



An  
Bord  
Pleanála

## Inspector's Report ABP-300336-17

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| <b>Development</b>                  | House, vehicular entrance, car parking and associated works. |
| <b>Location</b>                     | 50 Springvale, Rathfarnham, Dublin 16.                       |
| <b>Planning Authority</b>           | South Dublin County Council.                                 |
| <b>Planning Authority Reg. Ref.</b> | SD17A/0320.  |
| <b>Applicant(s)</b>                 | Skyscape Property Holdings Ltd.                              |
| <b>Type of Application</b>          | Permission.  |
| <b>Planning Authority Decision</b>  | Refuse Permission.   |
| <b>Type of Appeal</b>               | First Party vs. Refusal                                      |
| <b>Appellant(s)</b>                 | Skyscape Property Holdings Ltd.                              |
| <b>Observer(s)</b>                  | None.  |
| <b>Date of Site Inspection</b>      | 16 <sup>th</sup> February 2018.                              |
| <b>Inspector</b>                    | Susan McHugh.  |

## 1.0 Site Location and Description

- 1.1. The appeal site is located in the Springvale residential area which is located to the west side of Edmonstown Road just south of Ballyboden. The area is characterised by well established, medium density, two storey terraced and semi-detached suburban type housing.
- 1.2. Vehicular access is provided from Edmonstown Road via Springvale. There is a significant level difference as one enters the estate. A row of semi-detached houses along Springvale are located to the east of the appeal site. These houses are located at a lower level relative to the appeal site with rear gardens defined by a tall retaining wall. A large area of centrally located public open space is located to the north of the appeal site, and it too is defined by a retaining wall along its eastern boundary with the residential properties to the east.
- 1.3. The houses within the estate are characterised by double bay windows with red brick and tile finish and canopy over the entrance door. The roof profiles are pitched and finished in a brown roof tile.
- 1.4. The appeal site, no. 50 Springvale, is located at a bend along the road on the southern side. It has a stated area of 0.0773ha. The existing house is the end of a terrace of three and includes a side and rear garden which is level with the house.
- 1.5. The eastern part of the site is separated from the side garden by a retaining wall and a concrete post and timber fence is located at a lower level than the existing house. This low level area is accessed via steps located just inside the driveway. This area, including the access steps, is overgrown with briars and not currently in use as a garden. It is defined to the east by a retaining wall which backs onto the rear of houses no. 1 to 7 Springvale.
- 1.6. The southern rear boundary and western side boundary with no. 51 boundary is defined by timber post and concrete fencing.
- 1.7. There is an existing front driveway to the existing house.

## 2.0 Proposed Development

- 2.1. Permission is sought for the subdivision of the existing site and construction of a two storey detached house adjoining the existing house no. 50. The proposal includes three bedrooms at first floor with an adaptable bedroom/reception room at ground floor. The house is stated as being 127sq.m. in area.
- 2.2. It is also proposed to set back the existing front boundary thereby creating a common entrance area, with a new driveway to serve the proposed house.
- 2.3. It is also proposed to provide a new retaining wall with stone cladding to match existing.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to refuse permission for the following reasons:

1. *The proposed dwelling, by virtue of the design which in comparison to the dwelling permitted under SD09A/0184 breaks the rear building line and encroaches farther east on the site towards dwellings to the east will result in significant overshadowing of the adjoining properties to the east. The proposed development would also be unduly overbearing, in particular when viewed from the dwellings to the east, and would therefore seriously injure the residential amenities or depreciate the value of property in the vicinity. The proposed development is contrary to Section 11.3.2 (ii) of the South Dublin County Development Plan (2016-2022) and therefore materially contravenes the Development Plan and would be contrary to the proper planning and sustainable development of the area.*
2. *The private amenity space to service the proposed dwelling does not comply with the minimum requirements of table 11.20 of the South Dublin County Development Plan 2016-2022 which requires 70 sq.m of private open space for a 4 bedroom dwelling. The proposed dwelling would therefore be seriously injurious to the residential amenity of future occupants of the proposed dwelling. The proposed development materially contravenes the*

*Development Plan of South Dublin County Development Plan (2016-2022) and would be contrary to the proper planning and sustainable development of the area.*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Report (dated 31<sup>st</sup> October 2017)**

Basis for planning authority decision.

