

Comhairle Chontae Atha Cliath Theas

PR/0371/22

Record of Executive Business and Chief Executive's Order

Reg. Reference: SD17A/0039/EP **Application Date:** 27-Jan-2022
Submission Type: New Application **Registration Date:** 27-Jan-2022

Correspondence Name and Address: ODA Architecture Marlborough Mews, Marlborough Lane, Dublin 4

Proposed Development: A new vehicular entrance and boundary fence to new display surface car parking, on 0.15ha of vacant land, located west of the existing car parking including a 6m high internally illuminated signage totem and tensile fabric canopy structures. Extension of existing workshop by 208sq.m located to the north of Block B and extension of 106sq.m for new vehicle preparation to the north of Block B and internal alterations including a trade parts counter and a new double door on the west elevation of the showroom building, known as Block B, a two storey extension matching the existing height of Block C of 692sq.m to the north of the servicing area of the building known as Block C for vehicle servicing and waiting facilities and an external canopy structure of 200sq.m to the east elevation of the existing parts building known as Block A on an overall site of 2.257ha.

Location: Blocks A, B and C, Clonlara Avenue, Baldonnell Business Park, Dublin 22

Applicant Name: Armalou Ltd.

Application Type: Extension Of Duration Of Permission

(EW)

Description of Site and Surroundings:

Site Area: stated as 2.257 Hectares in the application form for Reg. Ref. SD17A/0039.

Site Description:

The subject site is located in Baldonnell Business Park. There are three buildings on site with car parking throughout the site. The site is visible from the N7 and access is via the industrial estate entrance.

Comhairle Chontae Atha Cliath Theas

PR/0371/22

Record of Executive Business and Chief Executive's Order

Proposal:

The applicant is seeking to **extend the duration of permission by a period of 5 years for**, which relates to works previously granted planning permission under South Dublin County Council register reference SD17A/0039, now elapsed):

- Extension of existing workshop by 208sq.m located to the north of Block B;
- Extension of 106sq.m for new vehicle preparation to the north of Block B;
- internal alterations including a trade parts counter and a new double door on the west elevation of the showroom building,
- A two-storey extension matching the existing height of Block C of 692sq.m;
- External canopy structure of 200sq.m to the east elevation;
- A new vehicular entrance and boundary fence to new display surface car parking;
- A 6m high internally illuminated signage totem and tensile fabric canopy structures.

Proposal for Extension of Duration of Permission:

The final grant date for SD17A/0039 was issued on the 22nd of May 2017. The permission expires on the 22nd of May 2022 (excluding s.251 Order dates).

The application for Extension of Duration was received on the 27th January 2022, 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 has no overlaps with environmental layers.

Relevant Planning History on Subject Site:

SD17A/0039 (Subject Application)

Permission granted by South Dublin County Council with a final grant date of the 22nd of May 2017

Comhairle Chontae Atha Cliath Theas

PR/0371/22

Record of Executive Business and Chief Executive's Order

SD02A/0744

Permission granted for change of use of part of warehouse (26 sq. m.) to canteen facility at building C.

SD02A/0599

Permission granted for erection of a car wash and enclosure connected to interceptor and foul drain (waste licence required).

SD02A/0285

Permission granted for revisions to previously approved security kiosk building granted planning permission under Reference no S01A/0508 including the addition of an ESB sub-station.

S01A/0508

Permission granted for three buildings with an overall gross area of 7,090sq.m on a site extending to 2.1 hectares with associated vehicle parking, security kiosk and site works on a site known as Site F fronting the Naas Road with access from existing entrance from Barneys Lane at Baldonnell Business Park. Building A contains Spare Parts Store and ancillary offices. Building B contains vehicle workshop and training facility, vehicle sales showroom and ancillary offices. Building C contains truck service depot, parts store and ancillary offices

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.

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 as stated took effect in February 2019.** Therefore, extensions of

Comhairle Chontae Atha Cliath Theas

PR/0371/22

Record of Executive Business and Chief Executive's Order

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.
 - 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

Comhairle Chontae Atha Cliath Theas

PR/0371/22

Record of Executive Business and Chief Executive's Order

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—

(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—

Comhairle Chontae Atha Cliath Theas

PR/0371/22

Record of Executive Business and Chief Executive's Order

- (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 entrance gates, totem sign, boundary fencing and surface car parking are the particulars of substantial work carried out. The Planning Authority does not deem the stated as “substantial works”. There is no mention of building structure works having commenced onsite and it is noted that Baldonnell Business Park has the above mentioned in situ already as a general business park. Also noted is the applicant states on the application form that ‘*dealership reviews, slow recovery of vehicle market, unknown EV market, reduced supply of vehicles for sale*’ as details of the circumstances beyond the control of the person carrying out the development as a result of which the development was not completed.

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 permission. This is not the case in relation to the subject application. The Planning Authority does not deem the stated as “substantial works”. There is no mention of building structure works having 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

Comhairle Chontae Atha Cliath Theas

PR/0371/22

Record of Executive Business and Chief Executive's Order

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 Section 42 of the Planning and Development Act 2000 (as amended) 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.

Comhairle Chontae Atha Cliath Theas

PR/0371/22

Record of Executive Business and Chief Executive's Order

REG. REF. SD17A/0039/EP

LOCATION: Blocks A, B and C, Clonlara Avenue, Baldonnel Business Park, Dublin 22

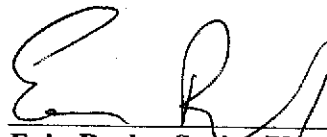
Colm Harte

**Colm Harte,
Senior 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:

23/3/22



Eoin Burke, Senior Planner