



An
Coimisiún
Pleanála

Inspector's Report ABP – 322683-25

Question

Whether the erection of 2m high security fencing around a site affected by knotweed until such time as the knotweed is eradicated by specialists, is or is not development and is or is not exempted development.

Location

Prospect House and Lands at Mullach Allain, Omeath, Co. Louth

Declaration

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

S5-2025-24

Applicant for Declaration

Aloha Mullavelley Limited

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Aloha Mullavelley Limited

Owner/ Occupier

Aloha Mullavelley Limited

Observers

None

Date of Site Inspection

25th October 2025

Inspector

Ian Campbell

1.0 Site Location and Description

- 1.1. This case relates to a referral submitted under Section 5(3)(a) of the Planning and Development Act, 2000, as amended, where the Planning Authority has issued a declaration on a referral and this determination is now the subject of appeal.
- 1.2. The subject of this referral is located at Mullach Allain, a housing estate in Omeath, Co. Louth. The site is accessed from Howes Hill and is c. 200 metres south-west of the centre of Omeath. The site is elevated with views towards the Carlingford Lough.
- 1.3. The subject of this referral, fencing, surrounds a vacant site within Mullach Allain. Based on the submitted site plan the referral relates to two types of fencing, grey colour 'Haras' type fencing c. 1.8 metres in height, and green colour 'weld mesh' type fencing, c. 2.5 metres in height.
- 1.4. A vacant house (i.e. Prospect House, a Protected Structure, Ref. LHS-005-067) on lands adjacent to the fencing. The extent of the former curtilage of Prospect House is unclear as the wider lands have been redeveloped for residential purposes.

2.0 The Question

- 2.1. The question that has been submitted in the referral is as follows:
 - Whether the erection of 2 metre high security fencing around a site affected by knotweed until such time as the knotweed is eradicated by specialists, is or is not development and is or is not exempted development.
- 2.2. Based on my site inspection and having reviewed the documentation submitted with the referral I submit to the Commission that the proposal should be reworded as follows –
 - Whether, the erection of fencing, c. 1.8 metres in height, and c. 2.5 metres in height around a site, is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

On the 14th of April 2025, a request for a Declaration in accordance with Section 5 of the Planning and Development Act, 2000, as amended, on the above question was received by Louth County Council from Aloha Mullavelley Limited.

In accordance with Section 5(2)(a) of the Planning and Development Act, 2000, as amended, Louth County Council issued a Declaration on the 9th of May 2025 that the subject of the referral, that being whether, the erection of 2 metre high security fencing around a site affected by knotweed until such time as the knotweed is eradicated by specialists, is or is not development and is or is not exempted development at Mullach Allain, Omeath, Co. Louth, is development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer includes the following comments;

- The fence is considered to constitute development.
- Having regard to the height of the fence the provisions of Class 11, Schedule 2, Part 1, of the Planning and Development Regulations, 2001, as amended, do not apply.

3.2.2. Other Technical Reports

None received.

4.0 Planning History

4.1. Subject Site (relevant/recent)

PA. Ref. 24/60340 / ACP.323032-25 – (subject of current appeal) Permission sought for (a) construction of 20 no. residential units, partial demolition, extension, renovation, restoration and subdivision of Prospect House (a Protected Structure within the Louth

County Development Plan 2021-2027 - Ref. LH005-067); (b) demolition of existing outbuilding and (c) associated site development works including hard and soft landscaping, planted weldmesh retaining wall, self-contained ecological/wildlife corridor, connection to mains sewerage, installation of new surface water drainage system, mixed boundary treatments, provision of public amenity space.

(Significant Further Information Received on 06/05/2025 & Revised Notices 13/05/2025 - subject of a revised stage 2 appropriate assessment (Natura Impact Statement) with the reduction of residential units from 20 to 17 and the provision of 3 new short term let units).

4.2. Referral History

Having undertaken a review of the referrals database I note the following case which is of relevance, having considered fencing under Class 11.

RL3357 - related to whether the erection of fencing, double gate and fencing off of open space of land is or is not development or is or is not exempted development. The Board decided that the erection of fencing, double gate and fencing off of open space of land was development and was not exempted development, as follows: - the erection of the fencing and double gate constituted "works" that was development per S.2 and 3 of PDA, 2000 - the fencing was not exempt under Class 5 of Part 1 of Schedule 2 as it comprised a security fence - the gateway was not exempt under Class 9 of Part 1 of Schedule 2 as the height exceeded two metres - the fencing was not exempt under Class 11 of Part 1 of Schedule 2 as it exceeded 1.2 metres and was not a replacement fence.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The relevant Development Plan is the Louth County Development Plan 2021 – 2027. The subject site is zoned 'Existing Residential' and also 'New Residential Phase 1' in the Louth County Development Plan 2021 – 2027.

5.2. Natural Heritage Designations

- Carlingford Shore SAC (Site Code 002306) – c. 260 metres east.
- Carlingford Lough pNHA (Site Code 000452) – c. 260 metres east.

