



An
Bord
Pleanála

Inspector's Report

ABP-322065-25

Development	Construction of 2 dwellings and all associated site works.
Location	Buttermilk Lane, Curryhills, Prosperous, Co. Kildare
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	2460073
Applicant(s)	Mont Blanc Development Limited.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant(s)	Jeffrey and Niamh Dunney.
Observer(s)	None.
Date of Site Inspection	19 th May 2025
Inspector	Catherine Hanly

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1.0 Site Location and Description

- 1.1. The site is located in Curryhills and is positioned approximately 950 m to the south of Prosperous town centre.
- 1.2. The site is positioned to the south of Buttermilk Lane. The site consists of a backland site which is accessed between 2 no. one and half storey detached dwellings, the fenced side boundaries of which adjoin the entrance road leading to the site. The southern boundaries of the 2 no. one and half storey detached dwellings abuts the north-eastern and north-western boundaries of the site. The site is bound to the east by hedging along the side boundary of no. 195 Curryhills and an agricultural field. The site is bound to the west by an agricultural field and the rear garden of a dwelling which is positioned off Buttermilk Lane. The site is bound to the south by an agricultural field.
- 1.3. The site is currently accessed by an agricultural field gate located on the northern boundary of the site off the Curryhills Road.
- 1.4. The site measures 0.41 ha and consists of relatively flat grassland.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - The construction of 2 no. one and half storey detached, four-bedroom gable fronted dwellings each with rooflights, rear return, 2 no. on-curtilage parking spaces and detached single storey garage.
 - House Type A is situated on the western side of the site and House Type B is situated on the eastern side of the site.
 - Provision of a central access lane via Buttermilk Lane which will give independent access to each dwelling.
 - All ancillary works, inclusive of landscaping, boundary treatment and SuDS drainage, necessary to facilitate the development.

3.0 Planning Authority Decision

- 3.1. Notification of the Decision to Grant Permission issued on 18/02/2025, subject to 16 no. conditions. The following conditions are of note:
- 3.2. Condition no. 2 requires that prior to the commencement of development, the applicant shall submit revised proposals demonstrating that both dwellings are located wholly within the area zoned B existing residential/ infill in the Prosperous Small Town Plan 2023 – 2029. This may require a re-design particularly of the dwelling to the western part of the site and a reduction in size of the dwelling to accommodate the development within the zoned land. A revised Site Layout Plan and revised floorplans and elevations shall be submitted. The revised Site Layout Plan shall clearly demonstrate the distances to site boundaries and to adjoining structures.
- 3.3. Condition no. 3 (b) requires that the garages shall be omitted.
- 3.4. Condition no. 5 requires that prior to the commencement of development, the applicant shall submit a revised landscaping plan which indicates an appropriate mix of native species planting only and shall indicate the height of all boundary walls and piers.
- 3.5. Condition no. 9 requires that prior to the commencement of development, the developer shall submit documentary evidence indicating the relocation of the utility pole behind lines of sight. The developer shall indicate that the relocated utility pole does not impede lines of sight of exiting vehicular entrance on the L-6001 local road.
- 3.6. Condition no. 10 requires the submission of a Final Construction Management Plan prior to the commencement of development. The Plan should include the final construction haul routes to and from the development site and relevant construction site warning signs on the public road network shall be in accordance with the Department of Transport, Tourism and Sport Traffic Signs Manual.
- 3.7. Condition no. 16 requires the payment of €34,286.00 as a development contribution in accordance with Section 48 of the Planning and Development Act 2000.

3.8. Planning Authority Reports

- 3.8.1. Planning Report dated 20/03/2024:

- Having regard to the nature and scale of the proposal, it was concluded that an Environmental Impact Assessment (EIA) or EIA Screening is not required.
- The nearest SAC site is Ballynafagh Bog SAC which is located c. 1.1 km from the site. A Screening for Appropriate Assessment concludes that a stage 2 AA is not required.
- The principle of the proposed development is acceptable.
- Approximately 13 no. dwellings have been granted permission within the settlement boundary of Prosperous since the adoption of the Development Plan. Having regard to the allocation under the Core Strategy of the 2023-2029 Kildare County Development Plan (*Kildare CDP*), capacity exists under the core strategy for the development.
- The general design and character of the dwellings is considered acceptable. The scale of the development is considered appropriate for the site.
- The proposed development provides a minimum separation distance of c. 12.65 m between elevations of the existing and proposed dwellings and that first-floor windows have been sited to avoid opposing windows.
- The development will not significantly impact adjoining residential amenity in terms of overlooking or overshadowing.
- The Planners report dated 20/03/2024 requested Further Information in relation to 7 no. items.

