



An
Bord
Pleanála

Inspector's Report ABP312489-22

Development	Two proposed detached, 1.5 storey dwelling houses, already permitted in principle under outline planning ref. no. 19/101.
Location	Curryhills, Prosperous, Co. Kildare.
Planning Authority	Kildare County Council.
Planning Authority Reg. Ref.	211277.
Applicant(s)	Mount Blanc Development Ltd.
Type of Application	Permission Consequent.
Planning Authority Decision	Grant.
Type of Appeal	Third Party.
Appellant(s)	Jeffrey and Niamh Dunney.
Observer(s)	N/A.
Date of Site Inspection	12.07.2022.
Inspector	Mary Mac Mahon.

1.0 Site Location and Description

- 1.1. The site is situated in Prosperous, a rural town in Kildare. It is located on the southern side of Buttermilk Lane, which forms the southern border of the town of Prosperous. There have been a number of estates built on the northern side of the road within the last two decades. On the southern side is a line of detached dwellings.
- 1.2. The site is a backland site, with the access positioned between two recently constructed dwellings and then expands behind them. A drainage ditch crosses the front of the site. There is an agricultural field to the rear. The site is level. There are no other dwellings that have been constructed on this second line of development. The site area is stated as 0.46 ha.

2.0 Proposed Development

- 2.1. The proposed development is permission consequent for the construction of two dwellings with detached garages, which have an outline permission, under Reg. Ref. 19/101. The dwellings face onto a new spine road, which also provides access to the agricultural field. The dwellings are perpendicular to the two dwellings fronting onto Buttermilk Lane.
- 2.2. The dwellings are 4 bedroom dormer dwellings. House Type A is 296 square metres. It has a window at first floor level facing the neighbouring dwelling. House Type B is 351 square metres. It also has a window at first floor level facing the neighbouring dwelling. Water supply and drainage is to the public system. The garages are 24 square metres in area, with a pitched roof.

3.0 Planning Authority Decision

3.1. Decision

Grant subject to 24 no. conditions. (lodged 07.09.2021, permitted 21.12.2021). This included Condition 2 that House Type B be constructed 5.5. metres from the northern boundary.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report noted the contents of the submission made by the appellants. The zoning of the site is noted as existing residential / infill and agriculture. It is considered that House Type A does not comply with Condition 2 of the outline permission, 19/101, which limits the height of the dwelling houses to 1.5 storeys. House Types A and B have been repositioned and should be relocated to the original positions. The first floor window would be acceptable, provided the original distances to boundaries were maintained. Further Information was sought on these matters.

- 3.3. Following receipt of Further Information, the design of House Type A reduces the roof profile, the position of House Type B can be conditioned and the water supply, drainage and surface water details are considered acceptable.

Other Technical Reports

- 3.3.1. Irish Water requested details on the proposed gravity foul sewer drain.
- 3.3.2. Water Service noted that there is no foul sewer or watermain immediately outside. Further information was sought on the drainage ditch running across the front of the site on its discharge point and its capacity to take surface water from the proposed development.
- 3.3.3. Roads and Transportation requested conditions be attached to a grant of permission.
- 3.3.4. Environment Section requested conditions be attached to a grant of permission.
- 3.3.5. A screening report for appropriate assessment was prepared and found no appropriate issues applied.

4.0 Planning History

Reg. Ref. 19/101 for Outline Planning Permission.

This application was for the construction of 2 no. one and a half storey type dwellings, 2no. domestic garages, individual connections to public foul, drainage and all associated ancillary site works. The application was submitted by John and William Croke, who owned the field to the rear of the site. The site area is stated as 0.39 ha (note – this is smaller than the current site for permission consequent).

Permission was granted on 29/11/2019. It was subject to 23 no. conditions. This included Condition 1, which prohibits development until a permission consequent is granted and requires the development to be carried out in accordance with the plans and particulars submitted, as amended by Further Information.

