

Comhairle Chontae Atha Cliath Theas

PR/0094/22

Record of Executive Business and Chief Executive's Order

Reg. Reference: ED21/0062 **Application Date:** 24-Sep-2021
Application Type: Declaration of **Registration Date:** 04-Jan-2022
Exemption Section
5

Correspondence Name and Address: Grainne McManus Griffeen Avenue, Balgaddy,
Lucan, Co. Dublin

Proposed Development: Canopy over children's play area so that students can
do PE and play outdoors regardless of the weather.

Location: Griffeen Avenue, Balgaddy, Lucan, Co. Dublin

Applicant Name: Lucan East ETNS

(SW)

Site Description

The subject site is Lucan East Education Together National School and is located to the south of Griffeen Avenue. Residential development lies to the west of the school. Residential development lies to the north, east and south.

The site contains an existing school, with areas of hard standing, including parking and play areas.

Proposal

This is an application requesting a Section 5 Declaration on whether:
Canopy over Children's Play area so that students can do PE and play outdoors
regardless of the weather is or is not development and is or is it not exempted
development.

From an assessment of the drawings the structure will measure 28m long and 8.5m wide. The structure will stand 3.3m to eaves height and will have an overall height of 4.932m at the apex of the domed roof. It is unclear what the structure will be constructed from but the drawing prepared by Colm Warren Polyhouses Ltd. 'Execution Class 2 En 1090-1' details that the structure will be welded and finished in 'galvanised U.N.O'. Bolts and fixings will also be used to construct the structure. No details of a 'canopy' has been submitted in the documentation. The applicant states that the structure is temporary. However, no details of when it was constructed or when it will be removed have been provided.

This Section 5 Declaration application includes:

- Application form
- Cover letter
- Plans – consisting of elevations and plans

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NOTE: No Site Layout Plan or Site Location plan showing the site outline in red or the location of the canopy has been provided for assessment and deliberation.

Planning History

No redline plan has been provided, the following is considered to be the relevant planning history based on the address provided.

SD10A/0238 Amendments to previously approved planning permission (Reg. Ref. SD08A/0054) for a 16 classroom school, of which 8 classrooms have been constructed to date, comprising the following: (a) revised floor plans and elevations for 8 classrooms, general purpose room, library and ancillary accommodation and (b) additional 2 class Special Needs Unit. The described changes will result in an increase in the overall floor area from 1120sq.m. to 3003sq.m. Site works will consist of a Special Needs Sensory Garden, a screened bin area, 2 bicycle racks and an increase in carparking from 19 to 27 spaces. Planning permission is also sought for associated construction site compound and related access at Lucan East Educate Together National School. **Permission Granted**

SD08A/0054 1 two storey 16 classroom building with general purpose hall, support teaching spaces and ancillary accommodation with a total floor area of c.1000sq.m. The site works to the school grounds will consist of the provision of cycle storage, bin stores, ball courts, landscaping and boundary treatment and all other associated site development works. The works to the remainder of the site will consist of the provision of 19 car parking, drop-off and pick-up facilities and new access road including the provision of temporary road link to the existing Griffeen Avenue Roundabout. All on a site of c.0.88 hectares. **Permission Granted**

Assessment

Consideration as to whether a canopy constitutes development or constitutes exempted development or not is governed by Sections 3, 4 and 5 of the Planning and Development Act 2000 (as amended) and Articles 5, 6, 9, 10, 11 of the Planning and Development Regulations 2001 (as amended)

Is the proposal development?

Section 3(1) defines 'development' as 'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'. The term 'works' is defined in Section 2(1) of the 2000 Act as 'any act or operation of **construction**, excavation, demolition, extension, alteration, repair or renewal'.

Having regard to the above, and to the drawings showing the skeleton of a galvanised steel structure measuring approximately 238sq.m, it is considered that the proposed structure and installation of a canopy is deemed to be construction and is therefore development.

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Is the proposal exempted development?

ASSESSMENT OF A TEMPORARY STRUCTURE

The applicant has stated that they consider the proposal to be exempted development as there are no bricks and mortar used and the canopy does not oversail adjacent properties. It is stated that the structure is intended for educational purposes and would be used only by students at the school during school hours. The applicant states that they are aware of other schools with similar structures that have not received planning permission.

The Planning and Development Regulations set out the following Classes in relation to temporary structures at schools.