3.8.2. Planning Report dated 17/02/2025:

- Item no. 1 invited the applicant to submit a revised site layout providing for the full footprint of the dwellings within the lands zoned B: Existing/ Infill Residential. The revised site layout plan that was submitted in response to the Further Information request was considered to be inaccurate as the boundary line differed to the actual boundary line in the *Kildare CDP*. A portion of the dwelling on the west is outside the B Existing residential/ infill boundary line. It was recommended that this be addressed by condition to ensure that the footprint of any dwelling is fully within the zoned part of the site. The garages were noted to be outside the zoned area and should be omitted.

- Item no. 2 invited the applicant to submit a detailed landscaping plan and a timeline for the completion of the landscaping works. The Planning Authority considered that native species should only be planted and that this should be addressed by way of condition.
- Item no. 3 invited the submission of a site boundary treatment plan. The Planning Authority noted the third-party's concern regarding the lack of information regarding the height of the piers.
- Item no. 4 invited the submission of details in relation to external finishes. The response submitted was considered acceptable.
- Item no. 5 invited the submission of a revised site layout plan identifying the corner radii at the entrance in accordance with the Design Manual for Urban Roads and Streets (*DMURS*), details of surface water collection, the re-location of the utility pole, revised details of the entrance to the site from the local road and electric vehicle charging points. The Planning Authority noted that the Transportation Report had no objection to the revised proposals.
- Item no. 6 invited the applicant to assess the need for lighting. The Planning Authority noted that the Transportation Report had no objection to the lighting details shown on the revised site layout.
- Item no. 7 invited the applicant to submit a Construction Management Plan. The response submitted was considered acceptable.

3.8.3. Other Technical Reports

- Water Services: No objection subject to 4 no. conditions.
- Maynooth Municipal District Planning Report: No objection subject to 5 no. conditions.
- Chief Fire Officer: No objection.
- Roads Report: Following the submission of the Further Information, no objection subject to 12 no. conditions.

3.9. Prescribed Bodies

3.9.1. None.

3.10. Third Party Observations

3.10.1. 1 no. observation was received by Kildare County Council from the appellant. The issues raised are as follows:

Residential Amenity

- House type B/2 will affect the light, view and privacy of the dwelling to the north. It is requested that no windows or doors are located on the gable side of the proposed dwelling at ground and first floor level.
- House type B will overshadow the house and garden located to the north. The development will impact solar gain and increase the energy usage to heat the dwelling. Images have been included in an appendix identifying shadowing caused by the proposed development.
- Light from house type B will overspill to the dwelling to the north.

Visual Amenity

- The design of the houses are not in keeping with the character of the area. The dwellings do not form part of the building line.

Flooding

- The location of house type B is flooded with standing water 6 months of the year. There is a concern that if the site is developed that it will result in additional run off and flooding affecting the dwelling to the north.
- Concern regarding whether or not a flood risk assessment has been conducted.

Zoning

- The footprint of the houses does not sit within the zoned area of the site.

Site Services

- The pre-connection enquiry is outdated.

Other Matters

- The naming of the proposed house types is unclear.
- There is no information about the boundary wall proposed between the development and the house to the north.
- There is a risk of overdevelopment of Prosperous with a lack of infrastructure. The number of houses to be developed in Prosperous has already been accounted for and surpassed. Since 2022 945 houses have been granted permission and are under construction.
- There is no information regarding the height and capping of the boundary walls proposed along the access road.
- There is no detail regarding the access road and proposed lighting.
- The application states that they are not relying on the Outline planning permission, but yet it is referred to in detail in accompanying reports.

3.11. Third Party Observations following the Submission of Significant Further Information

3.11.1. 1 no. observation was received by Kildare County Council from the appellant. Additional issues raised are as follows:

Landscaping

- The proposed trees are not native to Ireland and will significantly affect the light of the dwelling to the north of house type B/2.

Design

- Separation distances are not shown on the drawings.
- Dimensions for the height of the pier on the boundary wall have not been shown.
- It is requested that any portion of house type B/ 2 which is located within 21 m from the boundary wall of the house to the north is reduced to single storey to ensure that it will not overshadow the house to the north.

Flooding

- The construction of a boundary wall may impact drainage on the site.

Entrance

- The relocation of the utility pole may not be possible without impacting the sight lines of the dwelling to the north of house type B/ 2.

4.0 Planning History

4.1. Relevant Planning history for the site:

- **ABP Ref. 312489-22 and PA Ref. 211277.** Construction of 2 no. dwellings already permitted under outline **ref. no. 19/101**. 2023 **Refusal**. Refused due to the details submitted for permission consequent differing materially from the terms of the outline permission granted under **ref. 19/101**.
- **Ref. 19101.** Construction of 2no. dwellings and 2 no. detached garages. 2019 **Grant** of Outline Permission.

