

Comhairle Chontae Atha Cliath Theas

PR/0097/22

Record of Executive Business and Chief Executive's Order

Reg. Reference: SD16A/0338/EP **Application Date:** 24-Nov-2021
Submission Type: New Application **Registration Date:** 24-Nov-2021

Correspondence Name and Address: Hussey Architects 13, Gilford Road, Sandymount, Dublin 4, D04 HR59

Proposed Development: Works to an incomplete part of a previously approved development (previously granted planning permission under South Dublin County Council register reference SD07A/0367, now elapsed). The subject application now comprises: warehousing Block B4 (11.55m high) divided into 8 units totalling 3,484sq.m including 720sq.m ancillary offices/staff facilities on 2 floors and 2,764sq.m warehousing area. The development will also include the completion of ancillary car parking adjacent to the subject block and throughout the overall site, services, utilities, landscaping (including new flood mitigation berm to the northeast and southeast of subject block), drainage works including additional surface water attenuation system plus all site development works.

Location: Block B4, Site B, Aerodrome Business Park, Collegeland, Rathcoole, Co. Dublin

Applicant Name: De La Salle Limited

Application Type: Extension Of Duration Of Permission

(COS)

Description of Site and Surroundings:

Site Area: stated as 0.65 Hectares in the application form for Reg. Ref. SD16A/0338.
Site Visit: 20th of January 2021.

Site Description:

The subject site is located in the Aerodrome Business Park located off the R120 Newcastle Road. The site is an undeveloped site to the southeast boundary of the industrial estate. The site is entranced from Jordanstown Road and is located to the rear of Block B2 and Block B3. The

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existing entrance serves these two existing units also. The site is currently vacant and surrounded by fencing.

Proposal:

The applicant is seeking to **extend the duration of permission by a period of 5 years for SD16A/0338**, which relates to works to an incomplete part of a previously approved development (previously granted planning permission under South Dublin County Council register reference SD07A/0367, now elapsed):

- The subject application comprises warehousing Block B4 (11.55m high) divided into 8 units totalling 3,484sq.m including 720sq.m ancillary offices/staff facilities on 2 floors and 2,764sq.m warehousing area.
- The development also includes the completion of ancillary car parking adjacent to the subject block and throughout the overall site, services, utilities, landscaping (including new flood mitigation berm to the northeast and southeast of subject block), drainage works including additional surface water attenuation system plus all site development works.

Proposal for Extension of Duration of Permission:

The final grant date for SD16A/0338 was issued on the 27th of February 2017. The permission expires on the 27th of February 2022 (excluding s.251 Order dates).

The application for Extension of Duration was received on the 24th of November 2021, which was before the date of expiry of the permission, and not more than one year before this.

Zoning:

The subject site is subject to Zoning Objective 'EE': *'To provide for enterprise and employment related uses'* under the South Dublin County Development Plan 2016-2022.

Consultations:

No referrals required.

SEA Sensitivity Screening – the site overlaps with the Strategic Flood Risk Assessment (SFRA) B layer.

Relevant Planning History on Subject Site:

SD16A/0338 (Subject Application)

Permission granted by South Dublin County Council with a final grant date of the 27th of February 2017.

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SD08A/0829

Retention permission for alterations carried out to warehousing units. This retention permission includes alterations from the original granted planning permission (Reg. Ref. SD07A/0367) as follows: combining warehousing units B4 & B5 into one unit of warehousing 678sq.m., office/staff facilities 195sq.m.(Previously 214sq.m. for both B4 & B5) plus associated elevational revisions and carparking adjustments. The building height and neighbouring units remain unchanged due to this application. **Permission for retention granted.**

SD08A/0804

Retention permission for alterations carried out to warehousing unit. This retention permission includes alterations from the original granted planning permission (Reg. Ref. SD07A/0327) office/staff facilities on a 2 floors 173sq.m. (previously 83sq.m.) plus the inclusion of a mezzanine warehousing area of 240sq.m., totally 808sq.m. overall (previously 478sq.m. overall) the inclusion of a canopy 3.65m high and 4.0m projection and external access / escape stairs to revisions due to additional floor area. The building height and neighbouring units remain unchanged due to this application. **Permission for retention granted.**

