

Comhairle Chontae Atha Cliath Theas

PR/1540/21

Record of Executive Business and Chief Executive's Order

Reg. Reference: SD15A/0105/EP **Application Date:** 05-Oct-2021
Submission Type: New Application **Registration Date:** 05-Oct-2021

Correspondence Name and Address: Rhatigan Architects City Gate, Sligo, F91 TX2D

Proposed Development: (1) a new access roadway into the site from Cloverhill Road; (2) a new single-storey changing facility for Ballyfermot Utd. Sports & Social Club including new vehicular and pedestrian access gates to the club grounds from the new access road and parking for 37 cars and 2 buses and (3) residential development of 43 2-storey dwellings including 44 car spaces and comprising 4 Type A 3-bedroom semi-detached houses, 19 Type B 3-bedroom terraced houses, 16 Type C 3-bedroom terraced houses and 4 Type D 2-bedroom terraced houses. The proposed development also includes all associated landscaping, site development and infrastructural works.

Location: Cloverhill Road, Dublin 22

Applicant Name: Pathway Homes Ltd.

Application Type: Extension Of Duration Of Permission

(CM)

Description of Site and Surroundings:

Site Area: 1.6 Ha.

Site Description:

The subject site is located between Cloverhill Road (to the east) and the M50 motorway (to the west), and is also adjacent to established residential development to the north, and sports pitches to the south. The site is currently an active construction site.

Proposal:

Proposal is **to extend the duration of permission for permission SD15A/0105 (ABP Ref. LV06S.LV3280)**, which is a permitted development for the following:

- (1) a new access roadway into the site from Cloverhill Road;
- (2) a new single-storey changing facility for Ballyfermot Utd. Sports & Social Club including new vehicular and pedestrian access gates to the club grounds from the new access road and parking for 37 cars and 2 buses and

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(3) residential development of 43 2-storey dwellings including 44 car spaces and comprising 4 Type A 3-bedroom semi-detached houses, 19 Type B 3-bedroom terraced houses, 16 Type C 3-bedroom terraced houses and 4 Type D 2-bedroom terraced houses. The proposed development also includes all associated landscaping, site development and infrastructural works.

Proposal for Extension of Duration of Permission

The applicant is seeking an 11-month extension to 3rd October 2022.

Relevant Dates

The final grant of permission for SD15A/0105 was 25th July 2016. Taking into account 9 days for each intervening Christmas period, the application would have been due to expire on 8th September 2021. Under S.254A of the Act, 56 days of this period are to be disregarded in the calculation of its length, corresponding to the length of the pandemic emergency measures undertaken in 2020. This effectively extends the effective period of that permission to 3rd November 2021.

The application for extension of duration was received on 30th August 2021. This is within the appropriate time period for lodging an application for extension of permission.

Zoning:

The site is subject to zoning objective - 'RES' – "To protect and/or improve residential amenity" under the South Dublin County Development Plan 2016 – 2022.

Consultations

None received.

Relevant Planning History

SD02A/0338 at Ballyfermot United Sports & Social Club, Sports Field, On Cloverhill Road, , Clondalkin, Dublin 22

Application **withdrawn** for South New entrance and perimeter wall, car and bus park, perimeter fence and floodlighting to 3 all-weather pitches and retention of existing structures on site.

SD03A/0049 at Sports field on, Cloverhill Road, Clondalkin, Dublin 22

Permission **granted** by South Dublin County Council for new entrance and perimeter wall, car and bus park, perimeter fence and floodlighting to 3 all-weather pitches.

SD08A/0781 at Sports Field Of Ballyfermot United Sports & Social Club Ltd, Cloverhill Road, Clondalkin, Dublin 22

Permission **granted** by South Dublin County Council for construction of a single-storey changing facility and tiered spectator seating together with all necessary site works.

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SD10A/0149 at Cloverhill Road, Dublin 22

Permission **granted** by South Dublin County Council for amendments to previously granted planning permissions (Reg. Refs. SD03A/0049 & SD08A/0781) for development of a 343sq.m. single storey clubhouse with changing facilities, 4 no. all-weather pitches with floodlighting, car park with 53 car spaces and 2 coach spaces, landscaping and all associated site works on a site of 4.3ha at Ballyfermot United Sports Field.