5.0 Policy Context

5.1. Kildare County Development Plan 2023 - 2029

- 5.1.1. The majority of the site is located on land zoned B – Existing/ Infill Residential. The objective of land zoned B is “*to protect and improve existing residential amenity, to provide for appropriate infill residential development and to provide for new and improved ancillary services*”. A dwelling is permitted in principle on land zoned B – Existing Residential/ Infill.
- 5.1.2. A portion of the southern part of the site is located outside the small town boundary of Prosperous and is not zoned. Section 9.3 of the Kildare County Development Plan (*Kildare CDP*) states that “*if land is not within an identified settlement and is not otherwise zoned as part of this Plan, or any Local Area Plan, the use of such land shall be deemed to be primarily agriculture.*”

Small Towns

- 5.1.3. Objective GO 1 in Volume 2 of the Plan seeks to “*provide for new residential development which is in accordance with the Core Strategy and Settlement Strategy.*”
- 5.1.4. Objective GO 3 in Volume 2 seeks to “*particularly support and encourage residential development on under-utilised land and/or vacant lands including ‘infill’ and ‘brownfield’ sites, subject to a high standard of design and layout (to include high quality permeability connections) being achieved.*”
- 5.1.5. Policy STP 1 in Volume 2 seeks to “*Monitor the scale, rate and location of newly permitted developments and apply appropriate development management measures to ensure compliance with the Core Strategy including population targets for each small town; and to achieve the delivery of strategic plan led and coordinated balanced development throughout the planning area.*”
- 5.1.6. Table 2.1 in Volume 2 sets out the following development capacity for Prosperous:

Small Town	2016 Population Census	2021 Population Estimate (based on % growth from 2011 – 2016)	Population Target 2023 to 2028 (end of Q4) (persons)	Housing Target 2023 to 2028 (end of Q4) (units) in accordance with HSTGs	Residential Zoned Land Requirement (ha)	Target Residential Density (UPH)
Prosperous	2,333	2,468	251	91	3	30-35

Housing

- 5.1.7. Policy HO P1: “*Have regard to the DHLGH Guidelines on: - Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes and Sustaining Communities (2007); - Sustainable Urban Housing: Design Standards for New Apartments (2020); - Sustainable Residential Development in Urban Areas (2009); 44 - Urban Design Manual: A Best Practice Guide (2009); - Urban*

Development and Building Heights – Guidelines for Planning Authorities (2018) - Housing Options for our Aging Population (2020) and Age Friendly Principles and Guidelines for the Planning Authority (2021); - Design Manual for Urban Roads and Streets (DMURS) (2019)."

- 5.1.8. Objective HO O1: *"To secure the implementation of the Kildare County Housing Strategy in accordance with the provisions of national legislation and relevant policies and standards."*
- 5.1.9. Objective HO O6: *"Ensure a balance between the protection of existing residential amenities, the established character of the area and the need to provide for sustainable residential development is achieved in all new developments."*
- 5.1.10. Policy HO P6: *"Promote and support residential consolidation and sustainable intensification and regeneration through the consideration of applications for infill development, backland development, re- use/adaptation of existing housing stock and the use of upper floors, subject to the provision of good quality accommodation."*
- 5.1.11. Objective HO O46: *"Recognise and promote the agricultural and landscape value of the rural area and prohibit the development of urban generated housing in the rural area."*

Development Management

- 5.1.12. Table 15.2 sets out the minimum floor space and open space requirements for houses:

Unit Type (House)	Floor Area	Storage Area	Minimum Private Open Space
Four Bedroom	110 sqm	10 sqm	75 sqm

- 5.1.13. Table 15.8 sets out the maximum parking standard of 1 space and 0.5 visitor spaces for units of 4 bedrooms or greater.

5.2. Sustainable Residential Development and Compact Settlements - Guidelines for Planning Authorities *(Compact Settlements Guidelines)*

- 5.2.1. SPPR 1 – Separation Distances states:

“When considering a planning application for residential development, a separation distance of at least 16 metres between opposing windows serving habitable rooms at the rear or side of houses, duplex units and apartment units, above ground floor level shall be maintained. Separation distances below 16 metres may be considered acceptable in circumstances where there are no opposing windows serving habitable rooms and where suitable privacy measures have been designed into the scheme to prevent undue overlooking of habitable rooms and private amenity spaces.

There shall be no specified minimum separation distance at ground level or to the front of houses, duplex units and apartment units in statutory development plans and planning applications shall be determined on a case-by-case basis to prevent undue loss of privacy.”

- 5.2.2. SPPR 2 – Minimum Private Open Space Standards for Houses states that a 4 bed + house shall be provided with 50 sq.m of private open space.

