



An
Bord
Pleanála

Planning Appeal Form

Your details

1. Appellant's details (person making the appeal)

Your full details:

(a) Name

David Souhan, James Souhan, Denise Souhan
and Yvonne Souhan

(b) Address

5 The Watercourse, Templeogue, Dublin 6W

AN BORD PLEANÁLA

LDG- 047 125-22

ABP- _____

11 JAN 2022

Fee: € 220 Type: Cheque

Time: _____ By: Post

Agent's details

2. Agent's details (if applicable)

If an agent is acting for you, please also provide their details below. If you are not using an agent, please write "Not applicable" below.

(a) Agent's name

James Hogan (Hogan Architects)

(b) Agent's address

9 Millmount Avenue, Drumcondra, Dublin 9

Postal address for letters

3. During the appeal we will post information and items to you or to your agent. For this appeal, who should we write to? (Please tick ✓ one box only.)

You (the appellant) at the address in Part 1

The agent at the address in Part 2

Details about the proposed development

4. Please provide details about the planning authority decision you wish to appeal. If you want, you can include a copy of the planning authority's decision as the appeal details.

(a) **Planning authority**

(for example: Ballytown City Council)

South Dublin County Council

(b) **Planning authority register reference number**

(for example: 18/0123)

SD21A/0293

(c) **Location of proposed development**

(for example: 1 Main Street, Baile Fearainn, Co Ballytown)

Vacant garden plot adjacent to 36, Montpellier View, Dublin 24

Appeal details

5. Please describe the grounds of your appeal (planning reasons and arguments). You can type or write them in the space below or you can attach them separately.

Please refer to the following attachments:

- Cover Letter
- Notification of Decision to Refuse Permission.
- Record of Executive Business and Chief Executive's Order

Supporting material

6. If you wish you can include supporting materials with your appeal.

Supporting materials include:

- photographs,
- plans,
- surveys,
- drawings,
- digital videos or DVDs,
- technical guidance, or
- other supporting materials.

Acknowledgement from planning authority (third party appeals)

7. If you are making a third party appeal, you **must** include the acknowledgment document that the planning authority gave to you to confirm you made a submission to it.

Fee

8. You **must** make sure that the correct fee is included with your appeal. You can find out the correct fee to include in our Fees and Charges Guide on our website.

Oral hearing request

9. If you wish to request the Board to hold an oral hearing on your appeal, please tick the "yes, I wish to request an oral hearing" box below.

Please note you will have to pay an **additional non-refundable fee** of €50. You can find information on how to make this request on our website or by contacting us.

If you do not wish to request an oral hearing, please tick the "No, I do not wish to request an oral hearing" box.

Yes, I wish to request an oral hearing

No, I do not wish to request an oral hearing

NALA has awarded this document its Plain English Mark.

Last updated: April 2019.



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The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1,
D01 V902

04.01.2022

RE: South Dublin County Council (SDCC) Planning Application SD21A/0293 (Permission Refused on the 13th of December, 2021)

Dear Secretary,

On behalf of my client's; David, James, Denise and Yvonne Souhan, and in my capacity as their Architect and agent, I have been instructed to submit a **First Party** appeal against South Dublin County Council's decision to refuse permission for application **SD21A/0293**. The date of decision to refuse permission is the 13th of December 2021.

The appeal is made on the grounds that the *Record of Executive Business and Chief Executive's Order*, which informed the reasons outlined in the decision to refuse, contains inaccurate, misleading and fallacious statements, with particular reference to (but not limited to) the assessment of the proposal under the headings of:

1. Residential and Visual Amenity
2. External Development
3. Internal Accommodation
4. Private Open Space

It is my view that the application has been hastily, and unfairly appraised without any regard for context, precedent or the good faith in which the application was made. No requests for Further Information were made by SDCC in order to clarify some of the erroneous assumptions/interpretations that have been made in the *Record of Executive Business and Chief Executive's Order* and items that can, and should, routinely be dealt with as 'conditions' within a *Grant of Permission* have instead been used as justifications to refuse permission.

The reasons outlined by South Dublin County Council, as justification for the decision to refuse permission, are discussed below in the order in which they appear in the refusal.

REASON 1.

