ground level. (I also measured its equivalent height from within the yard to be 1.520m).
- 8.2.2. I consider that the existing SE boundary wall bounds the curtilage to the Old School House. The subject wall has been constructed in a position beyond this wall and the pedestrian gate within it and so I take the view that it is outside this curtilage. Nevertheless, insofar as it abuts the above cited brickwork in the SE boundary wall and spans across the above cited gateway, I consider that it bounds the said curtilage, too, i.e. it adds to its enclosure, even if in doing so it is superfluous.
- 8.2.3. Given the view expressed in the foregoing paragraph, I consider the subject wall does not come within the ambit of Class 11 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2019 (hereafter referred to as the Regulations), which addresses walls of stone and concrete blocks constructed “other than within or bounding the curtilage of a house”. It thus comes within the ambit of Class 5 of Part 1 of Schedule 2 to Article 6 of the Regulations, which addresses walls of stone and concrete blocks constructed “within or bounding the curtilage of a house”.
- 8.2.4. Class 5 is the subject of three conditions or limitations.
- The first of these pertains to height: essentially a wall must not exceed 2m, unless it is sited in front of a house, in which case it must not exceed 1.2m. The subject wall is to the side of a street-fronted house and so 2m is the relevant measurement. As cited above, it is lower than 2m.
 - The second of these pertains to the finishing treatments to walls: essentially stone walls do not need to be capped, whereas concrete blockwork walls do. The subject wall comprises a blockwork wall with stone to its outward looking

faces, i.e. its front and sides are covered by random coursed natural stonework. A cement mortar has been used throughout. The wall is uncapped.

The subject wall is composed of blockwork and stonework. Insofar as it is designed to appear from public vantage points as a stonewall, I consider that it should be regarded as such and so I do not consider that the absence of a cap from its concrete blockwork portion should be regarded as an infringement of the second condition and limitation.

- The third of these excludes metal palisade or other security fencing and so is not applicable to the subject wall.

8.2.5. I conclude that the subject wall is exempted development.

8.3. **Restrictions on exempted development**

8.3.1. The referrer draws attention to Article 9(1) of the Regulations, which sets out circumstances wherein development that is exempted under Article 6 can be de-exempted, and in particular to Item (xii) wherein development that would consist of or comprise the carrying out of works to the exterior of a structure located within an ACA would materially affect its character.

8.3.2. As discussed above, the subject wall abuts the pre-existing SE boundary wall to the site in the Blarney ACA and so its construction has comprised the carrying out of works to the exterior of a structure located within this ACA. The question, therefore, arises as to whether these works materially affect the character of the ACA.

8.3.3. Section 81 of the Act mandates PAs to designate ACAs where they consider them to be necessary to the “the preservation of the character of the place, area, group of structures or townscape concerned”. The LAP states that the Blarney ACA comprises the town centre and the Blarney Castle Estate. It includes the key buildings/groups of buildings of architectural, historical and cultural merit and public spaces around them in the town centre.

8.3.4. The referral site lies in the SE corner of The Square, a historic and well-used public open space, which is surrounded by roads and buildings. This site occupies a position adjacent to a pedestrian route to the Blarney Woollen Mills and to a bridge

over the River Martin which provides access to The Square from the SE. It accommodates a two-storey end of row house, which has a mural of Blarney Castle on its exposed southerly gabled elevation. Consequently, the site enjoys some public prominence within its immediate vicinity.

- 8.3.5. The referrer has submitted an Architectural Heritage Impact Assessment (AHIA), which reports that the pedestrian gate that is blocked by the subject wall is most likely to have been installed in the mid-19th century to provide access to an adjoining public area, which was used for washing and the drawing of water from the River Martin. The gate provides physical testimony to such access and the awareness of landlords of their tenants needs to avail of the same. It thus forms part of the town's social history.
- 8.3.6. The AHIA also reports that the aforementioned pedestrian gate is typical of wrought iron gates produced locally in the mid-19th century and it comments that its survival intact is "unusual and forms part of the character of the area".
- 8.3.7. In the light of the AHIA, I consider that the pedestrian gate within its walled context is of interest as an example of locally produced historic fabric and its presence points to the social history of the immediate locality. Given these factors, I consider that the gate is an intrinsic part of the character of the ACA and so the blocking of the same by the subject wall from public view represents both a significant loss to this Area, in terms of the visibility/legibility of this gate, and the introduction of a discordant feature. I, therefore, consider that the subject wall materially affects the character of the ACA.
- 8.3.8. I conclude that the exempted development is, under Article 9(1)(xii) of the Regulations, de-exempted.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the construction of a wall, blocking a historic side gate to the Old School House, Blarney, is or is not development or is or is not exempted development:

AND WHEREAS Charles Colthurst requested a declaration on this question from Cork County Council and the Council issued a declaration on the 9th day of March, 2020, stating that the matter was development and was exempted development:

AND WHEREAS Charles Colthurst referred this declaration for review to An Bord Pleanála on the 25th day of March, 2020:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 81 of the Planning and Development Act, 2000, as amended,
- (d) Section 82 of the Planning and Development Act, 2000, as amended,
- (e) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (g) The history of the site:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The construction of a wall, blocking a historic side gate to the Old School House, Blarney, is development.
- (b) The construction of this wall is exempted development under Class 5 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations 2001 – 2019.
- (c) The construction of this wall is de-exempted by Article 9(1)(xii) of the Planning and Development Regulations 2001 – 2019.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the construction of a wall, blocking a historic side gate to the Old School House, Blarney, is development and is not exempted development.

Hugh D. Morrison
Planning Inspector

30th June 2020