Condition 2 requires that the dwellings be one and half storey only. Full details in relation to height, design and external appearance shall be submitted in an application for permission consequent.

No gross floor area for the dwellings or garages are stated on the application form.

House A was located 6.3 metres from the site boundary to the north. It was approximately positioned between the garage and main gable wall of the house opposite. House B was located 5.5 metres from the northern boundary and positioned so as the main rear wall was approximately in line with the gable wall of the appellants' dwelling to the north. Both garages were larger than the current design.

5.0 Policy and Context

5.1. Development Plan

The *Kildare County Development Plan 2017-2023* applies. The site is zoned 'B' Existing Residential as far as the rear property line of the two dwellings either side of the site, where the access road is located. It is zoned 'I' Agricultural to the rear of the site, where the proposed dwellings are located. The site is sited outside the area where

a flood risk assessment is required. The site is located within the development boundary of the town of Prosperous.

The land use objective for Existing Residential is:

To protect and improve existing residential amenity, to provide for appropriate infill residential development and to provide for new and improved ancillary services.

This zoning principally covers existing residential areas and provides for infill development within these existing residential areas. The primary aims of this zoning objective are to preserve and improve residential amenity and to provide for further infill residential development at an appropriate density.

Residential development is acceptable in principle.

The land use objective for Agriculture is:

To retain and protect agricultural uses.

The purpose of this zoning is to ensure the retention of agricultural uses and protect them from urban sprawl and ribbon development. Uses which are directly associated with agriculture or which would not interfere with this use are open for consideration. This includes limited housing for members of landowners families or persons who can demonstrate a need to live in the agriculture zone, tourism related projects and amenity uses such as playing fields or parks

Residential development is not acceptable in principle.

5.2. Natural Heritage Designations

- 5.3. I am satisfied that having regard to minor scale and the foreseeable emissions from the proposed development 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.

5.4. **EIA Screening**

- 5.5. The application is permission consequent. Outline permission cannot be granted if an EIA is required, under Article 96 of the Planning and Development Regulations, 2001, as amended.

96. (1) In addition to the provisions of article 21, an outline application may not be made in respect of development which is of a class for the time being prescribed under article 93.

Therefore, the application does not come within a class where EIA is required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The appellants have submitted the following grounds, summarised below:

- They live to the north of House Type B.
- The permission consequent granted is substantially different from the outline permission, 19/101.
- The footprint of House Type B is larger, with a consequential impact on privacy, loss of daylight and sunlight and increased shadowing. The appeal includes daylight and sunlight shadow projections and photographs showing existing shadow lengths provided by the appellants.
- Windows overlooking the property were removed at Further Information under 19/101 have been reinstated, resulting in a lack of privacy.
- Suggested remedies are that the location and footprint be conditioned to be consistent with the outline permission and that any upper storey is located away from the appellants' property and that there are no openings in the gable end of the house.

6.2. **Applicant Response**

No response.

6.3. Planning Authority Response

The planning authority confirmed that it has no further comment to make and refers to their earlier assessment of the application.

7.0 Assessment

7.1. Before considering the appeal grounds, planning law in relation to Permission Consequent is set out below.

7.2. The Planning and Development Act, 2000, as amended, deals with Outline Permission under Section 36. Generally, an application for permission consequent must be made within 3 years of the grant of outline permission. Section 36 (4) states:

(4) Where an application for permission is made to a planning authority consequent on the grant of outline permission, the planning authority shall not refuse to grant permission on the basis of any matter which had been decided in the grant of outline permission, provided that the authority is satisfied that the proposed development is within the terms of the outline permission.

7.3. Furthermore, Section 36 (5) provides that:

(5) No appeal may be brought to the Board under [section 37](#) against a decision of a planning authority to grant permission consequent on the grant of outline permission in respect of any aspect of the proposed development which was decided in the grant of outline permission.

