

# Comhairle Chontae Atha Cliath Theas

PR/0657/22

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

<b>Register Reference:</b>	ED22/0008
<b>Correspondence Name &amp; Address:</b>	Kiaran O'Malley & Co. Ltd St. Heliers, Saint Heliers Copse, Stillorgan Park, Blackrock, Co. Dublin
<b>Development:</b>	Is the commercial use as open storage of lands at Clonacoole, Naas Road, Clondalkin, D22 development, & if so, is it exempt development
<b>Location:</b>	Clonacoole, Naas Road, Clondalkin, Dublin 22
<b>Applicant:</b>	John Hanlon

### Description of Site and Surroundings

#### Site Area

Stated as 0.15sq.m.

#### Site Description

The site is located on the north side of the N7, east of St Brigid's Cottages, with access from the N7 slipway. The site is located in close proximity to the M50/N7 interchange. The site is triangular in shape and appears to currently be used to store shipping containers onsite. The site is located adjacent to the rear of 2 no. detached two storey houses facing the N7 slipway.

#### Zoning

The subject site is subject to zoning objective 'EE' - *'To provide for enterprise and employment related uses'* in the South Dublin County Development Plan 2016-2022.

#### Proposal

This Section 5 Declaration application includes:

- Application Form.
- Cover Letter prepared by Kiaran O'Malley & Co. Limited dated 26<sup>th</sup> April 2022.
- Site Location Map.
- Site Layout Plan.
- Auto track Analysis Drawing.

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- Supporting documentation including:
  - Letter prepared by Irish Towing Services dated 20<sup>th</sup> August 2018.
  - Letter prepared by Tank Engineering Limited dated 15<sup>th</sup> August 2018.
  - Copies of Morlon Motors Receipts.
  - Design Experts Business Card.

This is an application requesting a Section 5 Declaration on whether the **commercial use of lands as open storage** is or is not exempted development.

### Relevant Planning History

**SD21B/0008** - Erection of a perimeter steel fence to match existing fence as erected on neighbouring property 2.5m high and the installation of a new electronically controlled entrance gate set back approx. 13m from road side 2.1m high. **SDCC Decision:** Refuse Permission, citing the following 3 No. reasons:

1. Having regard to the provisions of the South Dublin County Council Development Plan 2016-2022 and the extensive planning history of the site, the proposed development would result in the intensification of traffic that would give rise to the endangerment of public safety by reason of traffic hazard or obstruction of road users. Furthermore, the proposed development would be 'at variance with official policy in relation to the control of development on-affecting national roads, as outlined in DoECLG Spatial Planning and Roads Guidelines for Planning Authorities (2010)' and would therefore be contrary to the proper planning and sustainable development of the area.
2. The development, that comprises a perimeter steel fence around the boundary of a site associated with an existing dwelling house (as outlined in blue on the Site Location Map) and the installation of an electronically controlled entrance gate to the side of the existing dwelling house, where the site (outlined in red on the Site Location Map) is being used for an unauthorised self-storage business, would consist of and include the making of a material change of use of the land for which permission has not been granted and would therefore be contrary to the proper planning and sustainable development of the area.
3. The proposed development would set an undesirable precedent for other similar developments, which would in themselves and cumulatively, be harmful to road traffic safety and would be contrary to the proper planning and sustainable development of the area.

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The decision of South Dublin County Council was subject to a First Party Appeal to An Bord Pleanála. **ABP Decision:** Refuse Permission, with the following reason cited:

1. It is considered that the proposed development would facilitate the consolidation and continuance of development for which there is no authorisation and for which the Board has previously refused Retention Permission.

**SD19A/0202** - Retention for change of use of premises to self-storage facility; 40 shipping containers used as storage units; 10 metre length of 2.6 metre high palisade fencing in west boundary; sign on Unit 40; sign at roadside entrance and 2.2 metre high security gate and fence at the entrance. **SDCC Decision:** Refuse Permission for Retention. In Refusing Retention Permission, South Dublin County Council cited the following 3 No. reasons:

1. The development to be retained would have an adverse impact on the N7 national road and associated junction, and would lead to an increased traffic hazard due to traffic intensification and slow turning movements, which would be contrary to policy TM5 of the South Dublin County Council Development Plan 2016-2022, which seeks 'to effectively manage and minimise the impacts of traffic within the County' and would contravene Section 2.5 and 2.7 of the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January, 2012). The development would therefore endanger public safety by constituting a traffic hazard and would not be in accordance with the proper planning and sustainable development of the area.
2. The existing storage facility comprising shipping containers on a visible and high profile site adjacent to the national road network on a 'EE' zoned site, would constitute a haphazard form of development which would contravene policy ET3 objective 5 of the South Dublin County Council Development Plan 2016-2022, which requires all business parks and industrial areas to be designed to the highest architectural and landscaping standards. The development to be retained would not contribute positively to the surrounding area and having regard to its visible location and frontage/access with the national road network, would injure the visual amenity of the area and would not be in accordance with the proper planning and sustainable development of the area
3. The existing development, on a visible site, with access to the N7, would set an undesirable precedent for similar developments which would by themselves, and cumulatively, injure the amenities of the area and not be in accordance with the proper planning and sustainable development of the area.

