



An
Bord
Pleanála

Inspector's Report 16. RL 3562

Question	Whether the closing of an access is development or is exempted development
Location	Brackloon Wood, Westport, Mayo
Declaration	
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	P17/8
Applicant for Declaration	Michael Murphy
Planning Authority Decision	Is not development
Referral	
Referred by	Michael Murphy
Owner/ Occupier	Coillte Mary A. O'Malley
Date of Site Inspection	7 th June 2017
Inspector	Stephen J. O'Sullivan

1.0 Site Location and Description

1.1. The site is in a rural area c6km southwest of Westport, Mayo. It lies at the edge of a broadleaved wood along a county road beside a house. It consists of the start of a track that leads into the woods and which runs along the side of the curtilage of the house. At the time of inspection a wall c1.5m high had been erected on the site so that the track could not be accessed directly from the public road, but only via the entrance to the house. This wall was not mentioned in the request or referral and does not appear in the photographs submitted with them.

2.0 The Question

2.1. Whether the physical means by which access to Brackloon Wood has been closed to the public is or is not development or is or is not exempted development. The means in question are –

The erection of a barrier of rope and cones

The fitting of padlocks and chains to the gates

The raising of the height of the gates to 1.7m by affixing boards on top of them, and the nailing of diagonal boards across the remaining access

The installation of a new gate and a barrier of cut trees and bushes

3.0 Planning Authority Declaration

3.1. Declaration

The works, due to their minor nature, do not constitute development under Section 3(1) of the planning act, and can best be described as interference with property and so a legal matter. Therefore the planning authority decides that the said physical means whereby access to Brackloon Wood has been closed to the public is not development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning authority requested a file plan and folio from the application and documentary evidence of the duration of public access to Brackloon Wood here. A draft declaration was prepared and signed by a council planner with the same terms as that of the declaration made by the planning authority.

4.0 Planning History

Reg., Ref. P.82/1465 – the planning authority granted permission for a house beside the house on the application of Mary O'Malley. The drawings submitted with the application showed an existing road to the plantation along the western boundary of the site, parallel but separate from the proposed access to the house.

5.0 Policy Context

5.1. Natural Heritage Designations

The site is on the boundary of the Special Area of Conservation at Brackloon Wood, sitecode 000471. It has a single conservation objective that relates to the habitat 91A0 Old Sessile oak woods.

6.0 The Referral

6.1. Referrer's Case

- Brackloon Wood is an amenity and recreational resource. Excerpts from several websites are submitted to demonstrate this status, including a map from Coillte's website showing parking and access to the site from the location to which the request refers. The plans submitted with the application for planning permission for the house in 1982 show the access that has been blocked as an existing road to the plantation.
- The council were wrong to conclude that the works were minor in nature as they have the significant effect of denying access to Brackloon Wood. The development would clearly breach article 9(1)(a)(x) of the planning regulations. The council have failed to properly consider the effect of the works.

6.2. **Planning Authority Response**

None

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

- Mary A. O'Malley submitted an excerpt from the Land Registry showing the access to Brackloon Wood as part of the same landholding as the house to the east. She asserted ownership to the land concerned and objected to any interference that affects her property.
- Coillte made a submission in which it asserted ownership of Brackloon Wood. It stated that ownership and rights over the access are currently in dispute and will be potentially subject to litigation. The dispute is with Mary and Patrick O'Reilly. At their request Coillte erected the cones to prevent parking, a no entry sign and one of the steel gates. The notice on its website inviting access to the wood was removed pending resolution of the dispute. The nailing of timbers, the chaining of the gates and the installation of other barriers was undertaken against the wishes of Coillte and interfered with their right of access which is being legally asserted in separate proceedings. Coillte would welcome the overturning of the planning authority's determination.

7.0 **Statutory Provisions**

7.1. **Planning and Development Act, 2000 as amended**

Section 2 states that

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

Section 3(1) of the act states –

In this Act, “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 changes in the use of any structures or other land.

Section 4(2) states -

The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act

Section 4(4) states -

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

7.2. **Planning and Development Regulations, 2001 as amended**

Article 6(3) states –

Subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 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 3 opposite the mention of that class in the said column 1.

Article 9(1) states –

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—

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

....

- 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,

(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 public right of way,

.....

Class 4 of Part 3 of Schedule 2 to the regulations is -

The construction, erection or maintenance of any wall or fence, other than a fence of sheet metal, or a wall or fence within or bounding the curtilage of a house.

Conditions and Limitations

1. The height of the wall or fence, other than a fence referred to in paragraph 2, shall not exceed 2 metres.
2. The height of any fence for the purposes of deer farming or conservation shall not exceed 3 metres.

