



An
Bord
Pleanála

Inspector's Report ABP-320707-24

Question

Whether a new boundary line and pier location of a public access point into Bellamount Forest is or is not development and is or is not exempted development.

Location

Station Road, Cootehill, Co. Cavan.

Declaration

Planning Authority

Cavan County Council

Planning Authority Reg. Ref.

372

Applicant for Declaration

Cavan County Council

Planning Authority Decision

No declaration

Referral

Referred by

Cavan County Council

Owner/ Occupier

John Morehart

Observer(s)

St. Michaels Close Residents
Association

Date of Site Inspection

1/5/25

Inspector

Ronan Murphy

1.0 Site Location and Description

- 1.1. The subject site comprises of the south-eastern portion of the front boundary wall of Bellamount Forest, which fronts onto Station Road, in Cootehill, Co. Cavan.
- 1.2. The boundary wall encloses Bellamount House and demesne which is a Protected Structure (RPS Ref. CN17036). Bellamount House is a Palladian Villa, and the demesne includes gates houses, farm and stable building and a forest. The boundary wall fronting onto Station Road has a total length of c. 176m.
- 1.3. The constructed boundary wall and wings comprises of light-coloured brick (predominantly red brick) with stone piers.
- 1.4. The existing boundary wall is of a rubble construction and is generally in and around 2m in height as originally constructed. The wall would appear to have been altered over time.

2.0 The Question

- 2.1. Whether (i) a new boundary wing walls and piers, which are in the curtilage of a protected structure (Bellamont House Ref. No. CN17036 and Gate Lodge Ref No. CV030), (ii) the relocation of a public access point into Bellamont Forest and (iii) the fencing / enclosure of an access habitually used by the public during the 10 years preceding such enclosure for recreational purposes and use as a means to access to Dromore river and Bellamount Forest area of natural beauty and recreational utility is, or is not exempted development.

3.0 Planning Authority Declaration

- 3.1 The Planning Authority did not issue a declaration, and the question was referred directly by the Planning Authority to the Board for a decision under the provisions of Section 5 (4) of the Planning and Development Act 2000, as amended.

4.0 Planning History

4.1 Subject land

There is no planning history associated with the subject site.

4.2 Site to the west (Gate Lodge)

Reg. Ref. 20408. Permission granted for the alteration and restoration of the gated entrance and walls and construction of an outbuilding to provide storage in the vicinity of the Town Gate Lodge at Bellamont using appropriate materials and techniques. The works will include soft and hard landscaping, raising the height of the existing stone wall which abuts the public footpath, forming new cut stone piers, restoring, and replacing existing ironwork and installing new gates. 2. RETENTION to retain and complete existing low level retaining walls and paving. Bellamont House is a protected structure Ref No CN17036 as is the Gate Lodge Ref No CV17030

4.3 Planning Authority Reports

4.3.1 Report dated 27 August 2024 which seeks that the question asked by the initial referrer be referred to An Bord Pleanála.

4.3.2 Other Technical Reports

There are no technical reports on file.

5.0 Policy Context

5.1 Development Plan

5.1.1 The relevant development plan is the *Cavan County Development Plan 2022-2028*. Map 8 of the *Cavan County Development Plan 2022-2028* identifies the land as being within the Amenity and Open Space zoning. The land is also subject to the map based specific objective No.3. In addition to this the Cootehill Architectural Conservation Area is located c. 84m to the west of the subject site.

5.1.2 Section 2.6 of chapter 2 (Settlement Strategy) sets out a settlement Plan for Cootehill, of relevance to the matter are the following:

6.0 Map based specific objective No. 3 seeks to Protect, conserve and maintain the Demesne of Bellamont Forest.

7.0 Objective CH08 seeks to encourage and support sustainable developments in Bellamont Forest.

8.0 Objective CH09 seeks to Conserve, protect and enhance the built heritage of Cootehill including all Protected Structures and attendant grounds, Lower Market Street ACA, Records of Monuments and Places in accordance with best conservation practice.

6.0 Natural Heritage Designations

6.1 The site is not located within or adjacent to any Natural Heritage Designations nor is there any hydrological link to the same.

7.0 The Referral

7.1 Referrer's Case

7.1.1 A Section 5 referral was submitted to Cavan County Council by St. Michaels Close Residents Association on 6th August 2024. The Council did not make a declaration and referred the case to An Bord Pleanála.