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The decision of South Dublin County Council was subject to a First Party Appeal to An Bord Pleanála. **ABP Decision:** Refuse Permission. In Refusing Permission, South Dublin County Council cited the following 2 No. reasons:

1. The development proposed for retention would lead to an increase in traffic turning movements onto and off a busy slip road linking with the National Primary Road (N7) along which traffic travels at up to the maximum speed limit. The access to the site via this slipway is substandard in that it lacks adequate vision splays in each direction. The proposed development would, thereby, endanger public safety by reason of traffic hazard and would be contrary to the proper planning and sustainable development of the area.
2. The development proposed for retention consisting of the location of shipping containers for use for storage purposes on a visually prominent and poorly landscaped site which is clearly visible from the adjacent National Primary Route (N7) would constitute haphazard development and would seriously injure the visual amenities of the area by reason of visual dominance at this location. Furthermore, the development proposed for retention would contravene Objective ET3, Objective 5 of the South Dublin County Development Plan 2016-2022 which seeks to ensure that all business parks and industrial areas are designed to the highest architectural and landscaping standards and would set an undesirable precedent for similar development in the area. The development proposed for retention would, therefore, be contrary to the proper planning and sustainable development of the area.

### Adjacent Sites

**SD15A/0314** : The Yard, Red Cow, Naas Road, Clondalkin, Dublin 22. 68 no. 20 foot storage containers and 9 no. 40 foot storage containers, 1 no. 10 foot office unit & toilet. In addition, to include the provision of vehicle storage area along western boundary of the subject site to accommodate 26 parking spaces. The proposal also included landscaping to the boundary of the site and modifications to the existing entrance. This development was for a period of 5 years for the use of the subject site as a self-service storage facility. **SDCC Decision:** REFUSE PERMISSION.

### Relevant Enforcement History

**Enforcement Ref. S7798** – The operation of a commercial storage facility to the rear of the property without the benefit of appropriate Planning Permission. **Status:** Open.

### Planning Notes

- The Cover Letter prepared by Kieran O'Malley Limited dated 26<sup>th</sup> April 2022 states that a declaration is being sought in relation to the following:

*'Is the commercial use as open storage of lands at Clonacoole, Naas Road, Dublin 22 development, and if so, is it exempted development.*

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*For clarity this question relates to commercial use as open storage of this site without any structures on it.'*

For clarity, the Planning Authority considers storage containers as 'structures' as defined under Section 2(1) of the Planning and Development Act 2000 (as amended). It is also noted that planning permission has previously been refused for use of the site as a self-storage facility. There is also an enforcement file for the operation of a commercial storage facility at the site.

However, the proposal the subject of this declaration is stated as the **commercial use of the land for open storage**. Therefore, that is what has been assessed.

- The Planning History on the subject site and adjacent sites show the dwelling adjacent to the south of the subject site as within the Applicant's ownership. The drawings provided by the Applicant as part of the Declaration of Exemption Section 5 application do not indicate this.

### Assessment

Consideration as to whether a development 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, 7, 8, 9, 10 and 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*'.

**Section 2(1)** in this Act, except where otherwise requires –

'*works*' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

'*structure*' as any building, structure, excavation, or other thing constructed or made on, in or under any land, or part of a structure so defined, and –

- (a) Where the context so admits, includes the land on, in or under which the structure is situated.

The commercial use of lands as open storage is considered a material change of use of the land. The proposal is therefore considered 'development'.

### Is the proposal exempted development?

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Section 4 of the Planning and Development Act 2000 (as amended) outlines a number of forms of development which are exempt. Having regard to the proposed commercial use of the lands for open storage, the Planning Authority is satisfied that the proposal is not exempted development under Section 4 of the Planning and Development Act 2000 (as amended).

Schedule 2 of the Planning and Development Regulations 2001 (as amended) lists exempted development. It is not considered that the commercial use of lands for open storage fits the description of any of the uses listed under Schedule 2 of the Regulations. As such, the proposal cannot be considered exempted development under this schedule.

### Article 9 restrictions

Article 9(1)(iii) of the Planning and Development Regulations 2001 (as amended) states that:

*'Development to which article 6 relates shall not be exempted development for the purposes of the Act--*

*(a) if the carrying out of such development would--*

*(iii) endanger public safety by reason of traffic hazard or obstruction of road users'*

Insufficient information has been provided by the Applicant to demonstrate that the proposal would not endanger public safety by reason of a traffic hazard. In particular, insufficient detail has been provided in relation to the traffic generation resulting from the operation of the commercial storage business on the subject site. The issue of traffic hazard has also been raised on the previously refused applications on the site, including being cited as a reason for refusal.

### Conclusion

It is considered that the proposed development would not be exempted development having regard to the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

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**Recommendation:**

The applicant should be informed that the proposed development would not be considered as Exempted Development and therefore would require planning permission.

*Colm Harte*

**Colm Harte**  
**Senior Executive Planner**

**ORDER:** That the applicant be informed that the proposed development of Is the commercial use as open storage of lands at Clonacoole, Naas Road, Clondalkin, D22 development, & if so, is it exempt development at Clonacoole, Naas Road, Clondalkin, Dublin 22 is development and is not considered to be exempted development under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended) and therefore **does require** planning permission.

Date:

*31/5/22*

  
**Eoin Burke, Senior Planner**