"The private open space provided for the proposed house and the existing dwelling, No. 36, does not comply with the minimum private open space requirements as set out in Section 11.3.1 (iv) Dwelling Standards of

hoganarchitects
James Hogan - Principal
BSc.Arch, B.Arch, MRIAI

the SDCC Development Plan 2016-2022 (Table 11.20: Minimum Space Standards for Houses). To Comply a three bedroom house should have a minimum of 60sq.m of adequate private open space. The proposed house would have 46sq.m and the existing dwelling would be left with 29sq.m. Thus, the proposed development constitutes overdevelopment of the site and would contravene the zoning objective 'to protect and or improve the residential amenity of the area' and would be contrary to the proper planning and sustainable development of the area."

Concerns surrounding the reduction of the garden to No. 36 are irrelevant to the main body of the application; any property owner is entitled, under Exempted Development rights, to reduce their rear garden to 25sqm without the requirement to engage in the planning process. Exempt Development Rights supersede Development Plans. As the remaining rear garden to No. 36 will retain 29sqm of area, the observation should, therefore, fall outside the scope of SDCC's appraisal of the application. If this condition was to remain unchallenged it would set a terrible precedent for homeowners (of 3 bed dwellings) who wish to extend their privately owned dwellings, under their Exempted Development Rights, in any situation that resulted in a reduction of the rear garden area below the 60sqm area stated within the development plan. This is legally unworkable and blatantly obtuse in its attempted application. This should not be accepted as grounds to refuse permission.

SDCC's claim that the *proposed* dwelling fails to achieve the 60sqm minimum provision of private open space for a 3 bed house, asserting instead that only 46sqm has been achieved. It is evident from a rudimentary exercise that SDCC's calculations have been based on the area of private open space that falls behind the *rear* line of the house. The terminology used within the development plan itself, on page 205, states clearly that this measurement should be taken from '*behind the front building line*', not the rear building line. When calculated using the definitions outlined within the development plan, the private open space achieves an area of approx. 82.5sqm, with an additional area of open space to the front of the house achieving approx. 18sqm. This should not be accepted as grounds to refuse permission.

Furthermore, regardless of the incorrect calculation method adopted by SDCC, it should be noted that the vast majority of the properties across the entire existing development fall well below this 60sqm standard, being comprised entirely, as it is, of terraced dwellings. No appreciation of context or parity of precedent has been accounted for; this statement is made irrespective of the 82.5sqm of private amenity space achieved for the proposal and is included as evidence of the closed minded and fallacious manner in which the application has been appraised.

REASON 2.

"Having regard to the scale and layout of the proposed development on a constrained site, the proximity and configuration of neighbouring properties within Montpellier View, the proposed development would represent an overdevelopment of the subject site, would have an overbearing impact, give rise to overshadowing and have an adverse impact on the visual and residential amenity of properties in the immediate vicinity. Furthermore, the proposed development, being some 10m from the rear of dwellings to the West would give rise to unacceptable levels of overlooking and fall significantly short of the 22m required. The proposed development would seriously injure the amenities of property in the vicinity and would contravene the 'RES' zoning objective which seeks to 'protect and/or improve residential amenity' and would therefore not be in accordance with the proper planning and sustainable development of the area"

With regard to the distance of the proposed dwellings's first floor habitable room to that of the first floor habitable room of the opposing dwelling, it should be noted that the dwellings are orientated at an oblique angle to each other and are not parallel elevations, offset as they are by 42 degrees. It should also be noted that this is identical to the relationship that currently exists between No. 36 and No. 38 to the West. It should further be noted that the '10m distance' quoted by SDCC is incorrect with a measurement in excess of 13m achieved between the south/west corner of the proposed dwelling and the south/east corner of No. 37; an identical dimension to the respective relationships between No. 36 and No. 38.

Whilst the adjacent, identical precedent and the 42 degree angle of separation could, alone, merit an acceptable equivalence to the 22m rule, it should be stated that this rule is relevant to opposing *windows*

only and does not apply to opposing elevations in a carte blanche manner. With this in mind, the applicant is, and would be, open to a condition within any Grant of Permission which would limit visibility from the window in question via screening, fins, obscured glazing or similar. Furthermore, as the window in question is a secondary window only, the applicant would even be open to a condition that omitted the West facing bedroom window entirely. This would retain the North facing window which looks out across the road only, thus discharging any potential 'overlooking' concerns that SDCC may have in relation to the scheme. Unfortunately no consideration was given to these options in the form of a Further Information Request or a Conditioned Approval and the application was dismissed, out of hand. This statement is made irrespective of the mitigating circumstances outlined above and is included here only as *further* evidence of the closed minded and fallacious manner in which the application has been appraised. In light of the above this should not be accepted as grounds to refuse permission.