6.0 The Referral

6.1. Referrer's Case

The following is a summary of the main issues raised by the referrer in the submission to the Commission.

- The fence is temporary (intended for 18 - 24 months) and is around an area which is subject to a planning application for houses (PA. Ref. 24/60340 refers).
- The lands are zoned for residential development.
- A fence previously surrounded the area but was removed by Louth County Council to facilitate works to the road¹.
- The fence is stated as being required for the following reasons;
 - to secure Prospect House, an adjoining derelict property and Protected Structure, pending repair and construction works.
 - Archaeological testing;
 - Knotweed spraying and removal works.

¹ No details of any previous fencing has been provided, for example photographs, elevations etc.

- Under the current planning application the area accommodates the front driveways of houses, and as such will not remain as a permanent feature.
- The fence is a continuation of the existing security fence.
- Removing the fence or reducing its height to 1.2 metres will facilitate the use of the site, as the lands are privately owned.
- The development proposed under the current planning application includes open space provision.
- There are other amenities in the area.
- List of attached documents, including;
 - Letter of refusal of Louth County Council dated 9th May 2025 and photographs).
 - Warning letter.
 - Derelict Site Notice of Entry into Register dated 4th December 2024 Ref. DS.620.
 - Photographs of temporary fencing;
 - Louth County Council's letter dated 17th January 2025 re. extension of time for Further Information in respect of PA. Ref. 24/60340 to 17th May 2025.
 - Letter of Louth County Council confirming receipt of Further Information.

6.2. Planning Authority Response

Submission from the Planning Authority notes that the fence exceeds 2 metres in height.

6.3. Observations

None received.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2 Interpretation

(Works)

Works includes 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)

(a) 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 32 (obligation to obtain permission)

This section has a general obligation to obtain permission in respect of any development of land not being exempted development, and in the case of development not authorised for the retention of unauthorised development.

Section 177U (9) (Appropriate Assessment)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

7.2. Planning and Development Regulations, 2001

Article 6 (1) states the following:

Subject to Article 9 the 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 conditions and limitations specified in Column 2 of the Act opposite the mention of that Class in the said Column 1.

Article 9 (1) (a) provides that development to which Article 6 relates shall not be exempted development for the purposes of the Act, subject to specific criteria (see paragraph 8.5.2 below).

Class 11, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended,

The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of –

(a) any fence (not being a hoarding or sheet metal fence), or

(b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

Subject to the following conditions and limitations;

- 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.*
- 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*

8.0 Assessment

- 8.1. The purpose of this referral is not to determine the acceptability or otherwise of the proposal but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development within the meaning of the relevant legislation.

8.2. I have examined all the documentation on the file, inspected the site, and have had regard to the legislative provisions set out in both the Planning and Development Act, 2000, as amended, and the Planning and Development Regulations, 2001, as amended. I consider that the issues raised in the referral can be assessed under the following headings.

- Whether - the erection of fencing, c. 1.8 metres in height, and c. 2.5 metres in height around a site,
is or is not development and is or is not exempted development.
- Whether the works can be considered exempted development under the provisions of the Planning and Development Act, 2000 as amended, or under the Planning and Development Regulations, 2001, as amended.

8.3. **Is or is not development**

8.3.1. 'Works' are defined as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'. The proposal, the extent of which is indicated on *Drawing No. 07-04-25* (Existing Site Layout Map), consists of the erection of two different types of fencing, grey colour 'Haras' type fencing c. 1.8 metres in height, and green colour 'weld mesh' type fencing, c. 2.5 metres in height. The erection of a fence comprises 'an act or operation of construction' and I therefore consider the proposal to be 'works'.

8.3.2. In accordance with Section 3(1) of the Planning and Development Act, 2000 as amended, 'works' become development when they are carried out on, in, over or under land and therefore the works which are the subject of this referral are considered to comprise 'development'.

8.4. **Is or is not exempted development**

8.4.1. Section 4 of the Planning and Development Act, 2000, as amended, sets out certain forms of development which shall be exempted development. Additionally, Schedule 2 of the Planning and Development Regulations, 2001, as amended sets out forms of

development which are exempted development within specific context. I have reviewed the Section 4 of the Planning and Development Act, 2000 and I note that there are no specific provisions contained therein which would afford an exemption to the subject of this referral.

8.4.2. Class 11, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, provides that *'the construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of – (a) any fence (not being a hoarding or sheet metal fence), or (b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete'*, is exempted development subject to specific conditions and limitations. The boundary which is subject to this referral is not within the curtilage of a house, having no obvious relationship to Prospect House in the sense of providing a boundary to a defined curtilage, but rather surrounds a residual area of land within a development site (which is subject to a planning application), and therefore I consider this provision to be relevant. To avail of the exemption provided under Class 11 the structure, in this case a fence, shall not exceed a height of 1.2 metres, or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres. The proposal consists of the erection of two different types of fencing, grey colour 'Haras' type fencing c. 1.8 metres in height, and green colour 'weld mesh' type fencing, c. 2.5 metres in height. No evidence/detail has been submitted to support a claim of the fencing replacing previous fencing. As the height of the fencing, in both cases, exceeds 1.2 metres, Class 11, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, would not afford an exemption to the proposal.