SD15A/0105

Permission **granted** by South Dublin County Council for: (1) a new access roadway into the site from Cloverhill Road; (2) a new single-storey changing facility for Ballyfermot Utd. Sports & Social Club including new vehicular and pedestrian access gates to the club grounds from the new access road and parking for 37 cars and 2 buses and (3) residential development of 43 no. 2-storey dwellings including 44 car spaces and comprising 4 Type A 3-bedroom semi-detached houses, 19 Type B 3-bedroom terraced houses, 16 Type C 3-bedroom terraced houses and 4 Type D 2-bedroom terraced houses. The proposed development also includes all associated landscaping, site development and infrastructural works.

LV06S.LV3280

An Bord Pleanála granted leave to a third party to appeal the above application. Records do not show that an appeal was lodged.

SD21A/0181 at Cloverhill Road, Clondalin, Dublin 22

South Dublin County Council has **sought additional information for** alterations to previous approved planning application, Reg. Ref. SD15A/0105, consisting of: construction of a new single storey flat roof modular changing facilities (293sq.m) ancillary to the existing playing pitch; relocation of approved 38 carparking spaces and 2 coach parking bays from northern boundary to the eastern boundary adjacent to Cloverhill Road installation of new overhead flood lights; 3 new flag poles; continuation of previously permitted boundary wall and footpath (Reg. Ref. SD15A/010) extending along the south eastern boundary, with addition of new security fencing added to top of wall, all adjacent to Cloverhill Road; new entrance gates (accessed via the permitted entrance off Cloverhill Road); all associated boundary treatment, landscaping and ancillary works necessary to facilitate the development.

Relevant Enforcement History

None recorded for subject site

Legislation:

Terms

'The 2000 Act' means The Planning and Development Act 2000, as amended.

'The 2016 Act' means The Planning (Housing) and Residential Tenancies Act 2016, as amended.

'The 2018 Act' means the Planning and Development (Amendment) Act 2018.

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'The 2021 Act' means the Planning and Development (Amendment) Act 2021.

'The Regulations' means The Planning and Development Regulations 2001, as amended.

Summary of Recent Changes to Legislation

Previously, the Planning Authority was able under s.42(1)(a)(ii) of the 2000 Act to grant extensions of duration of permission for developments which had not commenced, where it was satisfied that there were considerations of a commercial, economic or technical nature beyond the control of the applicant which substantially militated against either the commencement of development or the carrying out of substantial works pursuant to the planning permission.

S.42(1)(a)(ii) was deleted from the 2000 Act by way of the commencement of s.28(1) of the 2016 Act. **This commencement took effect on 9th September 2021.** Therefore extensions of permission under s42(1) of the 2000 Act can only be granted under s42(1)(a)(i), which lists as a requirement that works shall have commenced.

On the same day, s.7 of the 2021 Act was commenced which provided a new s.42B of the 2000 Act. Section 42B sets out a new section 41(1B) to temporarily appear in s42. Section 41(1B) provides for extensions of permission to December 2023 and various criteria for making such extensions. One of these criteria is that works shall have commenced.

There is therefore no facility in the 2000 Act for extensions of duration of permission where works have not commenced.

Detail of Current Legislation

The power to extend the duration of a planning permission is governed by Section 42 of the 2000 Act and by Articles 40–47 inclusive of the Regulations.

Section 42 of the 2000 Act has been amended and has effect as per the following legislation:

- s.28 of the Planning and Development (Amendment) Act 2010;
- s.5(7) of the Local Government Act 2014;
- s.28(2) of the Planning and Development (Housing) and Residential Tenancies Act, 2016;
 - Itself amended by s.1 of the Planning and Development (Amendment) Act 2017.
- s.28(1) of the Planning and Development (Housing) and Residential Tenancies Act, 2016;
 - Itself amended by s.57(1) the Planning and Development (Amendment) Act 2018.
 - All commenced in August 2021.
- S. 7 of the Planning and Development (Amendment) Act, 2021.
 - Also commenced in August 2021.

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NB: Both s.28(1) of the 2016 Act (as amended by the 2018 Act) and s.7 of the 2021 Act amend provide for amendments to s42(4).