5.3. National Planning Framework 2025 – First Revision

- 5.3.1. National Policy Objective 3: *“National Policy Objective 3 envisages that the Eastern and Midland Region where Prosperous is located will have 470,000 additional people between 2022 and 2040 (c. 690,000 additional people over 2016-2040) i.e. a population of almost 3 million.”*
- 5.3.2. National Policy Objective 7: *“Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements and ensure compact and sequential patterns of growth.”*
- 5.3.3. National Policy Objective 9: *“Deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints and ensure compact and sequential patterns of growth.”*
- 5.3.4. National Policy Objective 42: *“To target the delivery of housing to accommodate approximately 50,000 additional homes per annum to 2040.”*
- 5.3.5. National Policy Objective 43: *“Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.”*

5.4. Natural Heritage Designations

- 5.4.1. The following distances are noted between the site and natural heritage designations:

Site	Approximate Distance from the Subject Site
Ballynafagh Bog Special Area of Conservation (SAC) and Proposed Natural Heritage Area (pNHA)	1.12 km
Grand Canal pNHA	1.7 km
Hodgestown Bog NHA	3.8 km
Donadea Wood pNHA	5.1 km
Mouds Bog SAC and pNHA	7.6 km

5.5. EIA Screening

- 5.5.1. The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendices of this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A Third-Party appeal has been lodged in this instance by Jeffrey and Niamh Dunney. The Third-Party is living in the house to the north of the proposed house type B which is located on the eastern side of the site. The grounds of the appeal can be summarised as follows:

Planning History

- The application is similar to one which has already been refused by An Bord Pleanála on the subject site.
- Reference no. **19/101** should either be relied upon in its entirety or all reference to it should be omitted.
- The proposed dwellings are significantly larger than those permitted at outline planning.
- The footprint of the proposed development should be equal or less than that granted outline permission under ref. **19/101**. The separation distances between dwellings A and B and neighbouring residences should be 6.5 m and 13 m respectively as scale from the outline planning application.

Zoning

- The houses are not fully located on zoned residential land and are outside the small town boundary.

Design

- The dwellings are larger than those permitted in the outline planning permission.
- There is no other backland development on the road.
- Concern regarding the separation distance between the proposed dwellings and the dwellings to the north. There are no dimensions on the drawing showing the separation distances. Condition no. 2 confirms the appellant's concern.
- Concern regarding the 2m high blockwork wall.
- There is confusion regarding the size of the site. Under this application the site measures 0.41 ha. This has changed from ref. 19/101 where it measured 0.39 ha and ref. 21/1277 where it measured 0.45 ha.
- The condition requiring the relocation of the utility pole excludes the public from public consultation.

- There are discrepancies in the representation of the land to be used for access and the attenuation systems.

Residential Amenity

- House type B/02 will affect the light, view and privacy of residents to the north.
- House type B/02 will overlook the dwelling to the north, particularly from the ground floor windows and sliding door.

Visual Amenity

- The houses are not sympathetic to the character of the area.
- The houses do not accord with the established building line.

Other Matters

- Conditioning the site layout plan, revised floorplans and elevations which identify separation distance to the boundaries, the landscaping plan and relocation of the utility pole is inappropriate and does not allow for further engagement from the public.
- The applicant did not respond to the further information request in relation to surface water.
- No dimensions of the paths are shown on the drawings.
- One of the folios KE4057 is in third party ownership. The applicant does not have a letter of consent from the third party owner. The application is invalid.
- The development will impact existing infrastructure including local schools which are oversubscribed.
- There are inconsistencies on the drawings and references which make them difficult to understand.
- The provision of trees on the site will overshadow the patio and living areas of the dwelling to the north.
- Concern regarding drainage, flooding, water and sewage connections.

6.2. Applicant Response

6.2.1. The applicant's response to the grounds of appeal can be summarised as follows:

Outline Permission Ref. 19/101

- The outline permission does not pertain to the subject application. The outline permission expired on the 6th February 2024.

Site Layout Plan

- The original site layout plan identified proposed separation distances. The site layout plan submitted in response to the further information request did not. This has been addressed by condition no. 2.
- With regards to the width of the path at the entrance to the site, it was identified on the site layout plan submitted at Further Information stage to measure 2.4 m.

Surface Water

- Surface water is dealt with through permeable paving for driveways and rainwater from roofs will drain to an attenuation tank. No water will discharge to the public road. The Planning Authority considered that this approach was acceptable.

Land Ownership

- As stated in the application form, the applicant is the owner of the site.

Conditions Attached to the Grant of Planning Permission

- Condition no. 3 (b) omits the garages from the permission.
- Condition no. 2 states that the revised proposals shall address the zoning issue to ensure that the buildings are located within zoned land.
- Condition no. 9 requires the developer to submit documentary evidence to the Planning Authority for its written agreement indicating the relocation of the utility pole behind lines of sight. Whilst the appellants claim that this is consultation behind closed doors, the public do not typically have a right to

public participation in regard to the erection of utility poles as per Section 53 of the Electricity (Supply) Act 1927.

Zoned Land

- The Planning Authority is aware of the minor discrepancy regarding the zoning line and has dealt with it through condition no. 2.

Design

- The proposed development is at a density of 5 dwellings per hectare. The site is characterised as the edge of a small town/ village. The Kildare County Development Plan 2023-2029 (*Kildare CDP*) outlines that the general density parameters for the site as 15-20 units per hectare with lower densities in some cases. The development therefore does not constitute overdevelopment.
- The dwellings which both measure 276.5 sqm are smaller in size than the appellant's property which measures 289 sqm.

