



An
Bord
Pleanála

Inspector's Report ABP-305086-19

Development	Permission for the construction of 7 houses and retention permission for paths, public lighting and landscaping.
Location	Brookes Mill Housing Estate, Prosperous, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	19/569
Applicant(s)	Bilberrylane Limited
Type of Application	Permission
Planning Authority Decision	Refuse permission for 7 houses and grant permission for retention of paths, landscaping and public lighting
Type of Appeal	First Party V Refusal
Appellant(s)	Bilberrylane Limited
Observer(s)	Oliver and Mary Reilly Thomas and Brigid Price Brookes Mill Residents
Date of Site Inspection	19th March 2020
Inspector	Fergal O'Bric

1.0 Site Location and Description

- 1.1. Prosperous is a small town in central Kildare located approximately 17km south-west of Maynooth and approximately 9km north west of Sallins. The town is located at the intersection of the R408, Maynooth Road, the R403 Celbridge Road and the R407 Sallins Road. The appeal site is located to the north-west of the town crossroads and is accessed via an existing access road serving the Brookes Mill residential development, which in turn is accessed off the R408, within the 50 km/h speed control zone.
- 1.2. The appeal site has an area of 0.3 hectares and comprises two sections, firstly an infill area in the south -western section of the Brookes Mill development and secondly, part of an area of the designated open space within the same development.
- 1.3. To the east of the infill section is a detached dormer dwelling within the Brookes Mill development and to the west are two storey dwellings outside of Brookes Mill development. Levels on site are consistent with those of the Brookes Mill development and neighbouring properties. To the east and south is a two-metre plastered and capped wall, the site is open to the Brookes Mill development to the north and there is a hedgerow to the west.

2.0 Proposed Development

- 2.1. The application was lodged with the planning authority on the 21stMay 2019.

The proposal comprises:

- Construction of 7 dwellings, comprising of four semi-detached and three terraced dwellings to be known as numbers 33-39 Brookes Mill in lieu of three unbuilt dormer bungalows
- Retention permission for paths, landscaping and public lighting in lieu of five shop and four office units and associated car parking previously permitted on this part of the site. 4 no. semi-detached, 2 storey, 4 bed units on sites 4, 5, 6, and 7 (Type A).

- 2.2. On site numbers 33-36 (infill section of appeal site) the applicants are proposing to construct two pairs of three bedroomed semi-detached dwellings. They would have ridge heights of 8.8 metres, floor areas of 125 square metres and external finishes would comprise a mixture of brick and Tyrolean selected finishes and concrete roof tiles, consistent with the finishes within the existing residential development.
- 2.3. The layout would continue the established built form around the perimeter of a central open space of 1,570 square metres (sq. m.) with another linear area of open space to the north-east of the overall development comprising 719 sq. m. The applicants are proposing to tap into the existing watermains and foul sewer network within the existing development. It is noted that there is a pumping station on the site. Landscaped strips are also proposed to the front of the dwellings.
- 2.4. Access is proposed via the existing internal service road serving the Brookes Mill residential development. The existing development is served with two metre footpaths and street lighting. It is proposed to continue the internal footpath and streetlighting along the frontage (north) of the proposed semi-detached dwellings. Two on-site car parking spaces per residential unit would be provided.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted retention planning permission for the paths, public lighting and landscaping at the entrance area to the overall Brookes Mill development and refused planning permission for the seven houses. The houses were refused permission for the following three reasons:

Reason No 1: The proposed development would seriously injure the residential amenity of the dwellings to the south of the site by reason of visual dominance and overlooking, would depreciate the value of property in the vicinity and therefore would be contrary to the proper planning and sustainable development of the area.

Reason No 2: The proposed development includes three dwellings (numbers 37-39) to be constructed on lands designated as public open space under previous permissions planning authority reference numbers P01/1326 and P06/2727 and as such the development would contravene materially the terms of those permissions

and Policy RA3 of the Kildare County Development Plan 2017-2023 which seeks to avoid the loss of existing amenity of recreational facility through any development proposal.