Include:

Reference to;

- Internal floor areas comply with provisions of the Quality Housing for Sustainable Communities-Best Practice Guidelines (DOEHLG 2007).
- Private amenity space to serve the proposed dwelling does not meet the minimum private amenity standards as set out in table 11.20 of the South Dublin County Development Plan 2016-2022.
- Dwelling permitted under SD09A/0184 was a semi-detached dwelling which had a rear building line and dwelling height the same as the existing. The proposed dwelling detached, has a greater depth, in the form of a single storey extension and encroaches further to the east of the site than that previously permitted. Reference to Section 11.3.2(ii) – Development on corner and/or side garden sites.
- Overall scale and location of the proposed development would have an unacceptable overbearing and over shadowing impact on the dwellings to the east.
- Notes the proposed development addresses the issue of ridge height, however, issues relating to type of dwelling (i.e. detached versus semi-detached) location and overall scale have not been addressed, and therefore, the previous reasons for refusal have not been overcome.

#### **3.2.2. Other Technical Reports**

The application was referred to:

**Roads Department:** no objection subject to standard conditions.

**Water Services:** no objections subject to standard conditions.

**Parks and Landscape Services:** no reply.

### 3.3. Prescribed Bodies

**Irish Water:** no objection subject to standard conditions.

### 3.4. Third Party Observations

Submissions were lodged by the residents of No. 1-4 Springvale. The issues raised can be summarised as follows;

- Overall scale and location of the proposed development would be overbearing and result in overshadowing of properties to the east.
- Note the height of the appeal site above existing dwellings, and concern in relation to subsidence and devaluation of these properties.
- Contrary to policies and objectives of the South Dublin County Development Plan 2016-2022.

## 4.0 Planning History

**P.A. Reg. Ref. SD17A/0182:** Permission **refused** in July 2017 for the construction of a two storey detached dwelling by reason of its design, which compared to SD09A/0184 breaks the building line to the rear, has a taller ridge height and encroaches farther east and would result in significant overshadowing and would be unduly overbearing particularly when viewed from the dwellings to the east.

(File not available at the time of writing; relevant drawings downloaded from the planning authority website are provided in pouch attached).

**P.A. Reg. Ref. SD09A/0184:** Permission **granted** in December 2009 for the construction of a two storey terraced dwelling. This permission was not implemented.

(File not available at the time of writing; relevant drawings downloaded from the planning authority website are provided in pouch attached).

**P.A. Reg. Ref. SD08A/0367:** Permission **refused** in July 2008 for the construction of a split level 2/3 storey detached dwelling by reason of its split level design, proximity to site boundary, orientation which would result in significant overshadowing and would be unduly overbearing particularly when viewed from the dwellings to the east.

## 5.0 Policy Context

### 5.1. South Dublin Development Plan 2016 - 2022

- 5.1.1. Under the County Development Plan 2016-2022, the site is zoned – ‘**RES: To protect and/or improve residential amenity**’.
- 5.1.2. Section 2.4.0 of the Development Plan considers *Residential Consolidation – Infill, Backland, Subdivision and Corner sites*.
- 5.1.3. **Housing Policy 17** states that “*It is the policy of the Council to support residential consolidation and sustainable intensification at appropriate locations, to support ongoing viability or social and physical infrastructure and services and meet the future housing needs of the County*”.
- 5.1.4. **H17 Objective 2** states ‘*To maintain and consolidate the County’s existing housing stock through the consideration of applications for housing subdivision, backland development and infill development on large sites in established areas, subject to appropriate safeguards and standards identified in Chapter 11 implementation.*’
- 5.1.5. **H17 Objective 3** states “*To favourably consider proposals for the development of corner or wide garden sites within the curtilage of existing houses in established residential areas, subject to appropriate safeguards and standards identified in Chapter 11 Implementation*”.
- 5.1.6. **H17 Objective 5** states ‘*To ensure that new development in established areas does not impact negatively on the amenities or character of the area*’.
- 5.1.7. Section 11.3.2(i) specifically refers to Infill Development. It states (inter alia):  
*Development on infill sites should meet the following criteria: Be guided by the Sustainable Residential Development in Urban Areas – Guidelines for Planning*

*Authorities DEHLG, 2009 and the companion Urban Design Manual; A site analysis that addresses the scale, siting and layout of new development taking account of the local context should accompany all proposals for infill development. On smaller sites of approximately 0.5 hectares or less a degree of architectural integration with the surrounding built form will be required, through density, features such as roof forms, fenestration patterns and materials and finishes. Larger site features, such as boundary treatments, pillars, gateways and vegetation should be retained, in so far as possible, but not to the detriment or providing an active interface with the street.*