Residential Amenity

- Due to the design of the dwelling at 1 – 1.5 storeys, the height and separation distances proposed, the dwelling proposed to be located to the south of the appellants property will not result in significant impacts. There will be a separation distance of 12.7 m between the appellant's house and the dwelling located to the south of it. It is not considered that the development will result in overshadowing to the appellants property.
- There is only one window proposed on the northern elevation at first-floor level. It is not considered that the development will result in overlooking to the appellants property.

6.3. Planning Authority Response

- 6.3.1. The Planning Authority's response to the grounds of appeal can be summarised as follows:

- The Planning Authority notes the content of the appeal.
- The Planning Authority confirms its decision asks that An Bord Pleanála refer to the Planners' Report, internal department reports and prescribed bodies reports in relation to the assessment of the planning application.

6.4. Observations

6.4.1. No observations were received.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including the reports of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of Development
- Core Strategy
- Design
- Residential and Visual Amenity
- Access
- Site Services
- Other Matters

7.2. Principle of Development

7.2.1. The majority of the northern half of the site is located on land zoned B – Existing/ Infill Residential. Land zoned B has the objective “*to protect and improve existing residential amenity, to provide for appropriate infill residential development and to provide for new and improved ancillary services*”. A dwelling is permitted in principle on land zoned B – Existing Residential/ Infill. Generally, the principle of constructing 2 no. houses on the zoned portion of the site is acceptable under the zoning objective for the site.

- 7.2.2. A portion of the southern end of the site is located outside the small town boundary of Prosperous and consists of unzoned land. I note that this was raised as a concern in an observation submitted to the Planning Authority during the observation period.
- 7.2.3. I note that the Planning Authority invited the applicant to submit a revised site layout providing for the full footprint of the dwellings within the lands zoned B: Existing/ Infill Residential. The revised site layout plan that was submitted in response to the Further Information request was considered to be inaccurate, as the boundary line differed to the actual boundary line in the *Kildare CDP*. The Planning Authority identified that a portion of the dwelling on the west of the site is outside the B: Existing residential/ infill zoning boundary line. The Planning Authority subsequently issued a Notification of Decision to Grant Permission and included condition no. 2 which requires the submission of a revised Site Layout Plan, floorplans and elevations demonstrating that both dwellings are located within the area zoned B: existing residential/ infill.
- 7.3. I note the grounds of appeal which raise concern that the houses are not fully located on land zoned B. I also note the First Party's response which states that the revised drawings submitted by way of condition no. 2, will address the zoning issue to ensure that the buildings are located within zoned land.
- 7.4. I have examined the Site Layout Plan which was submitted in response to the Further Information request. I agree with the Planning Authority and the appellant that the small town boundary line of Prosperous shown on the Site Layout Plan is incorrect and that residential development is proposed on unzoned land. This is particularly evident on the western boundary of the site. I note that in accordance with section 9.3 of the *Kildare CDP*, "*if land is not within an identified settlement and is not otherwise zoned as part of this Plan, or any Local Area Plan, the use of such land shall be deemed to be primarily agriculture.*" Whilst the majority of the residential dwellings are located on land zoned B, the entirety of the dwellings is not. As such, I consider that the principle of constructing the proposed development is not acceptable, as residential development is currently proposed on unzoned land. I therefore consider that the development as proposed will contribute to the encroachment of rural agricultural land and will militate against the preservation of the rural environment. I note objective HO O46 in the *Kildare CDP* which seeks to promote the agricultural and landscape value of the rural area and to prohibit the

development of urban generated housing in the rural area. Having regard to the design proposed, I consider that the development does not accord with objective HO O46 in the *Kildare CDP*.

7.5. I note however that the Planning Authority sought to address this issue by way of condition no. 2 through the submission of revised drawings. However, the impact of condition no. 2 on the amenities of adjacent properties must be considered. As such, there are a number of other considerations which must be examined, and these are addressed in subsequent sections below.

7.6. **Core Strategy**

7.6.1. I note an observation was submitted to the Planning Authority which raises concern that there is a risk of overdevelopment in Prosperous. The observation outlines that there has been 945 no. houses granted permission, which construction commenced on between 2022 – 2024.

7.7. The report from the Planning Authority identifies that under the Core Strategy of the *Kildare CDP* for Prosperous, c. 13 no. dwellings have been granted permission within the settlement boundary since the adoption of the plan. The report concludes that capacity therefore exists under the current Core Strategy for the proposed development.

7.8. I note that table 2.1 in Volume 2 of the *Kildare CDP*, identifies that the housing target for Prosperous is 91 no. units.

7.9. The National Planning Framework (*NPF*) includes revised National Policy Objectives together with a projected substantial increase in national and regional population and housing demand over and above the figures in the original *NPF* in 2018.