Reason No 3: The proposed development includes three dwellings (numbers 37-39) located on lands zoned as public open space and amenity within the Kildare County Development Plan 2017-2023 and as such, if permitted, would materially contravene the relevant zoning objective of the Development Plan.

3.2. Planning Authority Reports

3.2.1. The Planner's Report dated 5th July 2019 outlined the following;

- Accepted the principle of residential development on the infill section of the site along the southern boundary (Page 5 planning report-Principle) and recognised that planning permission was previously permitted on this section of the site for dormer dwellings.
- Recommended that permission be granted for the paths, public lighting and landscaping at the entrance to the Brookes Mill residential development and that permission be refused for the seven dwellings for the reasons as summarised in Section 3.1 above.

3.2.2. Technical Reports

Roads, Transportation and Public Safety\): No objection, subject to conditions.

Area Engineer\): No objection, subject to conditions.

Environment Section: No objection, subject to conditions.

Housing Section: No objection, subject to condition.

3.3. Prescribed Bodies

Irish Water: No comments received

3.4. Third Party Observations

A number of third-party submissions from neighbouring residents were received which included many of the issues raised in the appeal observations.

4.0 Planning History

Appeal Site

Planning Authority reference number Reg. Ref. 01/1326. In 2001 planning permission was granted for the development of shops and offices, thirty seven two storey townhouses. House numbers 32-35 were reduced to single storey by means of a further information request and response.

Planning Authority reference number Reg. Ref. 06/2727. Planning permission was granted in 2007 by An Bord Pleanála under reference number PL 09.223028 for a revision from four number three bedroomed semi-detached bungalows to four number dormer bungalows on site no's 32-35 (infill section of the current appeal site).

5.0 Policy Context

5.1. Development Plan

5.1.1. Kildare County Development Plan 2017-2023

Prosperous is designated as a 'small town' the role of which 'is to develop as key local centres for services, with levels of growth to cater for local need at an appropriate scale and to support local enterprise.'

In respect of small towns, Chapter 4 sets out indicative density levels in Table 4.2 for centrally located sites within Small Towns/Villages of between 30-40 units per hectare.

Chapter 16 sets out Urban Design Guidelines

Chapter 17 sets out Development Management Standards

5.1.2. Prosperous Town Plan 2017-2023

The southern section of the site (Where two pairs of semi-detached dwellings are proposed) is zoned 'A – Town Centre', the objective for which is: *To provide for the*

development and improvement of appropriate town centre uses including residential, commercial, office and civic The northern section of the site is zoned Open Space and Amenity where the objective is: To protect and provide for open space, amenity and recreation provision. While the purpose of the town centre zoning is to protect and enhance the special character of the town centre and to provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the centre of a developing town, it will be an objective of the Council to encourage the use of buildings and backlands. The size and scale of all new developments shall not be out of character with the already established town centre area. Dwellings are 'permitted in principle' within this zoning objective.

The north-western part of the appeal site (where a terrace of three dwellings is proposed) is zoned open space and amenity within the town plan. Residential development is not listed as being permitted in principle nor open for consideration within the Development Plan.

The following specific objective is of relevance;

PR1: 'Seek the development of lands for residential development during the lifetime of this Plan largely within the town centre zone, areas designated as existing residential / infill and on lands zoned new residential, in accordance with the principles of proper planning and sustainable development.'

PR4: 'Encourage and promote development within the town centre, which is of a high standard of design, has an appropriate mix of uses, enhances the built environment.'

5.2. Natural Heritage Designations

None relevant.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal against the decision to refuse planning permission for the seven residential dwellings by the Planning Authority has been submitted by the applicant.