- 5.1.8. Section 11.3.2(ii) specifically refers to development on corner and/or side garden sites, it states that proposals should meet the criteria for infill development in addition to the following criteria: *Corner/Side Garden sites should be of sufficient size and an appropriate set back should be maintained from adjacent dwellings; be designed and sited to match the building line and respond to the roof profile of adjoining dwellings; architectural language of the development (including boundary treatments) should respond to the character of adjacent dwellings and create a sense of harmony; contemporary and innovative proposals are encouraged and corner sites should provide a dual frontage in order to avoid blank facades and maximise surveillance of the public domain.*

## 5.2. **Natural Heritage Designations**

There are no designated European sites within the vicinity.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The first party appeal is lodged by AKM Design on behalf of the applicant. The main grounds can be summarised as follows:

Refusal Reason No. 1.

- The potential impact of the proposed development on residential amenity has been overstated and exaggerated by the planning authority.

- Considers that the visual impact of the proposed development is acceptable; the scale of the proposed dwelling respects adjoining residential development and there are dwellings in the estate laid out in an identical way, e.g. refers to no. 29 and no. 34 Springvale.
- Site is large enough and has the capacity to absorb another dwelling; the proposed dwelling is well set back from the existing dwellings and from the street in line with existing dwellings. The proposed overall height, shape, scale and massing is very similar to the dwelling permitted under P.A. Reg. Ref. SD09A/0184.
- In terms of overshadowing, the shadow path of the proposed dwelling will largely fall within the subject site and will not impact on the residential amenity of adjoining properties. Invites the Bord to review the separation distance from the proposed dwelling to the existing dwelling, and notes the proposed dwelling is set in line with the existing building line.

#### Reason for Refusal No. 2

- The overall site has a total area of 773 sq.m, with a site coverage of 14% and a plot ratio which is very low.
- There are two distinct garden levels, a lower garden and an upper garden serving the proposed dwelling. The area of private open space far exceeds the minimum requirement of 70sq.m. The area of open space to the rear of the front building line of the proposed dwelling is 195sq.m.

#### Planning History - Dwelling granted under P.A. Reg. Ref. SD09A/0184

- Asks that the Board to agree that the proposed dwelling can be used as a three or four bedroom dwelling if so required by the applicant. Consider that the planning authority have taken a 'rigid' view of the proposal and that it is totally in compliance with the South Dublin Development Plan. Consider that the planning authority placed too much weight on the decision to refuse permission rather than on the decision to grant permission under P.A. Reg. Ref. SD09A/0184.

#### Compliance with Planning Policy



- The proposal is in compliance with the zoning objective for the site, relevant policies in the development plan and the standards set out in the Quality Housing for Sustainable Communities Guidelines (2007).

#### Planning Precedent

- Precedent already exists within Springvale for a similar arrangement of dwellings between house no. 29 and n. 34.

### 6.2. **Planning Authority Response**

Confirms decision – reference to planners' report.

### 6.3. **Observations**

None received.

## 7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Appropriate Assessment also needs to be considered. The issues are addressed under the following headings.

- Principle of Development
- Design
- Residential Amenity
- Private Amenity Space
- Precedent
- Material Contravention
- Appropriate Assessment

### 7.2. **Principle of Development**

- 7.2.1. The principle of development is already established under a previous permission, which was granted in 2009 under P.A. Reg. Ref. SD09A/0184. This permission was never implemented, and has long since expired. A more recent application in 2017 for a detached two storey house was considered acceptable in principle, but was refused by the planning authority. The current proposal seeks to address the previous reasons for refusal under P.A. Reg. Ref. SD17A/0182.
- 7.2.2. The site is located within an area zoned 'RES: To protect and/or improve residential amenity' in the South Dublin County Development Plan 2016-2022. Planning policy supports development of dwellings on corner/side gardens, subject to appropriate safeguards and standards.
- 7.2.3. I am satisfied that the proposal is acceptable in principle.

