



An
Bord
Pleanála

Inspector's Report

ABP-304859-19

Development	49 Dwellings of Varying Types at Downings North, Prosperous County Kildare
Location	Downings North, Prosperous County Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	181166
Applicant	Ardlea Construction Ltd.
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant	Joe Conway
Date of Site Inspection	21 st , February 2020
Inspector	Paddy Keogh

1.0 Site Location and Description

- 1.1.1. The site of the proposed development which has a stated area of 2.77 ha. is located immediately to the west of an existing housing development ('The Downings' and 'Mossbrook') which is located on the western fringe of Prosperous, Co. Kildare. The site is located immediately to the north (and will be accessed from) the Prosperous to Allenwood Road (R403),
- 1.1.2. The site which is currently in agricultural use forms part of a more substantial farm holding from which it will be sub-divided. The site is flat with ground levels similar to those of the public carriageway of the R403.
- 1.1.3. The area in the general vicinity of the site on the northern side of the R403 is characterised by suburban style housing estates on the urban edge of Prosperous. The area in the general vicinity of the site on the southern side of the R403 is characterised by residential development (housing estates together with a number of houses on large individual sites fronting onto the R403) and commercial development including a petrol filling station almost opposite the site of the proposed development.
- 1.1.4. The eastern boundary of the site is defined by a small stream and mature hedgerow planting which separate the site from the existing housing development at 'The Downings' and 'Mossbrook'. The northern boundary of the site is defined by mature hedgerow planting. The western boundary of the site is open (to the remainder of the existing field from which the site will be sub-divided). The southern boundary of the site adjoins the R403.

2.0 Proposed Development

- 2.1.1. The proposed development involves:
 - Construction of 49 houses to include:
 - 2 no. part 2 storey detached 4 bedroom houses
 - 34 no. part 2 storey 4 bedroom houses
 - 2 pairs of part 2 storey semi-detached 3 bedroom houses
 - 6 no. part 2 storey terraced 3 bedroom houses

- 3 no. 2 storey terraced 2 bedroom houses,
- The provision of solar photovoltaic panels on the roofs of the dwellings,
- New site entrance from the R403 (Allenwood) Road,
- Provision of a new road to the west of the proposed dwellings,
- All associated site works, boundary treatments and landscaping works to include the culverting of the existing watercourse/stream to the north, north-east and eastern boundaries of the site,
- Provision of a landscaped linear park to the east and north-east of the site to include new pedestrian entrance to the south-east corner of the site (adjacent to the R403),
- The provision of a Traffic Calming Gateway and associated siteworks on the R403 to the west of the site on lands owned by Kildare Co. Council,
- Provision of an underground foul pumping station and all associated works to the north of the site.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of a decision to grant planning permission for the proposed development, subject to 32 conditions, was issued by the planning authority per Order dated 17th, June 2019.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 3.2.2. A report from the planning authority Senior Executive Planner dated 14th, November 2018 includes:

- There are no Protected Structures or Recorded Monuments within the site. There is a Protected Structure to the east of the site (thatched cottage) (B13-44 of Record of Protected Structures refers). This structure is a significant distance from the appeal site and well screened by existing boundary planting.

- The site is covered by three separate zonings in the 'Prosperous Small Town Plan'. These are: Zone F (Open Space and Amenity); Zone C (New Residential) and Zone I (Agriculture).
- The entire site is located within a Flood Risk Assessment area. The site is located within 700 m of the centre of Prosperous. A walking route with linear park is located along the eastern boundary of the site. The western portion of the site is affected by a Roads Objective.
- The proposed houses are located on the portion of the site zoned for residential development. The principle of residential development on these lands is considered to be acceptable.
- The proposed linear park on the portion of the site zoned for 'Open Space' is considered to be acceptable.
- The provision of a portion of a new road in compliance with the Roads Objective that affects the site (on lands zoned for agriculture) is deemed to be acceptable.
- The proposed site layout has been defined by the zonings.
- A Design Statement accompanies the application lodged with the planning authority. This statement addresses matters including (i) Site Analysis and Context, (ii) Placement & Orientation, (iii) Inclusivity, (iv) Design & Variety, (v) Efficiency, (vi) Distinctiveness, (vii) Layout, (viii) Public Realm, (ix) Adaptability, (x) Privacy and (xi) Parking.
- Serious concerns expressed (by the Area Planner) in relation to (i) the removal of hedgerow and the stream, (ii) southern section of the linear park is not sufficiently overlooked and a revised layout for this area is required and (iii) the proposed turning head at the centre of the open space seriously undermines the quality of this space.
- The proposed density of development is considered to be high given the location of the site on the western periphery of Prosperous.
- The proposed housing mix is generally considered to be acceptable and in accordance with standards set out in the Kildare County Development Plan 2017-2023.

- The proposed development generally complies with site development standards as set out in the Kildare County Development Plan 2017-2023.
- The proposed development will not give rise to undue overlooking, overshadowing or overbearing impact.
- Technical Reports from a number of sections of the planning authority have recommended that the applicant be requested to submit further information in respect of a number of matters viz. (i) Revised landscape Plan to show existing hedgerows to be retained (ii) Revised details in relation to access and traffic (iii) Further details in relation public sewer connection and public water connection etc.

[The planning authority requested 10 items of further information (FI) from the applicant per letter dated 15th, November 2018. Further information was received by the planning authority on 27th, March 2019. A further request for clarification of further information (CFI) (8 items) was issued by the planning authority per letter dated 23rd, April 2019. Clarification of further information was received by the planning authority on 22nd, May 2019].

A report dated 14th, June 2019 from the planning authority Senior Executive Planner, following the receipt of further information and clarification of further information, includes the following:

- Items No. 1 to 6 of the planning authority request for CFI related to detailed matters concerning drainage, flood levels, surface water attenuation, provision of capacity for climate change, flood risk assessment, correction of inconsistencies/anomalies in respect of flood levels indicated in the documentation previously submitted to the planning authority etc. the applicant has submitted a report prepared by Consultant Engineers. The findings of this report have been accepted by the planning authority Water Services Section who have reported that they have no objection to the proposed development subject to conditions.
- In response to Item No. 7 of the planning authority request for CFI relating to the provision of revised boundary treatment plan for the site, the applicant has submitted updated drawings and landscaping details. No updated report has been received from the planning authority Parks Section. However, a memo

was received from Parks Department following the receipt of CFI which indicates no objection to the proposed development subject to conditions.