The main issues raised may be synthesised as follows:

- The proposals will provide for high quality residential dwellings, result in intensification of a residential development in an existing residential area within the settlement of Prosperous well served by public amenities and transport links.
- The proposals are consistent with the policies and objectives as set out within the Kildare County Development Plan 2017-2023.
- The proposed development is consistent with the provisions of Project 2040: National Planning Framework where the target of 40% is set out for the delivery of new housing within existing settlements on infill or brownfield sites (National Policy Objective 35).
- The proposals are consistent with Rebuilding Ireland Action Plan for Housing and Homelessness 2016 which seeks to double residential construction output to 25,000 homes per year by the year 2020.
- The proposed development will not result in unreasonable overlooking, or overshadowing of neighbouring dwellings.
- The proposed development will not negatively impact upon the amenities of neighbouring residents and is compliant with residential standards including open space provision.
- The applicants have submitted revised proposals as part of their appeal submission to the Board whereby they are proposing to omit the terraced units from the area zoned as open space and amenity and are now proposing to develop four semi-detached residential units only on the southern section of the site zoned as Town Centre.

6.2. Planning Authority Response

The planning authority made no further observations.

6.3. Observations

6.3.1. Three observations were submitted from the following parties;

1. Oliver and Mary Reilly.
2. Thomas and Brigid Price.
3. Brookes Mill Residents.

6.3.2. The issues raised in the observations may be synthesised as follows:

- A previous application to the Planning Authority for a similar type development was deemed invalid.
- The proposed development materially contravenes the Kildare County Development Plan 2017-2023 in that part of the development would be located on lands zoned as open space and amenity and lands designated as open space under previous planning permissions pertaining to the overall development.
- The linear section of open space for which retention permission is being sought as part of this application is sub-standard in that it is not passively supervised by dwellings within Brookes Mill, This space is narrow, not functional and adjacent to the main entrance where all traffic in and out of Brookes Mill must pass.
- Residential amenities of existing residents will be seriously impacted upon by the proposed development by reason of insufficient separation distances to the dwelling south of the appeal site and would adversely upon their light, security and privacy and would devalue the neighbouring properties.
- The observers have not had an opportunity to review the alternative proposals submitted by the first party to the Board which would be unfair and contrary to natural justice.

- The current foul services and infrastructure is not fit for purpose. Local residents have had to endure malodours.
- There is a lack of parking and turning within the development to date and the proposed development will exacerbate this situation.
- The parking spaces for the existing houses within the development is restricted and results in many residents parking on the internal service road which can cause difficulties for bin lorries and other service deliveries/collections. The proposed development will result in a loss of public open space.
- The original residents bought the dwellings knowing that four dormer bungalows were to be built on the appeal site and the most recent purchasers into the development understood there would be no further development within the scheme. The aesthetic appearance is a cause for concern as they had envisaged four dormer bungalows being developed on the appeal site.

7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Design and Layout
- Access, Traffic and Parking
- Residential Amenity
- Appropriate Assessment

7.2. **Design and Layout**

7.2.1. As per the current town Development Plan for Prosperous, the southern section of the site is within an area zoned A; Town Centre. In principle the proposal would accord with the zoning objective. The remainder of the appeal site is zoned as open space and amenity and therefore the principle of development is neither permissible in principle nor open for consideration under the provisions of the Development Plan and would contravene the zoning objective. It is noted that the appellants submitted

revised proposals to the Board as part of their appeal submission, whereby they proposed the omission of the three terraced units on the open space and amenity lands. These revised proposals would be considered acceptable in principle subject to other planning considerations pertaining to design, layout, impact upon neighbouring amenities and achievement of the requisite development management standards.

7.2.2. I note that the southern section of the appeal site is an infill site where previously four dormer bungalows were permitted but remain undeveloped to date.

7.2.3. I note that the revised layout as submitted to the board contains dwellings sizes of adequate standard, that the open space provision, separation distances would be consistent with the pattern of development in the area. Therefore, I am satisfied from a layout and design perspective that the development would be satisfactory and in accordance with the policies and objectives, including the development management standards, as set out within the Kildare Development Plan 2017-2023.

7.3. Access, Traffic and Parking

7.3.1. The scheme as originally permitted is accessed off the Maynooth road, the R408. It is noted that each of the existing and proposed dwellings have two on site car parking spaces. This is in accordance with the provisions of the Kildare Development Plan 2017-2023. I note that the neither the Area Engineer nor the Transportation, Roads and Public Safety Sections of the Local Authority raised any objections to the proposed traffic/parking proposals.