Subsequently, until 31st December 2023, section 42 of the 2000 Act has effect as if it reads as follow (this includes a reading as described in s42B):

'42.—

(1) On application to it in that behalf a planning authority shall, as regards a particular permission, extend the appropriate period by such additional period not exceeding 5 years as the authority considers requisite to enable the development to which the permission relates to be completed provided that each of the following requirements is complied with:

(a) (i) the authority is satisfied that—

(I) the development to which the permission relates was commenced before the expiration of the appropriate period sought to be extended,

(II) an environmental impact assessment or an appropriate assessment, or both of those assessments, was or were not required before the permission was granted,

(III) substantial works were carried out pursuant to the permission during that period, and

(IV) the development will be completed within a reasonable time,

(b) the application is in accordance with such regulations under this Act as apply to it,

(c) any requirements of, or made under those regulations are complied with as regards the application, and

(d) the application is duly made prior to the end of the appropriate period.

(1A) (a) Notwithstanding anything to the contrary in subsection (1) or (4), a planning authority shall—

(i) as regards a particular permission in respect of a development that relates to 20 or more houses and in respect of which an environmental impact assessment or an appropriate assessment, or both of those assessments, were not required before the permission was granted, and

(ii) upon application being duly made to the authority setting out the reasons why the development cannot be reasonably completed within the appropriate period,

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further extend the appropriate period by such additional period not exceeding 5 years, or until 31 December 2021, whichever first occurs, **but the authority shall only so extend that period where the authority—**

(I) **considers it requisite to enable the development to which the permission relates to be completed,**

(II) is satisfied that the application is in accordance with such regulations under the Planning and Development Acts 2000 to 2016 as apply to the application,

(III) is satisfied that any requirements of, or made under those regulations are complied with as regards the application,

(IV) is satisfied that the development to which the permission relates was—

(A) **commenced, and**

(B) **substantial works were carried out,** before the expiration of the appropriate period or any extension of that period, and

(V) is satisfied that in the case of a permission—

(A) where the expiry of the appropriate period as extended occurred or occurs during the period from 19 July 2016 to the day preceding the day that section 28(2) of the Planning and Development (Housing) and Residential Tenancies Act 2016 comes into operation, the application is duly made within 6 months of the said commencement date, or

(B) where the appropriate period as extended expires on or after the date of commencement of section 28(2) of the Planning and Development (Housing) and Residential Tenancies Act 2016, the application is duly made within the period prescribed for the purposes of section 43(2).

(1B) Notwithstanding anything to the contrary in subsection (1), (1A) or (4) a planning authority shall—

(a) as regards a particular permission in respect of a development, and

(b) upon application being duly made to the authority setting out the reasons why the development cannot be reasonably completed within the appropriate period, further extend the appropriate period, as extended or further extended, by such additional period not exceeding 2 years or until 31 December 2023, whichever first occurs, but the authority shall only so extend that period where the authority—

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- (i) is satisfied that an environmental impact assessment or an appropriate assessment would not be required in relation to the proposed extension of the appropriate period,
 - (ii) considers that the extension is required to enable the development to which the permission relates to be completed,
 - (iii) is satisfied that the application is in accordance with such regulations under the Planning and Development Acts 2000 to 2021 as apply to the application,
 - (iv) is satisfied that any requirements of, or made under, those regulations are complied with as regards the application,
 - (v) is satisfied that the development to which the permission relates was—
 - (I) commenced, and
 - (II) substantial works were carried out, before the expiration of the appropriate period, as extended or further extended, and
 - (vi) is satisfied that in the case of a permission—
 - (I) where the expiry of the appropriate period as extended or further extended occurred or occurs during the period beginning on 8 January 2021 and ending on the day before the date on which section 7 of the Planning and Development (Amendment) Act 2021 comes into operation, the application is duly made within 6 months of the date on which the said section 7 comes into operation, or
 - (II) where the appropriate period, as extended or further extended, expires on or after the date on which section 7 of the Planning and Development (Amendment) Act 2021 comes into operation, the application is duly made within the period prescribed for the purposes of section 43(2).’,
- (2) In extending the appropriate period under *subsection (1), (1A) or (1B)* a planning authority may attach conditions requiring the giving of adequate security for the satisfactory completion of the proposed development, and/or may add to or vary any conditions to which the permission is already subject under *section 34(4)(g)*.
- (3) (a) Where an application is duly made under this section to a planning authority and any requirements of, or made under, regulations under *section 43* are complied with as regards the application, the planning authority shall make its decision on the application as expeditiously as possible.
- (b) Without prejudice to the generality of *paragraph (a)*, it shall be the objective of the planning authority to ensure that it shall give notice of its decision on an application under this section within the period of 8 weeks beginning on—
- (i) in case all of the requirements referred to in *paragraph (a)* are complied with on or before the day of receipt by the planning authority of the application, that day, and