- In response to Item No. 8 of the planning authority request for CFI relating to the requirements of the Department of Culture, Heritage & the Gaeltacht in relation to the carrying out of test excavations (Archaeological) in advance of a planning decision the applicant states that a Consultant Archaeologist engaged by the applicant has advised that there is not sufficient time to obtain a licence, carry out test trenching and prepare a report within the 4 week deadline for responding to the planning authority request for CFI. The applicant has highlighted that a desktop study did not reveal this area to be a sensitive area in terms of archaeological potential. The applicant suggests that a condition requiring that test trenching be carried out post the grant of planning permission could be attached to a grant of planning permission. The Area Planner suggests that the applicant could have applied for a time extension for the consideration of the proposed development to facilitate the carrying out of the archaeological test excavations before concluding that it is considered to be reasonable that a grant of planning permission could be considered subject to an appropriate condition regarding archaeology.
- The proposed development is considered to be generally acceptable subject to conditions.

The planning authority notification of decision to grant planning permission reflects the recommendation of the Senior Executive Planner.

3.2.3. Other Technical Reports

Housing Section – Report dated 8th, November 2018 indicates that the proposed development will be subject to the requirements of Part V of the *Planning & Development Act, 2000*. The applicant's proposal for compliance with Part V. The attachment of a standard condition to any grant of planning permission is recommended.

Chief Fire Officer – Report dated 6th, November 2018 indicates no objection to the proposed development subject to conditions.

Principal Environmental Health Officer – Report dated 9th, November 2018 indicates no objection to the proposed development subject to conditions.

Water Services – Reports dated 4th, June 2019, following the receipt of further information and clarification of further information submissions from the applicant, indicates no objection to the proposed development subject to conditions.

Roads & Transportation – Report dated 12th, April 2019 indicates no objection to the proposed development subject to conditions.

Heritage Officer – Report dated 9th, November 2018 recommended that the applicant be requested to submit a number of items of further information relating to Archaeology (submission of an Archaeological Impact Assessment) and in relation to proposed hedgerow material (submission of a revised landscaping plan). A further report dated 12th, June 2019, following the receipt of further information and clarification of further information, recommends that planning permission for the proposed development be refused for the following reason:

The Department of Culture, Heritage & the Gaeltacht specified pre-development testing to be carried out prior to the grant of planning permission in order to inform the final layout of the proposed development. This information has not been submitted with the further information and clarification of further information. The conditioning of such test trenching as part of a grant of permission is not an adequate response. All archaeological issues should be resolved with confidence prior to the granting of permission.

[Policies AH1 and AH4 of the County Development Plan require that such an assessment be carried out]

3.3. Prescribed Bodies

Department of Culture, Heritage and the Gaeltacht – Report dated 13th, June 2019, following the receipt of clarification of further information, indicates no objection to the proposed development subject to a condition relating to the carrying out of pre-development testing.

Irish Water – Report dated 12th, April 2019 indicates no objection to the proposed development subject to conditions. The report notes constraints in the Upper Liffey Valley at Clane and Sallins which will be removed when the ‘Irish Water Upper Liffey Valley – Contract 2B’ is delivered. In advance of constraints removal an assessment of the hydraulic capacity and condition of the network may be required to determine what amount of new development can be catered for including some safety headroom for breakdowns, blockages etc. Where capacity is restricted development may have to be phased and where upgrades are required which are not included on the Capital Infrastructure Programme then developers may have to contribute.

3.4. Third Party Observations

3.4.1. Observations from 4 parties objecting to the proposed development were received by the planning authority. The grounds of objection include:

- Lack of capacity in the Osberstown Wastewater Treatment Plant.
- Adverse impact on the visual amenities of the area.
- Location of the site within a flood zone.
- Adverse traffic impacts.
- Lack of capacity in local schools to adequately serve the proposed development.
- Inadequate public open space provision.
- Proliferation of road accesses onto the R 403.

4.0 Planning History

4.1.1. There is no record of recent planning history on the subject site.

4.1.2. The submitted grounds of appeal refer to precedents for proposed residential developments that were refused planning permission in Prosperous and Clane by both the planning authority and the Board. These include:

1. Appeal No. 09.248093 (Reg. Ref. 16/1241) – Planning permission for 34 houses in Clane refused by the Board per Order dated June 2017. The reasons for refusal related to (1) Zoning (Business & Technology), (2) Poor layout and

disposition of public open space and (3) The proposed development is premature due to the lack of capacity in the wastewater network and the foul pump station Clane. The proposed development would therefore, be contrary to the proper planning and sustainable development of the area.

- Appeal No. 09.216253 (Reg. Ref. 05/529) – Planning permission for a development consisting of 46 houses at ‘The Downings’ Prosperous was refused by the Board per Order dated June 2006. The reasons for refusal related to (1) prematurity given existing deficiencies in the existing sewer facilities serving the area and (2) unzoned lands.
- Appeal No. 09.235082 (Reg. Ref. 07/1653) – Planning permission for 49 houses at ‘The Downings’ Prosperous was refused by the Board per Order dated March 2010. The reasons for refusal related to (1) lack of capacity in Osberstown Wastewater Treatment plant, (2) prematurity by virtue of existing deficiencies in sewerage treatment facilities, (3) encroachment of proposed houses into area zoned for public open space and (4) poor standard of layout an design.
- Appeal No. 09.238790 (Reg. Ref. 11/78) – Planning permission for 50 dwellings at Downings North, Prosperous was refused by the Board per Order dated August 2011. The reasons for refusal related to (1) Osberstown Wastewater Treatment facility has no capacity to cater for the proposed development, (2) prematurity by reference to lack of capacity in sewerage treatment facilities serving the area and (3) poor standard of layout and design.

5.0 Policy Context

National Policy

- 5.1.1. Having considered the nature of the proposal, the receiving environment, the documentation on file, including the submissions from the planning authority, I am of the opinion that of the various Ministerial Guidelines issued pursuant to Section 28 of the *Planning and Development, Act, 2000*, as amended the following are relevant:

- *'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas'* issued by the Department of Environment, Heritage & Local Government (2009).
- *'Urban Design Manual'* issued by the Department of Environment, Heritage & Local Government (2009) to accompany the above Guidelines.
- *'The Planning System and Flood Risk Management Guidelines for Planning Authorities'* issued by the Department of Environment, Heritage & Local Government (2009).
- *'Design Manual for Urban Roads & Streets'* (2013) ('DMURS') issued jointly by the Department of Transport, Tourism & Sport and the Department of Environment, Community & Local Government.