7.1.2 The referral is accompanied by a copy of the application for a Section 5 declaration made by St. Michaels Close Residents Association which is accompanied by:

- A site location plan.
- A written statement.
- Photographs documenting changes to the entrance over time.

7.1.3 The initial statement of grounds initially made by St. Michaels Residents Association states that measurements taken indicate that the height of the wall at the road edge is 2.25m and that the piers extend higher. A number of photographs are included with the statement of grounds.

7.3 Planning Authority Response

7.3.1 On 9th September 2024 Cavan County Council wrote to the Board confirming that there is no planning history on the subject land, that no correspondence has taken place with the planning authority, the landowner's details and that a declaration has not been issued by the planning authority.

7.4 Owner/ occupier's response

7.4.1 No response has been received from the landowner.

7.5 Further Responses

7.5.1 A detailed response has been received from the St. Michales Close Residents Association. The observers state that the referral to An Bord Pleanála by Cavan County Council fails to include the question of wing walls, relocation of the public access point and fencing / enclosure of the access point into Bellamont Forest. The response also states that the landowner is responsible for the construction and subsequent blocking of the pedestrian access to Bellamont Forest, thus preventing the enjoyment of the amenities of Bellamont Forest walkways and access to Dronmore River. The matters for referral meet the criteria that would qualify as “development” within the meaning of Section 3 of the Planning and Development Act, it has also caused a material change of use of the land within the terms of this habitual access over the land. The development is of such a standard that it qualifies as “works” within the meaning of Section 2 of the Planning and Development Act.

7.5.2 The response highlights a number of concerns in relation to the enforcement matters in relation to the wall. Concerns were also raised in relation to large concrete blocks being placed at the entrance point to the forest.

8 Statutory Provisions

8.1 Planning and Development Act, 2000

Planning and Development Act, 2000, as amended.

Section 2 – Definitions “*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 situated and

(b) in relation to a protected structure or proposed protected structure includes (i) the interior of the structure, (ii) the land lying within the curtilage of the structure, (iii) any other structures lying within the curtilage and their interiors, and (iv) all fixtures and features which would form part of the interior or exterior of any structure or structures referred to in subparagraphs (i) to (iii)

Section 2(1) 'works' any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3 (1) Development means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structure or other land.

Section 4(1) the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

Section 57(1) Notwithstanding Section 4(1)(h) the carrying out of works to a protected structure, or proposed protected structure, shall be exempted development only if those works would not materially affect the character of

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest.

8.2 Planning and Development Regulations, 2001

8.2.1 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.

Schedule 2 to Part 1 of the Regulations sets out classes of exempted development comprising 'general development within the curtilage of a house' and 'sundry works', including Class 5 which is considered relevant to this referral and states the following:

Column 1 Description of works- Sundry works	Column 2 Conditions and limitations
<p>CLASS 5</p> <p>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.</p>	<ol style="list-style-type: none"> 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. 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.
<p>CLASS 11 The construction, erection, lowering, repair, or replacement, other than within or bounding the curtilage of a house, of –</p> <p>(a) any fence (not being a hoarding or sheet metal fence), or</p>	<ol style="list-style-type: none"> 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.

(b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.	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 a decorative finish) which will be visible from any road, path or public area, including a public open space, shall be rendered or plastered.
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Article 9: Restrictions of exemption

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

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

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) obstruct any right of way

9 Assessment

9.1 It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the development in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

9.2 I will deal with each part of the question separately:

- (i) *New boundary wing walls and piers, which are in the curtilage of a protected structure (Bellamont House Ref. No. CN17036 and Gate Lodge Ref No. CV030).*

Is or is not development.

- 9.3 I make the Board aware that the referral does not include any site plans or any elevations of the wall in question. Therefore, comments below rely on my site visit dated 2/5/25. Having been on site it is obvious that on site that new works have occurred at the site. The wall is primarily constructed of light-coloured brick and includes piers.
- 9.4 I consider these works come within the scope of the definition of development in both Section 3 and Section 2 of the Act.
- 9.5 Consequently, I am satisfied that it can reasonably be concluded that the act of constructing the boundary wall including wing walls and piers involved works and therefore constitutes development.

Is or is not exempted development.