SD07A/0367

Construction of 3 no. warehousing blocks as follows: (1) Block B2 (12.850 m high, divided into a maximum of 2 units) totalling 1,990sq.m. including 309sq.m. of ancillary office plus 37sq.m. of staff facilities on 2 floors, (2) Block B3 (11.550m high, divided into a maximum of 12 units) totalling 4,750sq.m. including 916sq.m. of ancillary office plus 148sq.m. of staff facilities on 2 floors, (3) Block B4 (11.550 m high, divided into a maximum of 8 units) totalling 3,560sq.m. including 616sq.m. of ancillary office plus 120sq.m. of staff facilities on 2 floors together with services, utilities, fencing, landscaping, planting, paving, parking and site development works. **Permission granted.**

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.

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

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

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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 the 9th of 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 42(1B) to temporarily appear in s42. It is noted that Section 42 was only construed to include (1A) until the 31st of December 2021 under s.28 of the 2016 Act. Since this was removed Section (1B) is now construed to be renumbered and referred to as (1A).

Section 42(1A) provides for extensions of permission to December 2023 and various criteria for making such extensions. One of these criteria is that works have been commenced and substantial works carried out.

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.

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- 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 the 31st of December 2023, section 42 (1) and (1A) of the 2000 Act has effect as if it reads as follow (this includes a reading as described in s42B)(emphasis added by author):

'42.

(1) On application to it in that behalf, but subject to subsection (8), 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) substantial works were carried out pursuant to the permission during that period, and

(III) 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) Notwithstanding anything to the contrary in subsection (1) 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).’,*

Assessment:

Noting recent changes to the 2000 Act (see “Summary of Recent Changes to Legislation” above), there are 2 subsections under which an extension of duration of permission can be granted. These are subsections (1) and (1A) of section 42 of the Act.

There are 3 criteria under subsection (1), listed under clause (a)(i). Criteria (I) and (II) require that the Planning Authority must be satisfied that the development “was commenced before the expiration of the appropriate period sought to be extended” and that “substantial works were carried out pursuant to the permission during that period”. This is not the case in relation to the subject application. The applicant states on the application form that the date development commenced and particulars of substantial works carried out is not applicable. From the site visit no works have commenced onsite.

There are 6 criteria under subsection (1A), listed under clause (b). Criterion (v) requires that (I) works have commenced, and (II) substantial works were carried out prior to the expiration of

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permission. This is not the case in relation to the subject application. The applicant states on the application form that the date development commenced and particulars of substantial works carried out is not applicable. From the site visit no works have commenced onsite.

Conclusion:

The application was made after changes in the Planning and Development Act which have removed the statutory basis for an extension of duration of permission where works have not commenced, and substantial works have not taken place. In precise terms, the criteria set down in s42(1)(a)(i) or s42(1A)(b)(v) are not met in this instance, and the Planning Authority therefore cannot grant permission for an extension of duration of permission.

Recommendation:

I recommend that a decision to Refuse Ext of Duration Of Permission be made under the Planning and Development Act 2000 (as amended), for the following reason(s):-

Reasons:

1. The criteria set down in s42(1)(a)(i) or s42(1A)(b)(v) are not met in this instance, and the Planning Authority therefore cannot grant permission for an extension of duration of permission. In each case the Planning and Development Act 2000 (as amended) sets out as necessary criteria that works have commenced and substantial works must have taken place.

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REG. REF. SD16A/0338/EP

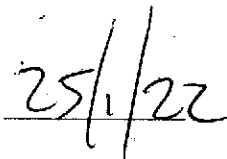
**LOCATION: Block B4, Site B, Aerodrome Business Park, Collegeland, Rathcoole, Co.
Dublin**



**Sarah Watson,
Executive Planner**

ORDER: A decision pursuant to Section 42 of the Planning and Development Act 2000 (as amended), for the application to extend the period for which the above mentioned planning permission has effect, is hereby made to refuse for the reason(s), as set out above.

Dated:


Eoin Burke, Senior Planner