Local Policy

5.2. Kildare County Development Plan 2017 – 2023 (the 'Development Plan')

- 5.2.1. Volume 2, Chapter 1 of the Development Plan includes 'Small Towns & Environs Plans' for the County. Prosperous is included as a 'Small Town' plan.
- 5.2.2. Land Use Zoning Objectives for Prosperous are set out in Map V2 – 1.6A. The appeal site falls within 3 separate zonings:
- The bulk of the site (1.8 hectares) is zoned 'C' – 'New Residential'
 - The eastern strip of the site (adjoining existing housing developments at 'The Downings' and 'Mossbrook' and a small portion of the northern tip of the site) is zoned 'F' – 'Open Space & Amenity'.
 - The western fringe of the site is zoned 'I' – 'Agricultural'.
- 5.2.3. Map V2 - 1.6B sets out 'Objectives' for Prosperous including a 'Roads Objective' for a new road linking the (to be upgraded) Allenwood Road (R403) with lands to the north. This road will pass along the western edge of the appeal site (within lands zoned 'Agricultural').

5.2.4. Policy 'PR 8' seeks to

'Reserve land for a proposed link road to the northwest and northeast of the town between Ballynafagh Road and the R403...'

5.2.5. The appeal site falls within the boundaries of a much larger area (incorporating most of the town of Prosperous) designated as a 'Flood Risk Assessment Area' in Map V2 – 1.6B.

5.2.6. Policy 'PR 24' seeks to

'Ensure that development proposals for lands identified by the dashed pink line on Map V2 – 1.6A are subject to site specific flood risk assessment appropriate to the type and scale of development being proposed'.

5.2.7. Policy 'NH 1' seeks to

'Facilitate, maintain and enhance as far as practicable the natural heritage and amenity of the county by seeking to encourage the preservation and retention of woodlands, hedgerows, stone walls, rivers, streams and wetlands.....'

5.2.8. Policy 'GI 9' seeks to:

'Ensure that proper provision is made for the consideration, protection and management of existing networks of woodlands, trees and hedgerows when undertaking, approving or authorising development'.

5.2.9. Policy 'LA 4' seeks to

'Ensure that local landscape features, including historic features and buildings, hedgerows, shelter belts and stone walls, are retained, protected and enhanced where appropriate.....'

5.2.10. Table 1.1 of the Prosperous Small Town Plan allocates future growth within Prosperous over the lifetime of the Development Plan at 1% with a new housing target of 325 units.

5.2.11. Table 17.9 'Car Parking Standards' of the Development Plan specifies a car parking requirement of 2 spaces per dwelling for new residential developments.

5.2.12. Section 17.4.3 of the Development Plan states that:

'It is an objective of the Council to ensure an appropriate mix of house types and sizes. In order to enable proper evaluation of proposals relative to this objective, a Statement of Housing Mix shall be submitted with planning applications for residential units, subject to the thresholds below.'

5.2.13. Section 17.2.4 of the Development Plan stipulates general minimum standards in residential developments in order to prevent overlooking (22m between opposing windows etc.).

5.2.14. Section 17.2.5 stipulates requirements in relation to measures to be taken to prevent overshadowing in the case of new development of a significant height.

5.2.15. Section 17.2.6 of the Development Plan sets out general requirements in relation to soft landscaping of new developments including a requirement that:

'Where the removal of hedges / trees during development is proposed, those to be removed shall be identified on drawings. A detailed replanting proposal shall be submitted. This proposal should provide for the replacement of, at minimum, an equal amount of similar indigenous hedgerows...'

5.2.16. Policy AH 1 of the Development Plan seeks to:

'Manage development in a manner that protects and conserves the archaeological heritage of the county, avoids adverse impacts on sites, monuments, features or objects of significant historical or archaeological interest and secures the preservation in-situ or by record of all sites and features of historical and archaeological interest. The Council will favour preservation in – situ in accordance with the recommendation of the Framework and Principals for the Protection of Archaeological Heritage (1999) or any superseding national policy.'

5.2.17. Policy AH 4 of the Development Plan seeks to:

'Ensure that development in the vicinity of a site of archaeological interest is not detrimental to the character of the archaeological site or its setting by

reason of its location, scale, bulk or detailing and to ensure that such proposed developments are subject to an archaeological assessment. Such an assessment will seek to ensure that the development can be sited and designed in such a way as to avoid impacting on archaeological heritage that is of significant interest including previously unknown sites, features and objects’.

5.3. Natural Heritage Designations

- Ballinfagh Bog Special Area of Conservation (SAC) (Site Code 0391) is located c. 0.3 km from the appeal site.
- Ballinfagh Lake SAC (Site Code 1387) is located c. 2 km from the appeal site.
- Pollardstown Fen SAC (Site Code 0396) is located c. 12.5 km from the appeal site.
- Mouds Bog SAC (Site Code 2331) is located c. 8.4 km from the appeal site.
- The Long Derries SAC (Site Code 0925) is located c. 15 km from the appeal site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment 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.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The submitted grounds of appeal include the following:

- *Drainage:-* The proposed development will connect to the Osberstown Wastewater Treatment Plant. The existing Osberstown Wastewater Treatment

Plant from Prosperous to Osberstown has no capacity to serve the proposed development. Over the past 10 years the Board has consistently refused planning permission for developments proposed in Prosperous on the basis of lack of capacity in Osberstown Treatment Plant (various cases cited including Appeal No. 09.248093, 09.216253, 09.235082 and 09.238790).

- *Design & Layout:-* The proposed layout constitutes a generic design response and poor design response which would result in a low grade and visually unpleasing development. There are concerns in relation to lack of overlooking/supervision of the proposed area of public open space and the fact that the proposed access road segregates the proposed public open space from the proposed houses. A tract of land to the east of the site will not benefit from passive supervision and will function as an area that will be attractive for people wishing to engage in anti-social behaviour. The proposed layout is poorly conceived in term the parking of cars particularly in light of the fact that Prosperous is poorly served by public transport facilities.
- *Flooding:-* The '*Strategic Flood Risk Assessment Map*' included in the County Development Plan 2017-2023 indicates that the subject site is susceptible to flooding which will cause potential for the ingress of water to the proposed foul sewer pumping station giving rise to potential for flooding of the proposed foul sewer pumping station (which is to be located at the rear of the proposed development and directly backing onto an existing watercourse flowing into the Slate River). This risk cannot be overcome to alleviate land flooding and contamination.
- *Traffic:-* The proposed development will result in an increase in pedestrian movements, cyclists and vehicular traffic on the Allenwood Road. The proposed development in addition to the proliferation of existing access points on the Allenwood Road would interfere with the freeflow movements along this road which would give rise to a traffic hazard.