CLASS 20B The erection on land on which development consisting of the construction of a school is to be carried out pursuant to a permission or outline permission under the Act of temporary on-site school structures – **Not relevant as the school has been constructed**

CLASS 20D Development consisting of – The erection on land on which a school is situated of a structure to facilitate the continued delivery of education. **The applicant states that the structure supports the delivery of PE. The following conditions must therefore be met:**

1. No such structure shall be erected for a period exceeding 5 years. **The applicant has not stated when the structure was put in place. It is stated that it is temporary. The applicant is requested to set out when the structure was put in place and when it will be removed. This should be provided via additional information.**
2. The gross floor area of such structure shall not exceed 30% of the gross floor area of the existing school. **The gross floor area would be 238sq.m. The school permitted under SD10A/0238 measures 1,557sq.m -30% of this is 467.1sq.m. The school permitted under SD08A/0054 measured 1,000sq.m – 30% of this is 300sq.m This condition is met.**
3. No such structure shall exceed two storeys. **The structure is single storey**
4. Distance to party boundary –
 - (a) any single storey structure shall be a distance of not less than 2 metres from any party boundary, **The applicant has not indicated the exact location of the structure. This should be provided via additional information.**
 - (b) any two-storey extension facing an existing dwelling shall be a distance no less than 22 metres from the main part of the dwelling, or **N/A structure is single storey.**
 - (c) any two-storey extension closer than 12.5m to a party boundary, or facing and closer than 22 metres to the dwelling shall – **N/A structure is single storey.**

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- (i) have no windows overlooking, or
- (ii) have obscure glass.

5. Such structure shall comply with the Department of Education Primary and Post Primary Technical Guidance Documents for the time being in force. **The latest Technical Guidance Document TGD-007, which was updated October 2021, does not refer directly to this type of structure. It is unclear whether compliance would be met. The applicant is requested to provide evidence / correspondence from the Department of Education indicating the appropriate standard is met. This should be provided via additional information.**

It is considered therefore that the proposed installation of:

- Canopy over children's play area so that students can do PE and play outdoors regardless of the weather (galvanised steel structure measuring 28m long and 8.5m wide, with an overall floor area of 238sq.m and an overall height of 4.932m; no details of a 'canopy' has been submitted in the documentation) may be exempt development, however, additional information is required.

ASSESSMENT UNDER CLASS 57 OF PART 1 OF SCHEDULE 2

The relevant legislation relating to exemptions for school structures is Class 57 of the Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) as follows:

Class 57

The extension of a school, where the school has not been previously extended, by the construction or erection of an extension to the side or rear of the school.

Conditions and Limitations

1. The floor area of any such extension shall not exceed:

(a) 160 square metres, or

(b) 40% of the gross floor area of the school, whichever is the lesser.

2. No such structure shall be above the ground floor.

3. Any extension shall be a distance of not less than 2 metres from any party boundary.

4. Such structure shall comply with the Department of Education and Science Primary and Post Primary

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Technical Guidance Documents for
the time being in force.

The applicant has submitted only limited information with the application. The above Class 57 relates to school extensions. It not clear, from the information submitted, that the canopy and its galvanised steel supporting structure would form an extension to the actual school building, which was granted permission under Reg. Ref. SD08A/0054 and modified and extended under Reg. Ref. SD10A/0238. In addition to this, it is noted that the above Class does not allow for temporary structures.

If the development comprises:

- A. A free-standing structure, as the limited drawings appear to indicate, **there are no exemptions for this type of structure.**

If the development comprises:

- B. An extension to the school building under Class 57, then the following criteria should be met:
 1. The floor area of any such extension shall not exceed:
 - (a) 160 square metres, or
 - (b) 40% of the gross floor area of the school, whichever is the lesser.

Assessment: The structure would have a floor area measuring 238sq.m, which is substantially above the maximum 160sq.m exempted. Furthermore, under Reg. Ref. the school has been extended, further reducing the sq.m of exempted floor space. Condition and Limitation 1(a) and (b) has not been met.

2. No such structure shall be above the ground floor.

Assessment: The structure would be single storey.

3. Any extension shall be a distance of not less than 2 metres from any party boundary.

Assessment: This item cannot be fully assessed due to the lack of information submitted with the application.

4. Such structure shall comply with the Department of Education and Science Primary and Post Primary Technical Guidance Documents for the time being in force.

Assessment: The latest Technical Guidance Document TGD-007, which was updated October 2021, does not refer directly to this type of structure. It is **unclear whether compliance would be met.**

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Having regard to the above, it is considered that the proposed installation of:

- Canopy over Children's Play area so that students can do PE and play outdoors regardless of the weather cannot be considered exempt as there are no exemptions for such 'temporary' structures and the proposed development does not come under the conditions and limitation laid out under Class 57.

ASSESSMENT UNDER SECTION 4(1)(h)

Section 4(1)(h) states that the following is exempted development:

'development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures'.

It is not considered that 4(1)h applies in this instance, as given the scale of the proposal, it would materially affect the appearance of the school.

ASSESSMENT UNDER ARTICLE 9 RESTRICTIONS

Article 9 restrictions

From the information submitted, it is not apparent that the proposed development is not restricted by any of the restrictions in Article 9 of the Planning and Development Regulations 2001 (as amended).

ASSESSMENT UNDER SI/CIRCULARS

An assessment of all recent circulars and Statutory Instruments has taken place and no exemptions have been included for temporary structures pertaining to school buildings/sites.