7.4. Therefore, my consideration of the appeal is limited by the above restrictions.

7.5. Article 24 of the Planning and Development Regulations, 2001 as amended, states:

Notwithstanding article 22(2)(d), an outline application shall, in addition to the requirements of article 22(2), be accompanied only by such plans and particulars as are necessary to enable the planning authority to make a decision in relation to the siting, layout or other proposals for development in respect of which a decision is sought.

- 7.6. The first issue to be determined, is whether the permission consequent application, comes within the terms of the outline permission.
- 7.7. The site area has increased between outline permission stage and permission consequent stage, by circa 0.07ha.
- 7.8. The outline development was for two dwellings and two garages. The permission consequent is for the same. The road layout serving the proposed development is in the same location as the outline permission.
- 7.9. The location of the two dwellings and size of the garages in the permission consequent are different from the outline permission granted. At permission consequent, the location of the two dwellings are closer to the northern boundary than at outline stage. Article 24 of the Planning and Development Regulations, 2001 as amended, requires that the siting and layout drawings are submitted at Outline Permission stage. In my opinion, the siting cannot change at permission consequent stage.
- 7.10. The design of the dwelling houses is different in this application from the outline permission. At outline permission, the dwelling houses were dormer dwellings with a single front and rear gable projections in a central location. The dwellings at permission consequent have three such gables, in lieu of the dormer windows and four on House Type B. The Regulations provide for flexibility in the design of the proposed development at Permission Consequent stage. Therefore, the difference in design from the outline permission can be accommodated – subject to assessment.
- 7.11. Condition 2 of the outline permission sets out the details to be submitted at Permission Consequent stage - height, design and external appearance. These are the details that were not determined at outline permission stage. However, I would consider that the location and position of the dwelling houses and garages are established at this point in time. I do not consider that a permission consequent can alter these elements of the outline permission.
- 7.12. No gross floor space figure for the proposed development was provided at outline application stage. Therefore, the sizes of the dwelling houses are flexible. However, I would be of the view that the flexibility in size can only be in relation to a reduction in gross floor area, as opposed to an increase in gross floor area. The Third Party has identified that the increase in area has brought about different conditions in relation to impacts on their property, in terms of overshadowing, loss of light and overlooking.

The impacts of the proposed development are more adverse than would have occurred at if the dwelling house had retained the same volume.

- 7.13. The planning authority, in granting planning permission, conditioned that House type B be constructed a minimum distance from the northern boundary, to correspond to the separation distance of the dwelling house at outline permission. I do not consider this a sufficient remedy, for the reasons outlined above. I consider that the first floor gable window in House B would give rise to close overlooking at circa 4.4 metres from the boundary. (This distance is taken from the Further Information Drawing General Arrangements, Drawing No. A00, at a scale of 1:200)
- 7.14. House A is circa 5.8 metres from the northern boundary and 13.7745 to the dwelling to the north. It has a similar first floor gable window. I would also consider that this would give rise to close over looking of the dwelling to the north. I note that these windows were removed at Further Information Stage under Planning Reg. 19/101.
- 7.15. In relation to overshadowing, the proposed development is located to the south of the existing dwellings. This will give rise to overshadowing and the increased volume of the dwellings would give rise to greater shadowing than the outline permitted dwellings. However, given the size of the existing private open space associated with the dwelling house, I consider the increased shadowing would not seriously injure the residential amenities of the Third Party. This would also apply to the residential dwelling the northwest of House A.
- 7.16. The proposed development would result in a reduction in the levels of light experienced by the Third Party over that which would have been assessed in the relation to the outline permission. The reduction in light would not be sufficient to warrant a reason for refusal.

8.0 Recommendation

- 8.1. I recommend that permission is refused for the proposed development.

9.0 Reasons and Considerations

Having regard to the position of the dwellings in the proposed development, the increase in footprint over that permitted at Outline Permission and the provision of

gable windows above ground floor, it is considered that the proposed development at Permission Consequent, does not come within the terms of the Outline Permission. The Board is therefore precluded from considering the application and appeal further.

Mary Planning	Mac	Mahon Inspector
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15.08.2022