6.2. Applicant Response

- 6.2.1. A submission from the applicant's agent dated 6th, July 2019, in response to the submitted grounds of appeal, includes:

- *Vexatious Appeal:-* The third party appeal received by the Board is vexatious in nature. The third party appellant is a Developer operating in Prosperous. He has been refused planning permission for developments in Prosperous on numerous occasions in the past for reasons relating to infrastructure constraints that existed at the time of these applications (cited in his appeal submission). The infrastructure constraints that existed at the time of these applications should not have any bearing on the current proposal. The appellant lives in Rathcoffey (8km. from the appeal site).
- *Drainage:-* The submitted grounds of appeal cite planning history relating to proposed housing developments that were refused planning permission in the general area of the appeal site for reasons relating to lack of capacity at the Osberstown Wastewater Treatment Plant, The Upper Liffey Valley Sewerage Scheme Contract 2A and the foul network from Prosperous to Osberstown. The Upper Liffey Valley Sewerage Scheme Contract 2A involves the upgrading of the Osberstown Wastewater Treatment Plant from 80,000 PE to 130,000 PE while contract 2B involves the installation of new and upgrading of existing gravity sewers, the installation of new foul sewer rising mains and the upgrading of existing foul pumping stations. Irish Water have confirmed that the WWTP Contract “A were completed in 2018 and contract 2B are currently underway with an expected completion date at the end of Q1 2020 at the latest. Irish Water have indicated that subject to entering into a valid connection agreement the proposed connection to the Irish Water network can be facilitated.
- *Design & Layout:-* The proposed scheme has been designed by RIAI accredited Architects. It is denied that the scheme is generic in nature or involves poor design. The design takes account of the need to provide a linear park to the east and a section of Distributor Road to the west. Proposed open spaces to the front, centre, rear and east side of the site are all overlooked. The boundary treatment of dwellings has also been designed in order to facilitate passive surveillance of open spaces. The design and layout of the open space to the west of the site facilitates passive surveillance of this space and will militate against anti-social behaviour. Adequate on-site and visitor car parking provision will be provided to meet the requirements of the development.

- Flooding:-** 95% of the site is located within a Flood Zone ‘C’ (as identified in the Draft Strategic Flood Risk Assessment (SFRA) prepared by RPS Consultants for the Kildare County Development Plan 2017-2023). All of the proposed housing will be located in Flood Zone C. The proposed area of open space within the flood zone is being maintained as a potential flood zone area and its storage capacity will be improved. The area of proposed open space will be liable to potential fluvial flooding (1:100 year). There will also be potential for flooding from the Slate River which flows East-West to the north of the site (1:1000 year). A detailed Flood Risk Analysis (FRA) prepared in accordance with the ‘*Planning System and Flood Risk Management Guidelines for Planning Authorities*’ (issued by the Department of Housing, Environment and Local Government) accompanied the application lodged with the planning authority. An additional 12% compensatory flood storage is being provided on site and no houses are proposed to be constructed within the portion of the site that is subject to fluvial flooding. A 750 mm freeboard has been provided to the lowest house finished floor level (+87.250) from the 1:100 (plus 20% Climate Change) Slate River Flood level of +86.500 while a 700 mm freeboard has been provided to the proposed Foul Pumping Station.
- Traffic:-** The applicant held detailed discussions with the planning authority at pre-planning stage and agreed that a Transport Assessment including independent Traffic & Speed Surveys, Traffic Impact - Access junction capacity and Junction modelling and analysis would be carried out along with an Existing Gateway Traffic Calming Upgrade and an independent Stage 1 Road Safety Audit. The speed surveys carried out on the R403 recorded 85th percentile speed was demonstrated to be 65kph despite access to the site being located within a 50koph speed limit zone. A refresh and upgrade of the existing R403 Gateway traffic calming arrangement (on lands within the ownership of the planning authority) was agreed with the planning authority (as set out in further information lodged with the planning authority). The results of the submitted Traffic Impact Assessment (junction assessment) noted that the worst case traffic increases are all below the Transport Infrastructure Ireland (TII) threshold level of 5% for the project increases on the access junctions to McCormack’s Filling Station and on the Downings Road/R403 junction located to the east of

the appeal site. The Junction Modelling & Analysis (utilising Junctions 9 PICADY) demonstrates that the maximum Ratio of Flow to Capacity (RFC) for the access in the opening year (2020) at morning peak time is 0.04 (significantly below the recommended optimum of 0.85) and demonstrating that the junction will operate well within recommended capacity. The Applicant conducted an independent Stage 1 Road Safety Audit which raised a number of issues. All such issues were responded to with the Auditor. These were addressed and incorporated in the design submitted and approved by the planning authority.

6.3. Planning Authority Response

- 6.3.1. A submission from the planning authority per letter dated 23rd, July 2019 indicates that the planning authority has no further comments to make in response to the submitted third party grounds of appeal.

6.4. Further Responses

- 6.4.1. A submission on behalf of the third party per letter dated 11th, September 2019, in response to the first party response to the submitted grounds of appeal includes:
- The submitted third party appeal is not vexatious in nature. The grounds of appeal are fair and justifiable.
 - Policy SI13 of the Development Plan seeks *'To ensure that development will not be permitted in instances where there is insufficient capacity in public water and wastewater infrastructure'*. It is clear that there are constraints in the *Upper Liffey Valley*. Thus, there are insufficient water services capacity to accommodate the proposed development and (having regard to the precedent of similar refusals) the proposed development should be refused on grounds of prematurity.
 - A Water Services Report prepared by Mr. Ibrahim Bargouthi of Kildare Co. Council in relation to Reg. Ref 05/529 stated in relation to the latter proposal that *'It's unacceptable to construct a pumping station in this area because there are two other pumping stations in this area'*. A Water Services report prepared by Mr. Ibrahim Bargouthi in relation to Reg. Ref. 05/529 and Reg. Ref. 05/1625 highlighted a range of infrastructure (all of) which should be

completed and commissioned before any planning application could be granted. The findings of the latter reports were accepted and endorsed in decisions made by An Bord Pleanála in relation to these proposals. In this context, it is difficult to understand how the planning authority can indicate that they have 'no further comments' to make in relation to the third-party grounds of appeal in the current instance.