7.10. National Policy Objective 42 in the *NPF* states that it is an objective to target the delivery of housing to accommodate approximately 50,000 additional households per annum in 2040.

7.11. National Policy Objective 3 in the *NPF* envisages that the Eastern and Midland Region where Prosperous is located will have 470,000 additional people between 2022 and 2040 (c. 690,000 additional people over 2016-2040) i.e. a population of almost 3 million.

The proposed development is for the delivery of 2 no. dwellings on a backland site, the majority of which is zoned for residential development. Having regard to National Policy Objectives 3, 7, 9, 42 and 43 in the *NPF*, I consider that the principle of delivering 2 no. dwellings on the zoned portion of the subject site is acceptable and will accord with national policy to provide new homes at locations which can support sustainable development.

7.12. Design

Planning History

7.12.1. I note the concerns raised by the appellant that the application differs to that granted outline permission under **ref. 19/101**. I also note the response from the First Party which identifies that the outline permission does not pertain to the subject application and that the outline permission expired on the 6th February 2024.

7.12.2. I have examined the application form and note under section 3 that the subject appeal is an application for permission. I also note that the site notice does not reference **ref. 19/101**. I am therefore satisfied that the subject application is a standalone application for permission and has clearly been identified as such in the public notices.

Backland Development

7.12.3. The development proposes to construct 2 no. dwellings on a backland site which is accessed off a road from Buttermilk Lane. The side elevation of both dwellings faces the rear elevations and private amenity space of 2 no. dwellings which front onto Buttermilk Lane.

7.12.4. I note the concerns raised in the grounds of appeal that there is no other backland development on Buttermilk Lane and that the positioning of the dwellings does not accord with the existing building line.

7.12.5. However, I note Policy HO P6 in the *Kildare CDP* which supports residential consolidation and sustainable intensification on backland sites. Having regard to the site's location in proximity to Prosperous town centre, I consider the principle of providing housing on the subject backland site, is an appropriate design response, subject to the placing of the dwelling footprints on B zoned land, as discussed above.

Boundary Treatments

7.12.6. I note the concerns raised by the appellant regarding the boundary treatments.

7.12.7. I have examined the boundary treatments, and I note that alongside the western and southern boundary of the house located to the north-east of the site, a 2m high block wall is proposed. This boundary treatment is also proposed along the southern rear boundary of the dwelling to the north-west of the site. It is not proposed however along the eastern side boundary of the dwelling to the north-west of the site. Noting that the wall is proposed along the eastern boundary of the access road, I consider that it should also be provided along the western boundary of the access road. Should the Board consider granting planning permission, I recommend that this is addressed by way of condition, requiring the applicant to submit boundary treatment details for agreement with the Planning Authority.

7.13. Residential and Visual Amenity

7.13.1. The appellant has stated that house type B, which is proposed on the eastern side of the site will impact the privacy of their home and result in overshadowing of their property. The appellant has also raised concern regarding the imposition of condition no. 2 which they state removes the public from commenting on revised drawings which may impact their dwelling. I note the response from the First-Party which states that due to the placement of windows, height and separation distances, that the development will not overlook or overshadow the appellants property.

7.13.2. Furthermore, I note that the Planning Authority considered that the design of the development was acceptable, and that the development would not impact the adjoining residential amenities of properties.

7.13.3. I note that condition no. 2 in the notification of decision requires the submission of a revised Site Layout Plan, floorplans and elevations, to demonstrate that both dwellings are located wholly within the area zoned B: existing residential/ infill. The condition further states that *"this may require a re-design particularly of the dwelling to the western part of the site and a reduction in size of the dwelling to accommodate the development within the zoned land"*. As noted above, this condition was imposed in order to ensure that the footprint of the dwellings was located on the B zoned land. If this condition is not included, the principle of development is not acceptable, as residential development will be proposed on

unzoned land. However, the imposition of this condition does not enable the public or An Bord Pleanála to comment on the revised plans in order to determine how the development impacts the residential and visual amenities of the appellant, adjacent properties or the streetscape. I therefore recommend that this application is refused, as the impact of the development on the residential and visual amenities of adjacent properties, future occupiers of the dwellings or the streetscape cannot be assessed.

7.14. Access

- 7.14.1. An observation submitted to the Planning Authority states that there are discrepancies in the representation of land to be used for the site access. The grounds of appeal also raises concern regarding the relocation of the utility pole which they fear will impact their own sightlines.
- 7.14.2. I note the response from the First-Party which outlines that condition no. 9 requires the developer to submit documentary evidence to the Planning Authority for its written agreement indicating the relocation of the utility pole behind lines of sight. The First-Party further states that public do not typically have a right to public participation in regard to the erection of utility poles as per Section 53 of the Electricity (Supply) Act 1927.
- 7.14.3. I have examined the Site Layout Plan, dated January 2024 which identifies the sightlines at the entrance to the site. The drawing identifies that the sightlines cut across the front garden of the house to the east of the entrance and across a portion of the front garden of the house to the west of the site.
- 7.14.4. The applicant was requested by the Planning Authority at Further Information stage by item 5 (c) to submit proposals to relocate the utility pole to ensure that it does not impede lines of sight. In response to the request, the applicant stated that the utility pole will be relocated outside the turning radius in coordination with the service provider. I note that the Roads Department had no objection to this proposal and recommended that it be addressed by way of condition which would ensure that the relocated utility pole does not impede lines of sight of existing vehicular entrances on the L-6001 local road.