### 7.3. Design

- 7.3.1. The applicant contends that the design of the detached two storey dwelling proposed is visually similar in appearance to the existing dwellings, and that there is very little difference in design to that permitted under P.A. Reg. Ref. SD09A/0184.
- 7.3.2. The design of the proposed house provides for a detached house, which is located 1.1m from the gable of house no. 50. The design of the house permitted under P.A. Reg. Ref. SD09A/0184 provided for an end of terrace house which was almost an exact replica of the existing houses and formed a terrace of four. The permitted house was slightly wider in its footprint resulting in a floor area of 127sqm compared to the existing dwelling on site which has a floor area of 104sqm.
- 7.3.3. The current proposal provides for a three bedroom house with an adaptable bedroom/reception room at ground floor and has a floor area of 127sqm. The ridge height of the pitched roof is in line with the adjoining house. The proposed house is in line with the established building line to the front and rear. It includes a single storey flat roofed element which projects 2.2m from the rear building line and has a height of 3.2m. Finishes are to include selected brick to match existing and selected roof tiles.
- 7.3.4. I note that there are minor differences between the proposed house and the existing houses in relation to the width of the overall house, which is marginally longer at

11.5m than the existing houses of 10.9m, the width of the projecting bay, absence of red tiles on the front elevation, and a chimney. However, I consider that the design of the proposed house is substantially similar to the adjoining houses, and contiguous elevations submitted with the application demonstrate this. I consider that the proposed development will not detract from the visual amenity of the area.

7.3.5. Given the detached nature of the house, it is now located 1.1m closer to the eastern boundary of the site and consequently closer to the existing dwellings to the east. I consider that with a separation distance of 16.5m between the gable of the proposed house and the rear elevations of adjoining properties to the east, that there will be no material difference in relation to overshadowing. The impact of the proposed development on the residential amenity of these properties is discussed in section 7.4 below.

7.3.6. I have also had regard to the application and decision to refuse permission by the planning authority under P.A. Reg. Ref. SD17A/0182. The proposed two storey detached house had a floor area of 157sqm, and included a pitched roof profile with a ridge height of 8.6m, 0.5m above the ridge height of the adjoining dwelling. The bay windows and entrance door arrangement did not follow the existing rhythm of the adjoining terrace. In particular, the pitched roof element above the double bay windows was at a steeper angle and did not integrate with the adjoining terrace successfully. I am satisfied that the current proposal which has been reduced in overall scale and height and designed to be more in keeping with the adjoining terrace has overcome the previous reasons for refusal.

7.3.7. I am satisfied that the scale and design of the proposed house is acceptable, and that the proposed development should not be refused on the basis of design.

#### **7.4. Residential Amenity**

7.4.1. Having regard to the Guidelines for Sustainable Residential Development and the provisions of the current development plan the acceptability or otherwise of the proposed development will be subject to the need to attain a balance between the reasonable protection of the amenities and privacy of adjoining property and the need to provide additional residential development at this location. I propose to address such matters in the following sections.

- 7.4.2. Reason for refusal no. 1 refers to significant overshadowing of the adjoining properties to the east and that the proposed development would be unduly overbearing in particular when viewed from adjoining properties to the east.
- 7.4.3. I would note that the third party submission lodged with the application was signed by the residents of No. 1- 4 Springvale. In my opinion the houses directly affected by the proposed development are no. 2 and 3 Springvale, as the rear gardens of these properties are in line with the gable of the proposed house.
- 7.4.4. As already noted above a separation distance of 16.5m is provided between the gable of the proposed house and the rear elevations of adjoining properties to the east. In my opinion the proposed house which is located to the west of these properties will not give rise to overshadowing in excess of the existing arrangement on site. I visited the site mid-morning in mid-February, and observed that the rear gardens of house no. 2 and 3 were already in shade. This is largely due to the existing retaining wall which dominates the view from the rear garden of these properties.
- 7.4.5. There is no doubt that the level difference between the rear gardens of house no. 2 and 3 and the appeal site is significant. Contiguous elevations submitted with the application indicate a level difference in the order of 5m such that existing site levels are at a similar level to the eaves height of these houses. Be that as it may, I am not entirely convinced that the proposed development would be unduly overbearing given the separation distances and location to the west of these properties.
- 7.4.6. I also note that in order to facilitate the proposed house it is proposed to construct a new retaining wall which is to be finished in stone cladding to match existing. The existing boundary fence on site is located approx. 17m from the rear elevation of the properties along Springvale to the east while the new retaining wall will be located approx. 15m distance from these properties. This is considered acceptable and provides an opportunity for the existing low level area of open space to be more usable and perhaps planted. While no details of planting were submitted with the application, I am of the opinion that this could be dealt with by way of condition. I consider that these works will not have a significant negative impact on the existing properties to the east.