- The Appellant's concerns in relation to the alleged poor quality of design and layout of the proposed development and lack of passive overlooking of proposed areas of public open space provision are restated. The proposed development provides for a poor standard of design and fails to provide for a high quality of useable open spaces and fails to establish a sense of place as advocated in the '*Urban Design Manual – Best Practice Guide*' issued by the Dept. of Environment Heritage & Local Government in 2009. Furthermore, the layout of the proposed development being dominated by roads is contrary to DMURS.
- The majority of the internal roads within the proposed development equate to only c. 5.5m in width thus creating an inevitable traffic hazard for potential future residents as a consequence of cars being parked in or on the proposed roads, turning circles and paths.

6.5. Further Planning Authority Responses

- 6.5.1. A submission for the planning authority per letter dated 5th, September 2019 indicates that the planning authority has no further comments to make in response to the submitted response from the first party to the submitted third party grounds of appeal.

7.0 Assessment

- 7.1.1. 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 issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- (1) Procedural Matter
- (2) Wastewater Treatment
- (3) Flooding
- (4) Design & Layout
- (5) Access & Traffic
- (6) Archaeology
- (7) Screening for Appropriate Assessment

(1) Procedural Matter

7.1.2. It has been submitted on behalf of the applicant, in a response to the submitted third party grounds of appeal, that the Board should exercise its powers pursuant to the *'Planning & Development Act, 2000'*, as amended, to dismiss the appeal on the grounds that is a vexatious appeal in circumstances where the appellant is a Developer operation in the area and is primarily aggrieved by this grant of planning permission in circumstances where he has previously been refused planning permission (by both the planning authority and the Board) for proposed housing developments in Prosperous.

7.1.3. This allegation has been strenuously been denied by the third party appellant.

7.1.4. Having consider that detailed grounds of appeal lodged by the appellant, I am satisfied that genuine planning matters have been raised in the submitted grounds of appeal. In these circumstances, I consider that there are no reasonable grounds why the Board might exercise its powers to dismiss this appeal as being vexatious.

(2) Wastewater Treatment

7.1.5. The submitted grounds of appeal highlight the appellant's concerns in relation to the proposed effluent disposal arrangements to serve the proposed development. In particular, the appellant has highlighted a number of precedent cases where planning permissions for housing development (in both Prosperous and Clane) were refused by both the planning authority and the Board for reasons including problems and shortcomings in the sewerage infrastructure serving the area arising from lack of capacity in the Osberstown Wastewater Treatment Works (viz. Appeal Nos.

09.248093; 09.216253; 09.235082 and 09.2238790). It is submitted that the planning authority decision to grant planning permission in the current instance is at variance with all of these precedents.

- 7.1.6. Lack of capacity in the Osberstown Wastewater Treatment Works and/or prematurity pending the upgrade of these Treatment Works was cited in the reasons for refusal in each of these cases. However, I note in passing that other reasons for refusal were also cited by the Board in refusing these planning permissions (e.g. unzoned lands, lands zoned for Business & Technology, houses proposed on lands zoned for public open space, poor standard of design and layout etc.).
- 7.1.7. The precedents cited by the appellant were all decided prior to the established of Irish Water.
- 7.1.8. There would appear to be no dispute between the parties in relation the planning history of the area or in relation to past problems relating to infrastructural deficiencies in the Upper Liffey Valley and lack of capacity in the Osberstown Wastewater Treatment Works.
- 7.1.9. A submission on behalf of the applicant, in response to the submitted grounds of appeal, highlights the fact that ‘*The Upper Liffey Valley Sewerage Scheme Contract 2A*’ involves the upgrading of the Osberstown Wastewater Treatment Plant from 80,000 PE to 130,000 PE while ‘*Contract 2B*’ involves the installation of new and upgrading of existing gravity sewers, the installation of new foul sewer rising mains and the upgrading of existing foul pumping stations. It is pointed out that Irish Water have confirmed that the WWTP Contract A was completed in 2018 and contract 2B is currently underway with an expected completion date at the end of Q1 2020 at the latest and that Irish Water have indicated that subject to entering into a valid connection agreement the proposed connection to the Irish Water network can now be facilitated.
- 7.1.10. Irish Water in a Report to the planning authority dated 12th, April 2019 have confirmed that they have no objection to the proposed development, subject to conditions. Irish Water have confirmed that subject to the completion of Contract A and Contract B capacity will be available in the Osberstown Wastewater Treatment Works to serve the proposed development. Irish Water point out that an assessment of the hydraulic capacity and condition of the network may be required before connection to the

upgraded network can be facilitated and that some phasing of development and that a financial contribution may be levied in respect of the completed upgrade works. The applicant has clearly indicated that payment of a financial contribution, if levied, is acceptable.

7.1.11. It is clear that past infrastructural deficiencies in the area of the appeal site, in particular lack of capacity in the Osberstown Wastewater Treatment Works have hampered housing development in Prosperous in recent years. The appellant has cited precedents of refusal of planning permission dating back as far as 2005 and as recently as 2017. However, based on the documentation on file and the report from Irish Water it appears that these constraints have recently been overcome and do not present an impediment to the granting of planning permission in respect of the development now being proposed.

(3) Flooding

7.1.12. The site of the proposed development is located within an area (incorporating most of the town of Prosperous) designated as a 'Flood Risk Assessment Area' in Map V2 – 1.6B of the Development Plan,

7.1.13. Section 5 of a '*Civil Structural Design Report*' that formed part of the application documentation lodged with the planning authority deals with flooding. This report points out that the site has not been identified as being within a flood risk area in the national Catchment Flood Risk Assessment and Management (CFRAM) study. The subject site has been designated as an area not subject to potential fluvial flooding under the OPW Preliminary Flood Risk Assessment. The Assessment identifies an area for potential pluvial flooding for a 1:1000 year event at the extreme northern end of the site and outside the boundary of the site itself.

7.1.14. The Strategic Flood Risk Assessment (SFRA) prepared for the Kildare County Council Development Plan 2017-2023 recommends that a 'Justification Test' as described in the '*Planning System and Flood Risk Management Guidelines for Planning Authorities*' (2009) be conducted in relation to new zoned residential lands in the town as there is some risk of flooding. The SFRA identifies that parts of the extreme northern portion of the site as being liable to flooding (1:100 year event and 1:1000 event) for fluvial flooding arising from proximity to the Slate River which flows South to West at the north of the site. Having regard to levels at the extreme northern end of the site and to

the estimated top level of water at the 1:100 AEP and 1:1000 AEP flood event (+86.500m) compared to the lowest finished floor level of units within the proposed development a 750mm freeboard will be provided even at times of maximum flood events.