- 9.6 Development can be considered exempt under either Section 4 of the Planning and Development Act or Article 6 of the Planning and Development Regulations. Section 4 (1) of the Act sets out the provisions in relation to exempted development and is separate to and has primacy over the exempted development provisions of the Regulations. For that reason, I will consider the first 'question' with reference to Section 4 (1) of the Act in the first instance.
- 9.7 The key question in this regard is whether the works have materially affected the external appearance of the wall in a manner which renders the appearance of the wall inconsistent with the character of the structure or of neighbouring structures. The alterations are clearly 'material' in the sense that they are easily visible from public areas and obvious to a casual viewer.
- 9.8 The boundary wall including wing walls and piers are constructed in a light coloured (predominantly red coloured) brick finish. This is a significant alteration from the rest of the boundary wall which is a stone structure. Therefore, in my opinion these works materially affect the character of the boundary wall which is within the attendant grounds of a protected structure do not come within the scope of the provisions of sections 4 (1) (h) of the Act.

9.9 I also note Section 57(1) (a) and (b) - the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of— (a) the structure, or (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest. I consider that the development does materially affect the demesne wall which is an element of Bellamount House which contributes to its special architectural character.

Is there any exempted development provisions available under the Planning and Development Regulations 2001?

9.10 Article 6(1) of the Planning and Development Regulations, 2001 (as amended), deals with exempted development it refers to Part 1 of Schedule 2 of these Regulations. Class 5 and Class 11 of the Regulations permits the construction of a wall bounding the curtilage of a house on the condition it does not exceed 2m. I am of the opinion that neither Class 5 nor Class 11 are applicable to the development. These classes, in my opinion, relate to walls to individual houses. In this case, the boundary wall which encompasses a number of houses and is a demesne wall and there is no exemption is available under the Planning and Development Regulations 2001 (as amended).

(ii) The relocation of a public access point into Bellamount Forest

9.11 It is clear from the information on file and from looking at historic Google Maps images that some form of pedestrian access was available at this location. The new works do not provide for a pedestrian access. No information has been provided with respect to

where the access point has been relocated to and therefore the information is insufficient to answer this question.

(iii) the fencing / enclosure of an access habitually used by the public during the 10 years preceding such enclosure for recreational purposes and use as a means to access to Dromore river and Bellamont Forest.

- 9.12 This question arises from a restriction under Article 9 on exempted development under Article 6 of the Planning and Development Regulations 2001 (as amended). As discussed above, Article 6 of the Regulations do not apply to these works. Therefore the restrictions under Article 9 do not apply.

10 Environmental Impact Assessment - Preliminary Examination

- 10.1 Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

11 Appropriate Assessment

- 11.1 Having regard to the nature and scale of the proposed development within a serviced area and separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on the conservation objectives of any European site.

12 Recommendation

- 12.1 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 development of new *(i) boundary wing wall and piers within the curtilage of a protected structure, (ii) the relocation of a public access point into Bellamont Forest (iii) the fencing / enclosure of an access habitually used by the public during the 10 years preceding such enclosure for recreational purposes and use as a means to*

access to Dromore river and Bellamont Forest is is or is not development
or is or is not exempted development:

AND WHEREAS Cavan County Council referred this declaration for review to An Bord Pleanála on the 2nd day of September 2024.

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

- (a) Section 2,3,4 and 57 of the Planning and Development Act, 2000, as amended,
- (b) the planning history of the site,
- (c) the pattern of development in the area,
- (d) A photographic review of the entrance over time using Google Street Maps.

AND WHEREAS An Bord Pleanála has concluded that:

I (a) The construction of a new boundary wing wall and piers within the walls surrounding the attendant grounds of a protected structure constitute works that is development within the meaning of Section 3 of the Planning and Development Act 2000 (as amended)

(b) The materials used in the new boundary wing wall and piers with the attendant grounds of a protected structure are inconsistent with the existing stone wall and would materially affect the special architectural interest of the protected structure and would not come within the scope of Section 4(1)(h) or 57(1) (a) and (b) of the Planning and Development Act, 2000, as amended.

ii) The information relating to relocation of the public access was insufficient for a determination to made.

iii) The closure of the public access to the lands is a restriction under Article 9 of the Planning and Development Regulations 2001 (as amended) which

limits exempted development Article 6 and as the exemption is not relevant to the development, the restriction on exemption is therefore irrelevant.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act as amended, hereby decides that the new boundary wing wall and piers within the curtilage of a protected structure is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Ronan Murphy
Planning Inspector

12 May 2025