8.5. Restrictions on exempted development

8.5.1. Whilst I consider the provisions of Article 9 of the Planning and Development Regulations, 2001, as amended, to be moot in this instance given that Class 11 does not provide an exemption for the proposal, in order to address a situation where the Commission reach a different conclusion I have examined the proposal in the context of the restrictions provided under Article 9.

8.5.2. The restrictions provided in Article 9 of the Planning and Development Regulations, 2001, as amended, relate to Article 6 of the Planning and Development Regulations, 2001, as amended, which in turn refers to classes of development specified in Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended. Article 9 (1) of the Planning and Development Regulations, 2001, as amended, provides that development to which Article 6 relates shall not be exempted development for the purposes of the Act, if the carrying out of such development would -

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

Not applicable.

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

Not applicable.

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

Not applicable.

(iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,

Not applicable.

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or

renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line 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,

Not applicable.

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

Not applicable.

(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,

The fence would not 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.

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or

the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

Not applicable.

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

Not applicable.

(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,

I have undertaken screening for Appropriate Assessment (see paragraph 8.6 below) and have concluded that that the development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.)

Not applicable.

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

Not applicable.

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified 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,

Not applicable.

(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,

Not applicable. No evidence has been submitted with the file to support such a position. Reference is made to members of the public using the area bound by the fencing however the land is indicated as being in private ownership and is not open to the public.

(xi) obstruct any public right of way,

Not applicable.

(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.

Not applicable.

Having inspected the site and the structure(s), and specifically the height of the fencing, and noting that it is not located within the curtilage of a house, and as no evidence has been submitted in relation to a contention that the fencing replaces a previous fence at this location, I do not consider that the fence comes within the scope of the exempted development provisions of Class 11, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended. I consider that the development which is the subject of this referral is not exempted development.

8.6. Appropriate Assessment – Screening

8.6.1. I have considered the proposed development at Mullach Allain, Omeath, Co. Louth in light of the requirements S177U of the Planning and Development Act, 2000, as amended.

8.6.2. The subject site is located c. 260 metres west of Carlingford Shore SAC (Site Code 002306). The subject of this referral comprises the provision of fencing. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows;

- The nature and small scale of the development.
- The location of the development site and distance from nearest European Site(s), and the lack of connections between the development site and European Sites.

8.6.3. I conclude that on the basis of objective information, that the development would not have a likely significant effect on any European Site either alone or in combination with

other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

8.7. EIA - Screening

- 8.7.1. The works which are the subject of this referral do not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and therefore is not subject to EIA requirements.

9.0 Recommendation

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

WHEREAS a question has arisen as to whether the erection of 2m high security fencing around a site affected by knotweed until such time as the knotweed is eradicated by specialists at Mullach Allain, Omeath, Co. Louth, is or is not development, and is or is not exempted development, and WHEREAS this question was reworded so as to reflect the situation on the site to - whether, the erection of fencing, c. 1.8 metres in height, and c. 2.5 metres in height around a site, is or is not development, and is or is not exempted development.

AND WHEREAS Aloha Mullavelley Limited requested a declaration on this question from Louth Council who issued a declaration on the 9th day of May 2025 stating that the matter was development and was not exempted development:

AND WHEREAS Aloha Mullavelley Limited referred this declaration for review to An Coimisiún Pleanála on the 4th day of June 2025:

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Article 6(1) and Articles 9(1)(a) (i) – (xii) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 11 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) The nature and extent of the works.
- (e) The documentation on file, including the submission of the referrer and the documentation provided by the Planning Authority.

AND WHEREAS An Coimisiùn Pleanála has concluded that:

- (a) The erection of fencing, c. 1.8 metres in height, and c. 2.5 metres in height around a site, constitutes the carrying out of “works” and is therefore “development” within the meaning of Section 3 of the Planning and Development Act, 2000, as amended;
- (b) The fencing exceeds a height of 1.2 metres, and does not come within the scope of Class 11 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended;
- (c) Aside from the fact that the fencing does not come within the scope of Class 11 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, the works which are the subject of this referral would not require an appropriate assessment as they would not be likely to have a significant effect on the integrity of a European site, and therefore the restriction on exemptions under Article 9(1)(a)(viiB) of the Planning and

Development Regulations, 2001, as amended, do not apply in this instance.

NOW THEREFORE An Coimisiùn Pleanála, in exercise of the powers conferred on it by section 5 of the Planning and Development Act, 2000, Act, as amended, hereby decides that the erection of fencing, c. 1.8 metres in height, and c. 2.5 metres in height around a site, 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.

Ian Campbell
Senior Planning Inspector

28th October 2025