- 7.1.15. All of the proposed dwellings will be located within Flood Zone C (less than 1:1000 fluvial flood event). Based on the '*Sequential Approach*' as described in the '*Planning System and Flood Risk Management Guidelines for Planning Authorities*' (2009) in circumstances where the proposed houses will be located within a Flood Zone C only the proposed development is acceptable in accordance with the requirements of the Guidelines and there is no need to proceed to conduct a Justification Test.
- 7.1.16. The '*Civil Structural Design Report*' submitted on behalf of the Applicant highlights the fact that the SFRA map included in the Development Plan identifies the potential for localised flooding of an existing open channel along the eastern boundary of the site. To mitigate against flooding at this location 2m wide and 1 m deep precast concrete culvert with a 300m freeboard will be provided designed with capacity excess to allow for 20% arising from climate change.
- 7.1.17. The planning authority in their assessment of the proposed development sought further information and clarification of further information which included a number of detailed technical matters (and clarification of calculations etc. provided in the documentation originally lodged by the applicant) relating to surface water drainage and flooding. All of these matters (including modifications/shortening of the proposed culvert over the existing stream running adjacent to the eastern boundary of the site) were dealt with satisfactorily (and to the satisfaction of the planning authority).
- 7.1.18. The submitted grounds of appeal argues that the SFRA map contained in the Development Plan indicates that the subject site is susceptible to flooding which will cause potential for the ingress of water to the proposed foul sewer pumping station giving rise to potential for flooding of the proposed foul sewer pumping station (which is to be located at the rear of the proposed development and directly backing onto an existing watercourse flowing into the Slate River). It is submitted that this risk cannot be overcome to alleviate the potential for land flooding and associated contamination in the event of flooding of the foul sewer pumping station.

7.1.19. A submission on behalf of the applicant, in response to the submitted grounds of appeal, restates much of the above information in relation to the above flood risk analysis, the location of 95% of the site (including the portion where houses and the proposed Foul Water Pumping Station) with a Flood Zone C. This submission confirms that A 750 mm freeboard will be provided to the lowest house finished floor level (+87.250) from the 1:100 (plus 20% Climate Change) flood level from the Slate River Flood level of +86.500. Furthermore, this submission confirms (as indicated in the submitted drawings) that a 700mm freeboard has been provided for the proposed Foul Water Pumping Station.

7.1.20. I note that a Foul Water Pumping Station would be regarded as falling within the definition of 'Highly Vulnerable Development' for the purposes of the '*Planning System and Flood Risk Management Guidelines for Planning Authorities*'. Nonetheless, on the basis of the foregoing and having regard to the provision of a 700mm freeboard for the Foul Water Pumping Station, I consider that there is no compelling reason why the proposed development should be refused for reasons relating to flooding or potential flood risk.

(4) Design & Layout

7.1.21. The proposed development involves the construction of 49 houses on a site with a stated area of 2.7 ha. (1.8 ha. of residential zoned land). This equates to a density of development equivalent to c. 19 houses per hectare (entire site) or 27 houses per hectare (residential zoned lands). The site is located within reasonably close proximity (c. 700 m) to the centre of Prosperous. Notwithstanding the comments of the planning authority Senior Executive Planner to the contrary and having regard to the general approach advocated in respect of villages and small towns in relation to densities and the promotion of higher densities in the '*Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas*', I consider that the proposed density of development is relatively low and the site could perhaps accommodate a higher density of development based on a more innovative approach to design. Nonetheless, the site is located on the fringe of the town (and in that sense remote from the centre) and at the outer edge of the residential zoned lands. Furthermore, the proposed density of development is compatible with indicative density of development for the site as set out in the Development Plan (in accordance with anticipated housing demand over the life cycle of the Plan). In these circumstances,

and having regard and having regard to the established pattern of residential development in the immediate vicinity of the site including at 'The Downings' and 'The Moorings' where densities of development and layouts are similar to those currently being proposed, I consider that the proposed density of development is acceptable.

7.1.22. I note that the overall layout of the proposed development is to a significant degree dictated by the topography and physical characteristics of the site allied to the different zoning provisions of the site in the Development Plan. The proposed houses will be located on the residential zoned portion of the site. Public open space will principally be provided in a linear strip on the eastern portion of the site which is zoned for open space. (This will provide for a linear park between 'The Downings' and the proposed development which will bill run alongside an existing stream and will join and existing are of public open space in 'The Downings'). A section of a proposed new link road to the northwest and northeast of the town between Ballynafagh Road and the R403 (Allenwood Road) which is included as an Objective of the Development Plan (Objective PR 8) is to be provided on the western edge of the site on lands zoned for agriculture in the Development Plan.

7.1.23. The submitted grounds of appeal state that the proposed development incorporates a generic design and disappointing layout representing a poor design response which would result in a low grade and visually unpleasing development. There are concerns in relation to lack of overlooking/supervision of the proposed area of public open space and the fact that the proposed access road segregates the proposed public open space from the proposed houses. It is also submitted that a tract of land to the east of the site will not benefit from passive supervision and will act as a magnet for people wishing to engage in anti-social behaviour.

7.1.24. It has been submitted by It has been submitted on behalf of the Applicant, in response, that the proposed development has been designed by an RIAI accredited Architect. In this regard the appellant's claims in relation to the poor quality of design are strongly refuted. It is claimed that the appellant's criticisms derive from a fundamental misunderstanding of the proposed design concept.

7.1.25. Modifications to the proposed development in the context of further information submitted to the planning authority (without altering the total number of housing units proposed – 49) provide for (1) the replacement of proposed house Nos. 8 and 9 and

18 and 19 (2 pairs of semi-detached dwellings) with 2 no. detached dwellings. Both of the proposed detached dwellings will have dual frontage and will improve overlooking of the proposed linear parkway public open space, (2) the redesign of House Type B to provide for a dual aspect unit with multiple windows addressing and providing passive supervision of the adjacent open space. It has been submitted on behalf of the applicant that subject to these modifications (including proposed modifications to boundary treatment to houses along the eastern boundary of the site) the proposed linear parkway/public open space will be well overlooked and passively supervised.

