

# Comhairle Chontae Atha Cliath Theas

**PR/1610/21**

## Record of Executive Business and Chief Executive's Order

**Reg. Reference:** SD14A/0172/EP      **Application Date:** 17-Sep-2021  
**Submission Type:** Additional      **Registration Date:** 29-Nov-2021  
Information

**Correspondence Name and Address:** Vincent O'Sullivan, Secretary, Celbridge Paddlers Canoe Club 19, Willow Grove, Dublin 22

**Proposed Development:** Retention for six steel containers for the storage of canoes and welfare area, a temporary structure which houses a gym. Permission for a club house which will contain storage of canoes, gym and welfare area; this proposed development would replace the existing steel containers and temporary structure. Development is to be completed in Phase 3, therefore a ten year permission is sought; all associated site and civil works.

**Location:** Aylmer Bridge, Skeigh, Newcastle, Co. Dublin.

**Applicant Name:** Celbridge Paddlers Canoe Club

**Application Type:** Extension Of Duration Of Permission

### **Site Description:**

The subject site is located along the southern bank of the Grand Canal proximate to Aylmer Bridge on the boundary of the County with Kildare. The site is bounded by Lyons Road on the south-western side, the grand Canal on the north-western side and an adjoining field on the north-eastern and south-eastern side. The site is bounded by mature trees and hedges on the south-western side and north-western side, and a mature hedge on the north-eastern and south-eastern side. The site is accessed from Lyons Road. Aylmer Bridge, a Protected Structure (RPS: 203) is located to the north-west of the site. The bridge is hump-backed and narrow, with no forward visibility for traffic. This section of the Grand Canal is rural in character.

The site is located within the Natural Heritage Area (pNHA) associated with the Grand Canal.

### **Proposal**

- Retention for six steel containers for the storage of canoes and welfare area, a temporary structure which houses a gym.
- Permission for a club house which will contain storage of canoes, gym and welfare area;
- proposed development would replace the existing steel containers and temporary structure. Development is to be completed in Phase 3, therefore a ten year permission is sought;
- all associated site and civil works.

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Permission SD14A/0172. Final grant date 17th November 2014 for a seven year permission. Permission stated to expire on 16th November 2021 (excludes Section 251 & 251A provision).

Application to extend received on 17th September 2021 which was before the date of expiry of the permission on 22<sup>nd</sup> March 2022 (including S251 & S251A provisions), and within one year of this expiry date, as required by legislation.

#### **Zoning:**

The proposed site is subject to current zoning RU- *'To protect and improve rural amenity and to provide for the development of agriculture'*.

Under the old CDP the site was subject to zoning objective B – *'To protect and improve rural amenity and to provide for the development of agriculture'*.

*SEA Sensitivity Screening* – Indicates overlap with pNHA, Rural Landscape and Protected Structures.

#### **Consultations**

None recorded.

#### **Submissions/Observations /Representations**

None received.

#### **Relevant Planning History**

SD14A/0172: Retention for six steel containers for the storage of canoes and welfare area, a temporary structure which houses a gym. Permission for a club house which will contain storage of canoes, gym and welfare area; this proposed development would replace the existing steel containers and temporary structure. Development is to be completed in Phase 3, therefore a ten year permission is sought; all associated site and civil works.  
Grant permission and grant retention

SD05A/0408: Planning permission granted for a new one and a half storey boathouse to include changing rooms, toilets and meeting hall together with new bio-cycle treatment system.

SD04A/0380: Permission was withdrawn for new portal framed boathouse to include changing rooms, toilets and meeting hall together with new bio-cycle treatment system.

S01A/0322: Permission granted for retention of 4 no. 40ft steel containers for canoe storage until the 31/8/2011

S97A/0269: Permission granted for the positioning of 2 further 40ft steel containers for canoe storage until 31/12/1999.

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S94A/0369: Permission granted for the position of 2 no. 40ft steel containers for canoe storage on this site until 31/12/1999.

### **Relevant Enforcement History**

None Found.