- 7.14.5. Having regard to the positioning of the sight lines at the entrance, I am not satisfied that the relocation of the utility pole is an appropriate design measure to be agreed by way of condition. Such an approach would preclude the public and An Bord Pleanála from commenting on the design. Having regard to the extent of the sight lines required and its relationship with adjacent properties which are not in the ownership of the applicant, I do not consider the conditioning of this detail to be an appropriate solution.
- 7.14.6. Furthermore, I have examined the land required for the entrance and I do not consider there to be any discrepancies in the land required for the site access.
- 7.14.7. The appellants have also raised concern that the dimensions of the paths are not shown on the drawings.
- 7.14.8. The First-Party has responded to the grounds of appeal and stated that the width of the path at the entrance to the site was identified on the site layout plan submitted at Further Information stage to measure 2.4 m. Whilst this detail could be measured off the drawing, I agree with the appellants that this detail has not been identified on the drawing.
- 7.14.9. An observation submitted to the Planning Authority raised concern that street lighting information had not been provided to the Planning Authority. I note that at Further Information stage an Outdoor Lighting Report was submitted which identifies the position of lighting columns along the access road. I am therefore satisfied that street lighting has been taken into consideration in the development.

7.15. Site Services

- 7.15.1. I note the concerns raised in the observations and the grounds of appeal that the pre-connection enquiry form is outdated, that there are discrepancies in the attenuation systems, and that there is concern regarding the drainage, water and sewage connections and flooding.
- 7.15.2. I also note the First-Party's response that the surface water is dealt with through permeable paving for driveways and that rainwater from roofs will drain to an attenuation tank.
- 7.15.3. I note that the Water Services Department in the Planning Authority had no objection to the proposed development subject to 4 no. conditions. I also note that condition

no. 14 was included in the Notification of Decision to Grant Permission which requires the applicant to enter into a Connection Agreement with Uisce Eireann.

7.15.4. The development proposes to connect to the existing 150 mm foul sewer located on the public road. It is also proposed to connect to the existing water main along the public road. A pre-connection enquiry response from Irish Water is included which states that a connection to the Irish Water networks can be facilitated. I note that the pre-connection enquiry response is dated from September 2019. Irish Water were contacted for comments on the subject application by the Planning Authority and no response was received. Whilst I note the period of time which has passed since September 2019, I consider that the Planning Authority's approach to include a condition requiring the applicant to enter into a Connection Agreement with Uisce Eireann is reasonable. Should the Board consider granting planning permission, I recommend that a similar condition is included.

7.15.5. I note the appellants concerns regarding flood risk on the site. I have reviewed the land use zoning map for Prosperous and I note that the site is not located in an area which is identified as a flood risk area. In addition, I note that the Planning Authority did not raise any concerns regarding flood risk on the site. I am therefore satisfied that the site is not in an area which is at risk of flooding.

7.15.6. The development proposes to discharge surface water run-off to an attenuation tank which will ultimately discharge to an existing ditch alongside the public road. Having examined the surface water design and noting the report from the Water Services Department in the Planning Authority, I am satisfied that the surface water design is acceptable. Should the Board consider granting planning permission, I recommend including similar surface water conditions to that imposed by the Planning Authority.

7.16. Other Matters

Ownership

7.16.1. The grounds of appeal raise concern that folio no. KE4057 is in third party ownership and that the application is invalid as the applicant does not have a letter of consent from the third party.

- 7.16.2. I note the response from the First-Party that they are the legal owner of the site. Furthermore, I note that the Planning Authority did not raise any concerns in this regard.
- 7.16.3. I have reviewed the application form, under which section 10 states that the applicant is the legal owner of the site. I have reviewed the Land Direct website, and I note that the site is comprised of 3 no. folios.
- 7.16.4. I appreciate the appellants concerns regarding the legal ownership of the site. I note section 5.13 in the Development Management Guidelines for Planning Authorities (*Development Management Guidelines*) which states the following:
- 7.16.5. *“The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development.”*
- 7.16.6. No information has been presented before me to raise doubt as to whether or not the applicant is the owner of the site. I therefore consider concerns surrounding land ownership to be a civil matter. In accordance with the *Development Management Guidelines*, I consider that the planning system is not designed as a mechanism for resolving disputes about title to land. I also note that in accordance with Section 34(13) of the Planning and Development Act (2000 as amended), a person is not entitled solely by reason of a permission to carry out development.