7.1.26. On balance, I share the conclusions of the applicant and the planning authority that, subject to the amendments made in the context of the further information lodged with the planning authority, the proposed design and layout of houses provides provided for adequate overlooking and passive supervision of proposed open spaces. Furthermore, I consider that the revised landscaping proposal (including proposed modifications and shortening of the culvert over the stream that will run through the proposed linear park) are acceptable and will provide for a satisfactory standard of treatment of open spaces.

7.1.27. The proposed linear park will provide only limited scope for use as an active recreational and play area for young children (ball games etc.). Nonetheless, having regard to the configuration and natural topography of the site I consider that the creation of this linear park/open space (providing for passive recreational use) is desirable. The linear park will connect the proposed development with the existing residential developments to the east of the appeal site at 'The Downings' and 'Rossbrook' and with existing open space and pocket parks in estates.

7.1.28. The proposed development is generally in compliance with site Development standards as set out in the Development Plan in relation to the protection of privacy for existing and future residents (avoidance of overlooking), prevention of overshadowing, car parking provision etc.

7.1.29. In all of the circumstances of the case, I consider that the design and layout of the proposed development is acceptable.

(5) Access & Traffic

7.1.30. The submitted grounds of appeal argue that the proposed development will result in an increase in pedestrian movements, cyclist and vehicular traffic on the Allenwood

Road. Furthermore, it is argued that the proposed development would give rise to a proliferation of existing access points on the Allenwood Road and would interfere with the freeflow of movements along this road and would thereby give rise to a traffic hazard.

- 7.1.31. It has been highlighted on behalf of the applicant that following detailed discussions between the applicant and the planning authority at pre-application stage, the applicant prepared a Transport Assessment (including independent traffic and speed surveys) and a Traffic Impact Assessment – Prepared by RB Consulting Engineers (to include Access junction capacity and Junction modelling and analysis together with an traffic calming upgrade of the existing Gateway Traffic Calming and an Independent Stage 1 Road Safety Audit – prepared by Road Safety Matters). All of these studies/documents accompanied the application lodged with the planning authority.
- 7.1.32. The Road Safety Audit identified potential issues associated with the proposed development including matters relating to sightlines, impact on sightlines (from hedges) lack of information of traffic speeds, volumes, pedestrian/cyclist movements. All of these matters were satisfactorily addressed in the Road Safety Audit.
- 7.1.33. The speed surveys carried out for the purposes of the Transportation Assessment/Traffic Impact Assessment recorded an 85th percentile speed along the R403 (Prosperous to Allenwood Road) of 65 kph (in a 50 kph zone). However, the applicant has demonstrated that these speeds can be reduced (to ensure compliance with the 50kph zone requirement) by way of bolstering and upgrading the existing traffic calming measures at this location.
- 7.1.34. The submitted Traffic Impact Assessment (including Junction Capacity and Assessment) demonstrates that the traffic volume increases generated by the proposed development (including at morning and evening peak times) even in a worst case scenario traffic and taking account of the proposed new entrance to serve the proposed development together with existing junctions onto the R403 serving 'The Downings' and McCormack's Garage will be well within the junction capacity (utilizing Junctions 9 PICADY modelling).
- 7.1.35. In addition to the above matters, problems identified in S.2.3.1 of the Road Safety Audit (provision for pedestrian movements) and S. 2.3.2 of the Road Safety Audit (provision for cyclist movements) have been addressed. In this regard, a 2m wide

footpath is to be provided along the new Link Road North as indicated on the proposed site plan (Drawing C-0050), 1m wide grass verges and 2m wide footpaths have been provided elsewhere throughout the site and dedicated shared access points via uncontrolled pedestrian crossings using dropped kerbs and tactile paving are proposed. A 2m wide cyclepath will be provided along the new Link Road (drawing C-0050) and new road markings will also be provided (Drawing C-0060).

7.1.36. On the basis of the above, I consider that (subject to the implementation of the proposed upgraded traffic calming measures onto the R403) the applicant has demonstrated that the proposed access, junction and road facilities are satisfactory to adequately serve the proposed development. Furthermore, satisfactory provision to safely cater for the movement of pedestrians and cyclists will be provided. Furthermore, I consider that the proposed development complies generally with the approach advocated in relation to the design of urban roads and streets as set out in DMURS. In this regard, I consider that the applicant has satisfactorily rebutted the appellant's claim that the proposed development would give rise to a traffic hazard.

(6) Archaeology

7.1.37. Following the receipt of further information and clarification of further information the planning authority Heritage Officer recommended that planning permission for the proposed development on the grounds that the Department of Culture, Heritage and the Gaeltacht had recommended that pre-development testing be carried out on site in order to inform the final layout of the proposed development. This testing was never carried out.

7.1.38. The applicant stated that it was not possible to obtain the necessary licence and to carry out the required works within the time framework allowed for responding to the request for clarification of further information. The applicant further stated that a desktop study conducted in relation to the site revealed that there is little likelihood of significant archaeological remains on the site.

7.1.39. The planning authority accepted (on the basis of the desktop study) that failure to conduct the recommended pre-testing works was not fatal to the granting of planning permission in this instance.

7.1.40. I consider that best practice dictates that the pre-testing for archaeological evidence should be carried out in advance of granting planning permission as recommended by

the Department of Culture, Heritage and the Gaeltacht. However, in light of the findings of the desktop study conducted on behalf of the applicant, I consider that the matter can be adequately addresses by way of the attachment of a appropriately worded condition in relation to archaeology to any grant of planning permission that may issue by the Board and that a refusal of planning permission on grounds of failure to comply with the requirements of the Department would be unwarranted in this instance.

(7) Screening for Appropriate Assessment

7.1.41. The application submitted to the planning authority was accompanied by an Appropriate Assessment Screening Report prepared by Roger Goodwillie & Associates.