With regards to the assertion that the proposal would constitute overdevelopment on a constrained site, it should be noted that the proposed scheme has a plot ratio of 0.5 which cannot be considered overdevelopment on a private residential site. This should not be accepted as grounds to refuse permission.

With regards to the assertion that the proposal would give rise to overshadowing, this is demonstrably unfounded. This comment is so ill considered that it appears to simply be a copy and paste of generic text with the conditions. Absolutely no attempt to ground this statement in fact has been made, and with good reason as it is entirely untenable. SDCC's appraisal of the site takes no account for the rudimentary principles of orientation and sun path trajectories. All properties within the block of the development enjoy an unobstructed Southern corridor of sunlight, as is clearly evident from all plans and maps submitted within the application. The proposed dwelling is situated at the northern end of a terrace and can therefore, even at the most rudimentary level, cause overshadowing issues for its own plot (to the North). *Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice*, states if an open space receives at least 2 hours of sunlight over 50% of its area on March 21st, it will appear adequately sunlit. This requirement would be in no way compromised, for any of the adjoining properties, by the proposed dwelling, and it is astounding that it has been included as grounds for refusal within the decision.

REASON 3.

"The proposed dwelling does not conform with the minimum target space requirements of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009) or the South Dublin County Development Plan 2016-2022. The house would not provide adequate accommodation to serve the needs of future residents and would therefore not be in the interests of proper planning and sustainable development of the area."

The *Record of Executive Business and Chief Executive's Order* claims that the proposed 3 bed dwelling falls short of the 92sqm requirement, instead asserting that the building achieves just 87sqm of gross floor area. This is incorrect. SDCC do not articulate the methods they employed arrive at such a figure, presumably by manually scaling off printed drawings, however, I can confirm that the proposal was designed and measured using the most up-to date, market leading CAD software and the Gross Internal Floor Area is, irrefutably, 92.353 sqm. There is no mechanism, that I'm aware of, within the appeal process, to pass digital DWG or DFX files to An Bord Pleanála, but they are available for inspection should they be required to clarify the floor areas. All other area claims within the *Record of Executive Business and Chief Executive's Order* should be disregarded as they are miscalculated by similar margins to that of the error in the overall floor area calculation, to the extent that it borders on incompetence.

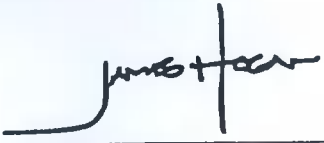
I can give some credence to the comments relating to 'hot-presses' being disregarded in the calculation of requisite storage space, however, the advancement of combination boilers has dispensed of the requirement for water cylinders in properties of this scale and as such hot presses can now be considered as storage space within the calculation. The attached drawing highlights that the combined storage space available meets the 5sqm requirement and far exceeds the paltry 1.7sqm erroneously asserted within the *Record of Executive Business and Chief Executive's Order*. Furthermore, in addition to this, the entirety of the attic space can be made available for storage. None of the above should be accepted as grounds to refuse permission.

CONCLUSION

The manner in which this application has been appraised by SDCC is of great concern, with particular regard to the inaccuracies and miss truths stated within the *Record of Executive Business and Chief Executive's Order*, many of which have only briefly been touched upon in discussing the three principal reasons given for refusal within the decision notice. It should be noted that this proposal aims to add affordable housing options to an area where the supply of same is falling well short of requirements. The applicants intend to hand the house over to the SDCC HAP housing scheme. The current vacant plot site is a constant target of antisocial behaviour and this development would hope to reduce this issue by occupying the site with a new affordable dwelling and by extending the passive surveillance within the overall development.

I trust that An Bord Pleanála will give due consideration to the points raised above and to the supporting documentation as it appraises the appeal.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'James Hogan', written over a horizontal line.

James Hogan
BSc.Arch, B.Arch, MRIAI