### **Relevant Policy in South Dublin County Council Development Plan 2016 -2022**

#### *Policy 2- Surface Water and Groundwater*

*It is the policy of the Council to manage surface water and to protect and enhance ground and surface water quality to meet the requirements of the EU Water Framework Directive.*

#### *Policy 3 – Protected Structures*

*It is the policy of the Council to conserve and protect buildings, structures and sites contained in the Record of Protected Structures and to carefully consider any proposals for development that would affect the special character or appearance of a Protected Structure including its historic curtilage, both directly and indirectly.*

#### *Policy 11-Grand Canal*

*It is the policy of the Council to promote the Grand Canal as a key component of the County's Green Infrastructure network and to protect and enhance the visual, recreational, environmental, ecological, industrial heritage and amenity value of the Grand Canal (pNHA) and its towpaths, adjacent wetlands and associated habitats.*

#### *Policy 13- Heritage Areas*

*It is the policy of the Council to protect the ecological, visual, recreational, environmental and amenity value of the County's proposed Natural Heritage Areas and associated habitats.*

#### *Policy 15-Non Designated Areas*

*It is the policy of the Council to protect and promote the conservation of biodiversity outside of designated areas and to ensure that species and habitats that are protected under the Wildlife Acts 1976 and 2000, the Birds Directive 1979 and the Habitats Directive 1992 are adequately protected.*

#### *Schedule 2 – Record of Protected Structures*

*Ref: 203: Aylmer Bridge – stone bridge.*

#### *Policy ET9 Rural Economy*

##### *Policy ET9 Objective 1*

*To support and facilitate sustainable agriculture, horticulture, forestry and other rural enterprises at suitable locations in the County.*

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*Policy IE7 Environmental Quality*

*Policy TM6 Road and Street Design*

*Policy HCL1 Heritage, Conservation and Landscapes*

*Policy HCL2 Archaeological Heritage*

*Section 9.2.0 Landscapes*

*Policy HCL7 Landscapes*

*Section 8.1.0 Green Infrastructure Network*

*Policy G2 Green Infrastructure Network*

*Section 8.2.0 Watercourses Network*

*Policy G3 Watercourses Network*

*Section 9.3.1 Natura 2000 Sites*

*Table 9.3 Natura 2000 Sites*

*Policy HCL12 Natura 2000 Sites*

*Section 11.8.2 Appropriate Assessment*

### **Relevant Government Guidelines**

***Architectural Heritage Protection – Guidelines for Planning Authorities*** Department of the Environment, Heritage and Local Government, (2011).

### **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.

'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.

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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 9<sup>th</sup> 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.

**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 31<sup>st</sup> 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

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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, 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,

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(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).

#### Assessment

The applicant has indicated in the application form that they are applying for an extension of duration of permission SD14A/0172 under the provisions relating to substantial works already being carried out, which is covered by Section 42(1)(a)(i) of the Planning and Development Act:

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### **10. PARTICULARS OF SUBSTANTIAL WORKS CARRIED OUT BEFORE THE PERMISSION WILL EXPIRE:**

As at the date of this application the following works have been completed -

1. Site clearance and groundworks have been completed.
2. Foundations have been poured.
3. The steel for the frame of the building has been delivered and is currently being fabricated.

We fully expect that construction of the shell and core of the building will be completed before the current permission expiry date of 17<sup>th</sup> Nov, 2021.

Excerpt from the application form

#### SECTION 42(1)(a)(i) PLANNING AND DEVELOPMENT ACT

The applicant has applied for extension of duration of permission under s.42(1)(a)(i) of the Planning and Development Act 2000 (as amended) on the grounds that substantial works were carried out pursuant to the permission. Accordingly, the authority must be satisfied that the following three criteria have been met:

- (I) the development to which the permission relates was commenced before the expiration of the appropriate period sought to be extended,*
- (II) substantial works were carried out pursuant to the permission during that period, and*
- (III) the development will be completed within a reasonable time,*

The Planning Authority notes that no supplementary or supporting documentation has been received with this application and therefore is concerned that a full assessment cannot be carried out. Furthermore, the applicant's statement that '*we fully expect that construction of the shell and core of the building will be completed before...17<sup>th</sup> November 2021*' is not enough to base a decision on. The applicant should be requested by way of Additional Information request to submit documentary evidence, including photographs, clearly demonstrating that substantial works are in place and that all development can be completed within a reasonable time. A commencement notice should also be submitted. **ADDITIONAL INFORMATION.**

The applicant should note that the expiry date, which includes days added for the Section 251 and Section 251A of the Planning and Development Act, is calculated to be 16<sup>th</sup> March 2022



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(Covid-period' and Christmas 9-day period). The Planning Authority considers that if substantial works are already in place that there may be sufficient time to finalise the construction on the site.