7.1.42. This report that of five sites located with 15 km of the site of the proposed development (listed at Section 5.2 above) only two sites have an ecological linkage to the project that could induce changes, namely:-

- Ballinafagh Bog SAC (Site Code 0391) and
- Ballinafagh Lake SAC (Site Code 1387)

7.1.43. Ballinafagh Bog SAC is a raised bog which is partially cutover but retains a core of actively growing peat. It is a priority habitat raised bog. The Appropriate Assessment Screening highlights the fact that the essential feature of a raised bog is that it is rain fed and the water falling on the surface flows away from the centre to the surroundings and into a river catchment. The significance of the surrounding land uses is thereby reduced as there is no way water from the edges can reach the active high dome of the bog. In the case of the proposed development the stream along the eastern side of the development site (which is partly piped) flows northwards picking up the drains on other sides of the northern section. After two fields it then turns in a westerly direction, running along the boundary of the SAC which covers the cutover and is partially wooded by willows. Thereafter it flows into the Barrow near Monasterevin. This peripheral channel takes any discharge of water from the high bog and the rest of the cutover but water from it does not enter the cutover to any significant extent. In these circumstances, materials and nutrients in it do not have any role to play on the bog itself and cannot affect it. The Screening Report also points out that since the proposed development will be serviced by existing systems of sewage treatment and

water supply it will not cause any effects on the bog during operation. During construction preventative measures will minimise any release of solids, concrete leachate and oils to the drains skirting the development site.

- 7.1.44. Ballynafagh Lake is a shallow alkaline lake with patches of fen vegetation occurring at the lake edges. It was created as a reservoir to feed the Grand Canal (The Blackwood feeder is also included in the site). The qualifying habitats and species include: Alkaline fens; Desmoulin's Whorl Snail and Marsh Fritillary.
- 7.1.45. The submitted Appropriate Assessment Screening Report highlights that fact that Ballynafagh Lake is fed by springs in its immediate vicinity and there is no likelihood of the groundwater there being influenced by the drainage system beside the development site which is c. 1.8 km away.
- 7.1.46. The Screening report concludes that (on the basis of the above) the proposed development will not have a significant effect on any of the Nature 2000 sites or on the conservation objectives for their constituent habitats or animals.
- 7.1.47. The planning authority conducted an Appropriate Assessment Screening which concluded that having regard to the features of Ballynafagh Bog and the associated flows in the river catchment and to the fact that Ballynafagh Lake is fed by a spring in the immediate vicinity of the lake and to the fact that the proposed development will connect into existing public foul sewer and public water supply it is not considered that the proposed development would have potential for significant effects on the Natura 2000 network.
- 7.1.48. I consider that the findings of the submitted Appropriate Assessment Screening Report (as summarised above) are reasonable. I concur with the conclusions of the Report and with the conclusions of the Appropriate Assessment Screening conducted by the planning authority. Accordingly, having regard to the nature and scale of development proposed and to the nature of the receiving environment and to the fact that the proposed development will be served by public sewerage and water supply, no appropriate assessment issues arise and it is considered that the proposed development would be unlikely to have a significant effect individually or in combination with other plans or projects on any European site, in light of the sites conservation objectives.

8.0 Recommendation

- 8.1. I recommend that planning permission for the proposed development be granted for the reasons and considerations and subject to the conditions as set out below.

9.0 Reasons and Considerations

- 9.1.1. Having regard to residential zoning and open space zoning of the bulk of the site in the Kildare County Development Plan 2017 – 2023, to the character, scale, layout and design of the proposed development and to established character and pattern of development in the vicinity of the site it is considered that, subject to compliance with the conditions as set out below, the proposed development would not seriously injure the established residential or other amenities of the area, would not be prejudicial to public health, would be acceptable in terms of traffic safety and convenience and would 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 on the 27th day of March 2019 and the 22nd day of May 2019, 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) (a) This permission is for 49 houses only. Each house shall be used as a single dwelling unit and shall not be separated or sub-divided in any way.

(b) Prior to the commencement of development details of a revised house type for Unit No. 43 to provide for the omission of the single storey rear projection of this house.

(c) Details of proposed boundary treatment for houses Nos. 40, 41, 42, and 43 shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of clarity and in the interest of visual amenity.

(3) 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.

(4) Prior to 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 and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public 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 or maintenance 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 and maintenance of the development until taken in charge.

- (5) The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and

(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

(i) the nature and location of archaeological material on the site, and

(ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

- (6) (a) The landscaping scheme shown on Drg. no. 00-Rev 4, as submitted to the planning authority on the 22nd day of May, 2019 shall be carried out no later than the first planting season after the first occupation of the first unit.

(b) On the open space to the north of the site, the proposed '1.2m high weldmesh fence to the edge of the existing watercourse' shall be replaced with a 1.2 m high steel bow top railing, the railing shall be galvanised and powder coated black in colour. The railing shall incorporate a lockable

double leaf vehicular access maintenance gate (bow top, steel, galvanised, powder coated and black in colour).

(c) The railing to the front of the site shall be 1.2m bow top, steel, galvanised, powder coated and black in colour.

(d) All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

(7) (a) Prior to the commencement of development a method statement detailing how trees to the south of the site adjacent to the R493 and along the north, north-western and eastern boundaries will be protected and retained shall be submitted to and agreed in writing with the planning authority.

(b) All trees and hedgerows within and on the boundaries of the site shall be retained and maintained, with the exception of the following:

(i) Specific trees, the removal of which is authorised in writing by the planning authority to facilitate the development.

(ii) Trees which are agreed in writing by the planning authority to be dead, dying or dangerous through disease or storm damage, following submission of a qualified tree surgeon's report, and which shall be replaced with agreed specimens.

Retained trees and hedgerows shall be protected from damage during construction works. Within a period of six months following the substantial completion occupation of the proposed development, any planting which is damaged or dies shall be replaced with others of similar size and species, together with replacement planting required under paragraph (b) of this condition.

Reason: In the interest of visual amenity.

(8) Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

- (9) Details of the materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity.

- (10) Construction and demolition waste shall be managed in accordance with a construction and demolition waste management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006

Reason: In the interest of sustainable waste management.

- (11) 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 intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

- (12) 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.

- (13) Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of amenity and public safety.

- (14) Proposals for an estate name, 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. No advertisements/marketing signage relating to the

name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

Reason: In the interest of urban legibility.

- (15) Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

- (16) Prior to the commencement of development details of the following shall be submitted to and agreed in writing with the planning authority:
- (a) Design of the link road and shared pedestrian/cycle track serving the development as required to Objective PR 8 of the Prosperous Small Town as set out in Volume 2 of the Kildare County Development Plan 2017-2022.
 - (b) Design for signalised pedestrian crossing on the R403 fronting the site.
 - (c) Design of the final layout for the domestic entrance off the R403 at the eastern end of the site frontage.
 - (d) The provision of advanced warning signage for the proposed pedestrian crossing on the R403.

Reason: In the interest of pedestrian and traffic safety.

- (17) The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, shall be in accordance with the detailed standards of the planning authority for such works.

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

Paddy Keogh
Planning Inspector

17th, April 2020