8.0 **Assessment**

8.1. **Is or is not development**

- 8.1.1. The request and referral cited operations of alteration that had been carried out on the site. Under section 2 and 3 of the act, those operations constitute works on land and therefore are development. There is no requirement for works to be of any particular size or significance for them to constitute development under section 3. The conclusion of the planning authority that the 'minor' nature of the works removes them from the category of development does not reflect the provisions of the act. Many classes of minor development are exempted from the requirement for a grant of planning permission, but this does not change their status as development in the first place.
- 8.1.2. Mary A. O'Malley has asserted her ownership of the land on which the development has occurred. She supports this with a copy of the Land Registry folio showing the land as part of the same freehold as the neighbouring house. The referrer asserts

that the development has closed the access to the amenity lands at Brackloon Wood that was previously available to the public. He supports the assertion that access was available to the wood across the site by submitting a plan from in the application for permission for the neighbouring house in 1982 showing the access to the forest as separate from the access to the authorised house. He supports the assertion regarding public access for walkers by submitting a copy of a map that previously appeared on Coillte's website showing parking and access at this point. Coillte said that it removed the map from its website pending resolution of its legal dispute with Ms O'Malley. The referrer's assertion that access was available for the public to walk across the site and along the track to Brackloon Wood is also consistent with the depiction of a walking route on the Discovery Series Map for the area issued by the Ordnance Survey in 1994 that follows this route. The assertions of both Ms. O'Malley and the referrer are both well supported and are accepted. The board is therefore advised that the land on the site has been used by the public used for recreational purposes and as a means of access to a place of natural beauty and recreational utility for period of 10 years or more. This conclusion on a matter of fact is not contradicted by the absence of a reference to that the use on the Land Registry folio that shows that the ownership of the freehold interest in the site.

- 8.1.3. The works cited in the referral have had the effect of preventing the use of the land that comprises the site itself for recreational purposes and in order to gain access to the other lands at Brackloon Wood for recreational use. They have therefore effected a change in the use of the land. This change of use has hindered public recourse to the valuable recreational amenity at Brackloon Wood and is therefore material in planning terms. The material change of use resulting from the operations cited in the referral therefore constitutes development.

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

- 8.2.1. The works cited in the referral and the wall erected on the site come within the category of exempted development of Class 4 of Part 3 of Schedule 2 to the regulations. They comply with the conditions and limitations for that class.

8.3. Restrictions on exempted development

- 8.3.1. The development that has occurred on the site has fenced and enclosed land that was used as a means of access to a place of natural beauty and recreational utility by the public during the 10 years preceding such fencing and enclosure. This occurred as a result of the works described in the referral. The erection of the wall on the site has had a similar effect because it physically blocks access to the forest track from the public road, so that anyone seeking access to the gate would have to cross the access to the private house. The fencing and enclosure of the means of access to a place of natural beauty is a fact that has occurred on the site whether or not public access to Brackloon Wood remains available over other lands. The restriction on exemption set out in article 9(1)(a)(x) of the regulations therefore applies. The development cannot be exempted development under the regulations.

8.4. Screening for appropriate assessment.

- 8.4.1. The boundary of the SAC at Brackloon Wood runs along the forest track that crosses the site to the public road. So the development may be wholly or partially within the SAC, or possibly just outside it. The works described in the referral would not be likely to have a direct significant effect on the SAC. However the closure of the access that results from them might give rise to significant effects on the SAC by preventing or inhibiting access to the forest by those who are responsible for the management of the woodland habitat there. The closure of the public access for walkers that the development involves would be likely to displace demand for recreational access to other locations around Brackloon Wood that may not be suitable to accommodate it. It is therefore likely that the development would have significant effects on the SAC at Brackloon Wood. It is possible that such effects would not arise or that they could be managed without adversely affecting the integrity of the site. However this could only be ascertained after an appropriate assessment of the implications of the development for the SAC in light of its conservation objectives. As the development requires appropriate assessment, the restriction on exemption at section 4(4) of the act would apply. The development cannot be exempted development under any of the provisions of the act.

8.4.2. It is apparent from an inspection that the wall that has been built on the site physically impinges on the woodland habitat within the SAC and involved the use of materials and processes that could have further indirect effects on it. It therefore required an appropriate assessment and so was not exempted development.

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 various works to restrict access to Brackloon Wood, Westport, Co. Mayo are or are not development or are or are not exempted development:

AND WHEREAS Michael Murphy requested a declaration on this question from Mayo County Council and the Council issued a declaration on the 2nd day of March, 2017 stating that the matter was not development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 20th day of March, 2017:

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, as amended
- (c) Section 4(4) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1)(a)(x) of the Planning and Development Regulations, 2001, as amended,

- (e) The status of Brackloon Wood as a Special Area of Conservation sitecode 000471,
- (f) the history of the site, and
- (g) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The operations that have occurred on the site involve works to land and have resulted in a material change in the use of land by preventing its recreational use by walkers, and so constitute development as defined in section 3(1) of the act.
- (b) The development would be likely to have significant effects on the Special Area of Conservation at Brackloon Wood and therefore requires appropriate assessment and so cannot be exempted development by virtue of section 4(4) of the act.
- (c) The development has closed access to Brackloon Wood at this location and therefore consists of the fencing or enclosure of land that has been used by the public during the preceding 10 years as a means of access to a place of natural beauty and recreational utility, and so the restriction on exemption set out in article 9(1)(a)(x) of the regulations applies.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act, hereby decides that the works to restrict access to Brackloon Wood are development and are not exempted development.

Stephen J. O'Sullivan
Planning Inspector

13th day of June 2017