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- (ii) in any other case, the day on which all of those requirements stand complied with.
- (4) A decision to extend the appropriate period of a permission shall be made not more than twice under this section and a planning authority shall not further extend the appropriate period. Where a second decision to extend an appropriate period is made under this section, the combined duration of the 2 extensions of the appropriate period shall not exceed 5 years.
- (5) Particulars of any application made to a planning authority under this section and of the decision of the planning authority in respect of the application shall be recorded on the relevant entry in the register.
- (6) Where a decision to extend is made under this section, *section 40* shall, in relation to the permission to which the decision relates, be construed and have effect, subject to, and in accordance with, the terms of the decision.
- (7) Notwithstanding *subsection (1) or (4)*, where a decision to extend an appropriate period has been made by a planning authority prior to the coming into operation of this section, the planning authority, where an application is made to it in that behalf prior to the expiration of the period by which the appropriate period was extended, may further extend the appropriate period provided that each of the following requirements is complied with—
 - (i) an application is made in that behalf in accordance with regulations under *section 43*,
 - (ii) any requirements of, or made under, the regulations are complied with as regards the application, and
 - (iii) the authority is satisfied that the relevant development has not been completed due to circumstances beyond the control of the person carrying out the development.'

NB: Subsection (7) of section 42 came into operation on 19th August 2010, as specified by S.I. No. 405/2010, which commenced s.28 of the Planning and Development (Amendment) Act, 2010.

Assessment:

Noting recent changes to the 2000 Act (see “Summary of Recent Changes to Legislation” above), an extension of duration of permission can be granted under subsections (1) and (1A) of section 42 of the Act.

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A further extension of permission can be granted under subsection (1B) – this is irrelevant to the subject proposal.

There are 4 criteria under subsection (1), listed under clause (a)(i). These criteria are assessed follows:

(I) the development was commenced prior to the expiration of the previous development. Criterion (I) is therefore met.

(II) EIA and AA

Screening for Appropriate Assessment

Having regard to the scale and nature of the development, and the distance from Natura sites, 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, therefore Stage 2 AA is not required.

Screening for Environmental Impact Assessment

Having regard to the modest nature of the proposed development, and the distance of the site from nearby sensitive receptors, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

Criterion (II) is therefore met.

(III) A site visit was conducted on 25th October 2021. A substantial portion of the permitted houses have been constructed to first floor level, albeit without final finishes or internal works. It is considered that the works carried out to date are 'substantial'. Criterion (III) is therefore met.

(IV) The applicant has stated that development will be completed by 3rd October 2022. This is considered to be reasonable, and therefore criterion (IV) is met.

Subsection (1A) applies to developments of 20 or more houses but limits extensions to 31st December 2021. As the subject proposal complies with criteria under subsection (1), subsection (1A) can be disregarded.

Timeframe of Proposal

The proposed extension of 11 months is considered acceptable.

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Conclusion

The subject proposal meets the criteria set down in s42(1)(a)(i), and the Planning Authority can therefore grant an extension of duration of permission for 11 months, to 3rd October 2022.

Recommendation

I recommend that the **EXTENSION OF DURATION OF PERMISSION** applied for, be granted.

Conditions

1. Extension of Duration of Permission.

Permission Reg. Ref. SD15A/0105 is extended for a period of 11 months, and shall (subject to any further extensions) expire on 3rd October 2022.

REASON: To clarify the details of the decision.

2. Financial Contributions/Security/Bond.

That arrangements be made with regard to the payment of financial contributions and lodgement of security/bond in respect of the overall development, as required by Condition Nos. 14 and 15 of Register Reference SD15A/0105, arrangements to be made prior to commencement of development.

REASON: It is considered reasonable that the developer should contribute towards the cost of providing services and to ensure that a ready sanction may be available to the Council to induce provision of services and prevent disamenity in the development.


NOTE: The applicant is advised that under the provisions of Section 34 (13) of the Planning and Development Act 2000 (as amended) a person shall not be entitled solely by reason of a permission to carry out any development.

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**REG. REF. SD15A/0105/EP
LOCATION: Cloverhill Road, Dublin 22**




**Jim Johnston,
Senior Executive Planner**

ORDER: A decision pursuant to Section 42 of the Planning and Development Act, 2000 (as amended) to Grant Extension of Duration of Permission for the above proposal is hereby made.

Dated:

29/11/21



Eoin Burke, Senior Planner