7.4.7. I am satisfied that the proposed development will not give rise to significant overshadowing or result in an overbearing impact, and would not therefore be seriously injurious to the residential amenities of adjoining properties to the east.

#### 7.5. **Private Amenity Space**

7.5.1. The second reason for refusal refers to the provision of private amenity space to serve the proposed dwelling and which is considered not to meet the minimum requirements set out in the Development Plan.

7.5.2. The open space requirement has been calculated by the planning authority on the basis of a four-bedroom house which in line with Table 11.2 of the County Development Plan requires 70sqm.

7.5.3. As already noted in section 7.3 above the current proposal provides for a three-bedroom house with an adaptable bedroom/reception room at ground floor. The open space requirement for a three-bedroom house is 60sqm.

7.6. It is proposed to provide private amenity space to the rear and side of the proposed dwelling. The planning authority calculated the area of private open space to the rear only not including the side passage areas as 53.6sqm. I would also note that the private amenity space serving the existing house no. 50 will be approx. 65 sqm.

7.7. I consider it reasonable to assess the proposed house as a three-bedroom house, assuming that the ground floor room to the front is more likely to be used as a reception room typical of these houses. I consider therefore that the shortfall in private open space provision is acceptable in this instance, given the south facing orientation of the rear garden, the large area of open space to the side albeit at a lower level, and the proximity of an area of public open space immediately adjoining the site to the north.

7.8. I am satisfied that the shortfall in private open space on this corner site is acceptable, and does not warrant a reason for refusal.

## 7.9. Precedent

- 7.9.1. The applicant considers that there is planning precedent for this type of development and that the proposal is in keeping with the character of development in the area.
- 7.9.2. In this regard the applicant has cited the layout of existing dwellings no. 29 and no. 34 Springvale which have a similar separation distance of 16 metres.
- 7.9.3. I have had regard to these properties which the applicant claims have a virtually identical layout to the proposed development. I note that the relationship is fundamentally different to the proposed development with respect to site levels as both houses are level with each other and secondly the gable elevation of house no. 29 faces onto the front garden of house no. 34 and not the rear garden as is the case in the current appeal.
- 7.9.4. While each application is considered on its own merits, I am satisfied that there is no other similar arrangement within the estate. Notwithstanding this I do not consider that the proposed development would result in a negative precedent.

## 7.10. Material Contravention

- 7.10.1. The decision of the Planning Authority states that the development (if permitted) would materially contravene policies set out under Section 11.3.2 (ii) (Corner/Side Garden Sites) and Table 11.20 (Minimum Space Standards for Houses) of the South Dublin County Development Plan 2016-2022.
- 7.10.2. In this context, if the Board are minded to grant permission for the proposed development, Section 37(2) of the Planning and Development Act 2000 must be considered. Section 37(2) requires that if the Planning Authority have decided to refuse permission on the grounds that a proposed development materially contravenes the Development Plan, the Board may only grant permission in certain circumstances. However, I do not share the view of the Planning Authority that the development would materially contravene the development plan for the area. The policies referenced in the reasons for refusal are general policies rather than policies which specifically relate to the appeal site. In addition, the site is zoned RES – ‘To protect and/or improve residential amenity’ and the proposal would not materially contravene this zoning objective. Accordingly, I do not consider that the proposed

development, if permitted, would materially contravene the applicable development plan and Section 37(2) of the Act requires no further consideration.

#### **7.11. Appropriate Assessment**

Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **8.0 Recommendation**

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

### **9.0 Reasons and Considerations**

Having regard to the location of the site on residentially zoned lands and to the compliance with the development standards for residential development in the South Dublin County Development Plan 2016-2022, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **10.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. Details of the materials, colours and textures of all external finishes to the proposed dwelling and boundary treatment shall be submitted to, and agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

3. The proposed dwelling shall be occupied as a single dwelling unit and shall not be sub-divided or used for any commercial purposes.

**Reason:** To restrict the use of the dwelling in the interest of residential amenity.

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

**Reason:** In the interest of public health.

5. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, detail shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of residential and visual amenity.

6. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground.

**Reason:** In the interests of visual and residential amenity.

7. 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, include hours of working, noise management measures and off-site disposal of construction/demolition waste.



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

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the planning 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.

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Susan McHugh  
Planning Inspectorate

26<sup>th</sup> February 2018