Existing Infrastructure

- 7.16.7. I note the concerns raised by the appellant regarding the impact of the development on existing infrastructure. The appellant notes that schools in the area are already oversubscribed.
- 7.16.8. The proposed development is for 2 no. dwellings. No evidence has been presented before confirming that the schools are oversubscribed. Having regard to the size of the development, I do not think that it would be reasonable to refuse the application on this basis.

Site Size

7.16.9. The appellants have queried the size of the site. I note the application form identifies the site area as 0.41 ha. In relation to **ref. nos. 19/101** and **21/1277**, I note that the boundaries of the site vary slightly to those proposed in the subject application.

In this instance, I am satisfied that the area identified for the site is correct.

8.0 **AA Screening**

8.1. I have considered the construction of 2 no. dwellings off Buttermilk Lane in light of the requirements S177U of the Planning and Development Act 2000 as amended.

8.2. The subject site is located approximately 1.12 km from Ballynafagh Bog Special Area of Conservation.

8.3. The proposed development comprises the construction of 2 no. dwellings. No nature conservation concerns were raised in the planning appeal.

8.4. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.

8.5. The reason for this conclusion is as follows:

- The nature of works
- The location of the site and its distance from Ballynafagh Bog Special Area of Conservation and lack of connections.
- Taking into account screening report by LPA.

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

8.5.2. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Water Framework Directive

- 9.1. The proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardize any water body in reaching its WFD objectives and consequently can be excluded from further assessment.
- 9.2. I refer the Board to Appendix 2 for my screening assessment.

10.0 Recommendation

- 10.1. I recommend that planning permission should be refused for the reasons and considerations as set out below.

11.0 Reasons and Considerations

1. The proposed development would result in the provision of residential dwellings outside the small town boundary of Prosperous on unzoned land where the use of such land has been deemed to be primarily agriculture. The proposed development would therefore contribute to the encroachment of rural agricultural land and would militate against the preservation of the rural environment. As a result, the development would contravene objective HO O46 in the Kildare County Development Plan 2023 – 2029 which seeks to promote the agricultural and landscape value of the rural area and to prohibit the development of urban generated housing in the rural area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Catherine Hanly
Planning Inspector

29th May 2025

12.0 Appendix 1: Form 1 - EIA Pre-Screening

Case Reference	ABP 322065 - 25
Proposed Development Summary	Construction of 2 no. dwellings and all associated site works.
Development Address	Buttermilk Lane, Curryhills, Prosperous, Co. Kildare
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2. <input type="checkbox"/> No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input checked="" type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	10(b)(i) Construction of more than 500 dwelling units

<input type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994. No Screening required.	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	State the Class and state the relevant threshold
<input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR	The class is 10(b)(i) Construction of more than 500 dwelling units. The development is for the construction of 2 no. dwellings and therefore is sub-threshold.

<p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	
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4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes <input type="checkbox"/>	Screening Determination required (Complete Form 3)
No <input checked="" type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____ **Date:** _____

13.0 Appendix 2: Form 2 - EIA Preliminary Examination

Case Reference	
Proposed Development Summary	Construction of 2 no. dwellings and all associated site works.
Development Address	Buttermilk Lane, Curryhills, Prosperous, Co. Kildare
This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
Characteristics of proposed development (In particular, the size, design, cumulation with existing/ proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	The development involves the construction of 2 no. house on a 0.41 ha site.
Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature	The site is not located in or immediately adjacent to any European site. The closest Natura 2000 site is Ballynafagh Bog Special Area of Conservation which is 1.12 km from the subject site.

reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	Localised construction impacts will be temporary. The proposed development would not give rise to waste, pollution or nuisances beyond what would normally be deemed acceptable.
Conclusion	
Likelihood of Significant Effects	Conclusion in respect of EIA
There is no real likelihood of significant effects on the environment.	EIA is not required.
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	N/A

There is a real likelihood of significant effects on the environment.	N/A
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Inspector: _____ **Date:** _____

DP/ADP: _____ **Date:** _____

(only where Schedule 7A information or EIAR required)

14.0 **Appendix 3: Water Framework Directive Assessment Determination**

Screening the need for Water Framework Directive Assessment Determination.

The subject site is located to the south of Buttermilk Lane, Curryhills, Prosperous in County Kildare. The nearest water body is the Slate River.

The proposed development comprises the construction of 2 no. dwellings, 2 no. garages and all associated site works.

No water deterioration concerns were raised in the planning appeal.

I have assessed the development proposed at the Buttermilk Lane site and I have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface & ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively.

The reason for this conclusion is as follows:

- The nature of the development
- The site is located approximately 0.247 km from Slate River and there is a lack of a hydrological connection.

Conclusion

I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardize any water body in reaching its WFD objectives and consequently can be excluded from further assessment.