Conclusion

Having regard to the provisions of Section 4 of the Planning and Development Act 2000 (as amended), and Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended), it is considered that the following works:

- Canopy over children's play area so that students can do PE and play outdoors regardless of the weather to be carried out at Lucan East ETNS, Griffeen Avenue, Balgaddy, Lucan, Co. Dublin as detailed in the documentation submitted,

(A) is development

and

(B) It is not clear whether it is exempt development.

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Recommendation

The applicant shall be written to and informed that the proposed development comprising canopy over children's play area so that students can do PE and play outdoors regardless of the weather

- (i) **is Development** and
- (ii) **Additional information is required to determine whether or not it is exempt development.**

Further Information

- Further Information was requested on 21/10/2021.
- Further Information was received on 04/01/2022.

The following Further Information below was requested:

Item 1: Class 20D

Temporary structures at schools are exempt development under Class 20D of the Planning and Development Regulations, as amended. In order to ascertain whether this proposal falls within the Class, the applicant is requested to provide the following information:

- when the structure was put in place and when it will be removed;
- the exact location of the structure (clearly shown on an appropriately scaled plan); and
- evidence/correspondence from the Department of Education indicating the appropriate technical standard is met.

Further Consultations

None.

Assessment

Item 1: Class 20D

The applicant has submitted a cover letter and an aerial image of the subject site to address the request for additional information. An extract taken from the cover letter submitted states the following:

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1. The canopy over the children's play area was put in place on the 8th May 2021. This canopy was installed to give the children a dry space to engage with the PE curriculum and also to play outside at break-times regardless of the weather during the Covid 19 pandemic. Due to the ongoing nature of the Covid 19 pandemic we are uncertain when this structure will be removed but as it has proven itself to be such a fantastic amenity for the school we are hoping to retain it for 5 years.
2. The exact location of the structure is shown on a map attached herewith
3. I contacted the Department of Education (DoE) in order to get correspondence/evidence indicating the appropriate technical standard has been met. The DoE responded to say that they do not have technical standards or guidance for this type of structure.

This structure is for the educational benefit of all the children attending our school. While it is intended for educational purposes and will be used only by the students of our school during school hours, it is also providing important support for their health, safety and wellbeing. The shelter is very necessary to our school. We are hoping that you will look favourably upon our application for this to be an exempted development.

JO'K

In **point no. 1** the applicant has clarified that the canopy structure was put in place on 8th May 2021 and the applicant is uncertain as to when the structure will be removed but it is hoped that the structure will be retained for a period of **5 years**. To be considered exempted development under Class 20D no such structure shall be erected for a period exceeding 5 years. It is considered the applicant has satisfactorily addressed the request for additional information for this item.

In **point no. 2** the applicant has attempted to broadly indicate the general location of the structure in an aerial image submitted. The canopy structure is indicated in a grey rectangular hatched shape on the south-west corner of the school building. However, it is noted that the aerial image submitted is **not to scale**, does not have any north arrow and does not have any dimensions. In this instance as the aerial image is not to scale the aerial image only broadly indicates the location of the structure and does not show proximity to party boundaries. To be considered exempted development under Class 20D any single storey structure shall be a distance of not less than 2 metres from any party boundary. This has not been clarified as the aerial image is not to scale and did not contain any dimensions. It is considered that the applicant has **not satisfactorily addressed the request for additional information for this item.**

The applicant is therefore requested to submit a scaled drawing or aerial image with appropriate dimension including dimensions relative to any adjacent party boundary, clearly showing the exact location of the structure. It is noted that to be considered

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exempted development under Class 20D any single storey structure shall be a distance of not less than 2 metres from any party boundary. It is considered that above may be addressed by way of a request for **Clarification of Additional Information**.

In **point no. 3** the applicant indicates that after contacting the Department of Education (DoE) the DoE have confirmed that they do not have the technical standards or guidance for this type of structure. As such, there is no standard set out by the Department of Education Primary and Post Primary Technical Guidance Documents in force.

Recommendation

I recommend that Clarify Additional Information be requested from the applicant with regard to the following:

1. The Planning Authority is not in a position to carry out a full assessment and analysis of the proposal without scaled and accurate drawings. The applicant is requested to submit a scaled drawing with all appropriate dimensions including dimensions to the structure relative to the adjacent party boundary, clearly showing the exact location of the structure. It is noted that to be considered exempted development under Class 20D any single storey structure shall be a distance of not less than 2 metres from any party boundary.

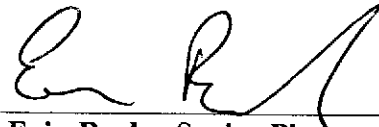


**Sarah Watson,
Executive Planner**

ORDER: That **CLARIFICATION OF ADDITIONAL INFORMATION** be requested from the applicant as set out above and that notice thereof be served on the Agent/ Applicant.

Date:

24/1/22



Eoin Burke, Senior Planner