### ***Environmental Issues – The Grand Canal, pNHA***

The impacts of the proposed development on the immediate and surrounding environment was fully assessed at the initial planning application stage and the screening for Appropriate Assessment, had regard to the scale and nature of the development, the existing development on the site, the existing activity on the site, the distance from Natura sites, and it was considered that the development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site, therefore Stage 2 Appropriate Assessment was not required. Furthermore, with regards to screening for Environmental Impact Assessment, again the Planning Authority had regard to the nature of the proposed development, the existing development and activity on the site, and it was deemed that there was no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment was therefore excluded at preliminary examination and a screening determination was not required.

Planner's Note: The Planning Authority notes that significant changes in the development objectives contained in the County Development Plan under which the original application was assessed and subsequently granted have been made (the planning permission straddled the lifespan of two plans), most notably the introduction of a Green Infrastructure Chapter, requiring significant 'greening' of sites specifically located along the County's waterways. Therefore the proposed development may no longer be consistent with current policy and objectives of the County Development Plan. The preparation of a new development plan for the County is currently under way, which will be in place in 2022.

### **Conclusion**

- (1) The Planning Authority considers that the applicant should clearly demonstrate how compliance with 42(1)(a)(i) is achieved.

Therefore, it is considered that the proposal has not been demonstrated that it **is in accordance with** Section 42(1)(a) of the Planning and Development Act. The Planning Authority seeks clarification to demonstrate compliance with this section of the Act.

### **Recommendation**

Request Further Information.

### **Further Information**

Further Information was requested on 11 November 2021

Further Information was received on 29 November 2021

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### Item 1:

The applicant has applied for an extension of duration of permission under Section 42(1)(a)(i) of the Planning and Development Act 2000 (as amended) on the grounds that substantial works were carried out pursuant to the permission. Accordingly, the authority must be satisfied that the following three criteria have been met:

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

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

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

The Planning Authority notes that no supplementary or supporting documentation was received with this application and therefore a full assessment cannot be carried out under which a decision can be made. The applicant is therefore requested to submit documentary evidence, which should include photographs, clearly demonstrating that substantial works are in place and that all development can be completed within a reasonable time. A commencement notice should also be submitted.

The applicant should note that the expiry date, when including days added for the Section 251 and Section 251A provision of the Planning and Development Act, appears to be 16th March 2022.

### *Applicant's Response:*

*The applicant has submitted photographs indicating that the structure has foundation, steel frame and blockwork. The cover letter states that the following works have been undertaken:*

- *w/b 19/07/21 foundations dug*
- *04/08/21 Concrete poured*
- *15-16 Oct 21 Steel Frame erected*
- *w/b 18/10/21 groundworks commence*
- *05/11/21 concrete floor laid*
- *09/11/21 blockwork commences*
- *17/11/21 blockwork 90% complete*

*An extension is now sought for 10 weeks, rather than 24.*

### **Assessment:**

In accordance with 42(1)(a)(i) (I) of the Planning and Development Act, 2000, as amended, development has commenced. It is apparent from the photographs submitted that substantial works have been completed (the walls are up to roof level, with trusses being put in place). The required additional information has been submitted and the works on site are deemed to be in accordance with 42(1)(a)(i)(II). For 42(1)(a)(i)(III) the applicant has indicated that an extension of 10 weeks is sought until 25 May 2022. In the interests of being flexible the Planning Authority are of the opinion that an extension until 31 August 2022 (24 weeks) would be acceptable, to allow for works to be constructed over the summer months, if necessary.

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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 24 weeks, to 31 August 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. SD14A/0172 is extended for a period of 24 weeks, and shall (subject to any further extensions) expire on 31st August 2022.  
REASON: To clarify the details of the decision.

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. SD14A/0172/EP**

**LOCATION: Aylmer Bridge, Skeigh, Newcastle, Co. Dublin.**

  
**Tracy McGibbon,**  
**A/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:**

15/12/21

  
**Eoin Burke, Senior Planner**