7.3.2. There is an existing vehicular access to the site and the additional vehicular movements associated with the additional dwellings would not be material relative to that generated by the existing residential development. The residential nature of the development would generate less traffic than a mixed-use commercial development as originally permitted at the entrance area to the Brookes Mill development.

7.3.3. I am satisfied that the proposed residential development which provides two on-site parking spaces per dwelling, is in accordance with the Kildare County Development Plan standards and is acceptable. I would not accept that the current proposal, in itself, would exacerbate parking issues in the overall development.

7.4. Residential Amenity

- 7.4.1. Having regard to the Guidelines for Sustainable Residential Development and the provisions of the current development plan the acceptability or otherwise of the proposed development will be subject to the need to attain a balance between the reasonable protection of the amenities and privacy of adjoining property and the need to provide for additional residential development at this location. I propose to address such matters in the following sections.
- 7.4.2. Whilst it was noted by the planning authority that 'the density is below the recommended range of 30-40, it is considered to be appropriate for the subject site given it constitutes an infill site and an opportunity to complete the residential scheme.
- 7.4.3. The surrounding area is characterised by a mixed pattern of development comprising largely two-storey, semi-detached/terraced dwellings to the north, east and west and dormer style dwellings to the south and east. The scheme, as amended, provides for two pairs of semi-detached dwelling units, which is considered acceptable on this infill site.
- 7.4.4. The proposed layout entails the development of dwellings around a central area of public open space. I also note that the proposed rear gardens of each house are approximately eleven metres in length which gives a separation distance in excess of twenty-two metres from the neighbouring dwelling to the south. I am satisfied that the issue of overshadowing/overlooking will not arise in this instance having regard to the separation distances, the existence of the two-metre boundary wall, the proposed pitched roofs and the orientation of the sun.
- 7.4.5. I am satisfied that the proposed revised scheme as submitted to the Board (comprising of 4 residential units) which is relatively modest in scale, utilises this underused and vacant site in an appropriate form. I am also satisfied that the proposed dwelling design, layout and height have taken due cognisance of neighbouring residential properties and would not seriously injure the residential amenities of neighbouring residential properties.

7.5. **Appropriate Assessment**

- 7.6. Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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 a European site.

8.0 Recommendation

8.1. I recommend that planning permission be granted.

9.0 Reasons and Considerations

Having regard to the location of the site on town centre zoned lands in the Prosperous Town Development Plan and to the development standards in the Kildare County Development Plan 2017-2023, it is considered that subject to compliance with conditions set out below, the proposed revised residential development (of four residential units) would not seriously injure the residential amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted to An Bord Pleanála on the 6th day of August 2019 by way of further information, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

- 2 Prior to commencement of development, a revised site layout plan with details of the following shall be submitted to, and agreed in writing with the planning authority:

- The three terraced dwellings on the open space and amenity lands to the north-west of the appeal site shall be omitted and this area shall remain as public open space to serve the existing and proposed development.

Reason: In the interest of proper planning and sustainable development and residential amenity.

- 3 Prior to commencement of development the applicant shall submit and agree in writing with the Planning Authority details of the physical boundary treatment along all boundaries of the site.

Reason: In the interest of visual and residential amenity

- 4 The internal road network serving the proposed development, including the turning area, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

Reason: In the interest of amenity and of traffic and pedestrian safety.

- 5 The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of method for removing rock, intended construction practice for the development, including noise management measures and off-site disposal of construction / demolition waste.

Reason: In the interests of public safety and residential amenity.

- 6 Proposals for a house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility

7 Drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

8 The applicant shall enter into water and waste-water connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

9 Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

10 All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

11 Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of amenity and public safety.

12 The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed

in writing with, the planning authority prior to the commencement of development.

Reason: To ensure the satisfactory completion and maintenance of this development.

- 13 Prior to the commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads footpaths, watermains, drains open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

- 14 The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

Fergal O'Bric
Planning Inspector

15th April 2020