

Comhairle Chontae Atha Cliath Theas

PR/0538/22

Record of Executive Business and Chief Executive's Order

Reg. Reference: SD16A/0303/EP **Application Date:** 04-Mar-2022
Submission Type: New Application **Registration Date:** 04-Mar-2022

Correspondence Name and Address: L. & M. Kelly 26 Cois Na hAbhann, Old Bawn, Tallaght, Dublin 24.

Proposed Development: Removing of existing garden wall and palisade fence along western boundary and for constructing a new 215mm tk. x 2.1m high rendered block perimeter wall complete with piers and concrete capping along south and west boundary to incorporate part adjoining site (area 481.3sq.m.). Permission sought for construction of 2 new semi-detached 3 bedroom houses to side (floor area to be 126.85sq.m per house, with a proposed ridge height of 8.325m above ground level), including 900mm deep bay window to front elevations at ground and first floor levels, single storey flat roof extended ground floor across rear and first floor windows to east and west elevations. Permission also sought for the construction of 2 new 3m wide driveway entrances with 750mm high block wall and 450mm.sq. x 1.2m high brickwork piers across front/n.east boundary, to form vehicle access onto new 6.15m long extended roadway across front of site, complete with dished footpath and kerbing to tie into existing, together with all associated site works.

Location: 26 Cois Na hAbhann, Old Bawn, Tallaght, Dublin 24.

Applicant Name: Liam & Marion Kelly

Application Type: Extension Of Duration Of Permission

(NM)

Description of Site and Surroundings:

Site Area: stated as 0.1054ha. Hectares in the application form for Reg. Ref. SD16A/0303.

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Site Description:

The site is located within the established residential estate of Cois Na hAbhann, Old Bawn. The site comprises the side garden of an existing semi-detached two-storey dwelling house and an additional parcel of land adjoining this, in close proximity to Kiltipper Stream. The surrounding properties in the immediate vicinity are semi-detached two-storey buildings with a predominately uniform building height.

Proposal:

The applicant is seeking to **extend the duration of permission by a period of 3 years for SD16A/0303**, which relates to works for the following:

- Removing of existing garden wall and palisade fence along western boundary
- Construct a new 215mm tk. x 2.1m high rendered block perimeter wall complete with piers and concrete capping along south and west boundary to incorporate part adjoining site (area 481.3sq.m).
- Construction of **2 new semi-detached 3 bedroom houses** to side (floor area to be 126.85sq.m per house, with a proposed ridge height of 8.325m above ground level), including 900mm deep bay window to front elevations at ground and first floor levels, single storey flat roof extended ground floor across rear and first floor windows to east and west elevations.
- Construction of 2 new 3m wide driveway entrances with 750mm high block wall and 450mm.sq. x 1.2m high brickwork piers across front/n.east boundary, to form vehicle access onto new 6.15m long extended roadway across front of site, complete with dished footpath and kerbing to tie into existing, together with all associated site works.

Proposal for Extension of Duration of Permission:

The final grant date by An Bord Pleanála for SD16A/0303 under reference PL06S.247642 was issued on the 7th of April 2017. The permission expires on the 7th of April 2022 (excluding s.251 Order dates).

The application for Extension of Duration was received on the 4th of March 2022, which was before the date of expiry of the permission, and not more than one year before this.

Zoning:

The majority of the subject site is zoned OS 'To preserve and provide for open space and recreational amenities'. The remainder of the subject site, directly adjacent to the existing dwelling, is subject to zoning objective 'RES' - 'To protect and/or improve residential amenity.'

Consultations:

No referrals required.

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SEA Sensitivity Screening

Overlaps with SFRA B 2016.

Relevant Planning History on Subject Site:

SD16A/0303 – **Permission Refused by SDCC / Permission Granted by ABP on Appeal PL06S.247642** for removing of existing garden wall and palisade fence along western boundary and for constructing a new 215mm tk. x 2.1m high rendered block perimeter wall complete with piers and concrete capping along south and west boundary to incorporate part adjoining site (area 481.3sq.m.). Permission sought for construction of 2 new semi-detached 3 bedroom houses to side (floor area to be 126.85sq.m per house, with a proposed ridge height of 8.325m above ground level), including 900mm deep bay window to front elevations at ground and first floor levels, single storey flat roof extended ground floor across rear and first floor windows to east and west elevations. Permission also sought for the construction of 2 new 3m wide driveway entrances with 750mm high block wall and 450mm sq. x 1.2m high brickwork piers across front/n.east boundary, to form vehicle access onto new 6.15m long extended roadway across front of site, complete with dished footpath and kerbing to tie into existing, together with all associated site works.

SD16A/0015 – **Permission Refused** for removal of existing garden wall and palisade fence along western boundary and for construction of 215mm tk. x 2.1m high rendered block perimeter wall complete with piers and concrete capping along south and west boundary to incorporate adjoining site (area 554.7sq.m). Permission for construction of 2 new semi-detached 3 bedroom houses to side (floor area to be 144.71sq.m per house with a ridge height of 8.525m above ground level) including 900mm deep bay window to front elevations at ground and first floor levels; single storey flat roof extended ground floor across rear and first floor windows to east and west elevations. Permission also sought for construction of 2 new 3.5m wide driveway entrances with 750mm high block wall and 450mm x 1.2m high brickwork piers across front northeast boundary to form vehicular access onto new 7m long extended roadway across front of site, complete with dished footpath, grass verge and kerbing to tie in with existing, together with all associated site works.

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.

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'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 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 in include (1A) until the 31st of December 2021 under s.28 of the 2016 Act.

Section 42(1B) 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(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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- Reg. 2 of the European Union (Planning) (Habitats, Birds and Environmental Impact) Regulations 2021 (S.I. No. 456 of 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 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.

(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) 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—

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- (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
 - (ii) in any other case, the day on which all of those requirements stand complied with.
- (4) Except where subsection (1B) applies, 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.
- (8) A planning authority shall not extend the appropriate period under this section in relation to a permission if an environmental impact assessment or an appropriate assessment would be required in relation to the proposed extension concerned.

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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:

It is noted that in section 13 of the application form the applicant indicates that the reasons for not completing the development was due to hospitalisation due to mental health issues and KBC not releasing a portion of the side garden which has now been rectified as the applicant has paid off the remaining mortgage.

13. DETAILS OF THE CIRCUMSTANCES BEYOND THE CONTROL OF THE PERSON CARRYING OUT THE DEVELOPMENT AS A RESULT OF WHICH THE DEVELOPMENT WAS NOT COMPLETED. (SEE NOTES ATTACHED):

05/19 - HOSPITALISED WITH MENTAL HEALTH ISSUE
06/20 - 10/21 ISSUES WITH KBC RELEASING SIDE GARDEN FROM MORTGAGE
PLEASE SEE ATTACHED LETTER FOR FULL DETAILS

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 *Section 9: Date Development Commenced as Not Commenced and Section 10: Particulars of Substantial Works Carried Out Before The Permission Will Expire as None.*

There are 6 criteria under subsection (1B), 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 as the applicant has confirmed that no works have commenced to date.

Conclusion:

The application was made after changes in the Planning and Development Act 2000 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. The criteria set down in s42(1)(a)(i) or

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s42(1B)(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 Extension 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.

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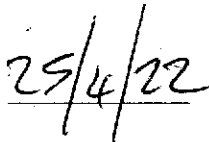
LOCATION: 26 Cois Na hAbhann, Old Bawn, Tallaght, Dublin 24.



Jim Johnston,
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:





Eoin Burke, Senior Planner