

Comhairle Chontae Atha Cliath Theas

PR/0706/22

Record of Executive Business and Chief Executive's Order

Reg. Reference: SD17A/0023/EP **Application Date:** 11-Apr-2022
Submission Type: New Application **Registration Date:** 11-Apr-2022

Correspondence Name and Address: Rathcroghan Designs Ballinagare, Castlerea, Co. Roscommon

Proposed Development: Alterations to previously granted permission, Ref: SD15B/0287, increasing side extension to allow for a new 2 storey, semi-detached, 3 bedroom house, with shared entrance and all associated site works.

Location: 1, Wheatfield Crescent, Clondalkin, Dublin 22

Applicant Name: Shane Casey

Application Type: Extension Of Duration Of Permission

Description of Site and Surroundings:

Site Area:

Stated as 0.0118 ha.

Site Description

The site is a corner site located at No. Wheatfield Crescent, adjacent to the junction of Wheatfield Avenue and Wheatfield Crescent. The site contains an existing two storey semi-detached dwelling with front and rear garden. The streetscape is generally characterised by two storey dwellings of a similar architectural design and form.

Proposal:

Proposal is **to extend the duration of permission for SD17A/0023**, which is a permitted development for the following:

Alterations to previously granted permission, Ref: SD15B/0287, increasing side extension to allow for a new 2 storey, semi-detached, 3 bedroom house, with shared entrance and all associated site works.

Proposal for Extension of Duration of Permission:

The applicant is seeking a 5-year extension to May 2027.

Relevant Dates:

The final grant of permission for SD17A/0023 was 15th May 2017 and would have expired on 16th May 2022. Under S.254A of the Act, 56 days of this period are to be disregarded in the calculation

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of its length, corresponding to the length of the pandemic emergency measures undertaken in 2020. This effectively extends the effective period of that permission to 11th July 2022.

The application for extension of duration was received on 11th April 2022. This is within the appropriate time period for lodging an application for extension of permission.

Zoning:

The site is subject to zoning objective - '*RES*' '*To protect and/or improve Residential Amenity*' under the South Dublin County Development Plan 2016-2022.

Relevant Planning History on Subject Site:

Other than the Parent Permission (SD17A/0023), the following Planning History is recorded on the subject site:

SD15B/0287

Erection of a new two storey extension to front side and rear of existing house, consisting of new lounge on ground floor, 2 bedrooms on first floor and all associated site works.

SDCC Decision: Permission Granted, subject to conditions.

SD07A/0894

Proposal as stated on APAS; Demolition of existing garage; construction of 2 storey extension to side, single storey pitched roof extension to rear and pitched roof porch to front all for use as crèche; change of use of existing house to crèche facilities to include one bedroom apartment; widened vehicular entrance.

SDCC Decision: Refuse Permission

Relevant Enforcement History:

None Found.

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

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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.

Section 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 9th September 2021.** Therefore, extensions of permission under S.42(1) of the 2000 Act can only be granted under S.42(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 41(1B) to temporarily appear in S.42 Section 41(1B) provides for extensions of permission to December 2023 and various criteria for making such extensions. One of these criteria is that works shall have commenced.

The date of commencement of works has not been provided by the applicant, nor can the planning authority find a date when a commencement notice was sought.

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 31st December 2023, section 42 of the 2000 Act has effect as if it reads as follow (this includes a reading as described in s42B):

‘42. —

- (1) On application to it in that behalf a planning authority shall, as regards a particular permission, extend the appropriate period by such additional period not exceeding 5 years as

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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) an environmental impact assessment or an appropriate assessment, or both of those assessments, was or were not required before the permission was granted,

(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) (a) Notwithstanding anything to the contrary in subsection (1) or (4), a planning authority shall—

(i) as regards a particular permission in respect of a development that relates to 20 or more houses and in respect of which an environmental impact assessment or an appropriate assessment, or both of those assessments, were not required before the permission was granted, and

(ii) 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 by such additional period not exceeding 5 years, or until 31 December 2021, whichever first occurs, **but the authority shall only so extend that period where the authority—**

(I) **considers it requisite to enable the development to which the permission relates to be completed,**

(II) is satisfied that the application is in accordance with such regulations under the Planning and Development Acts 2000 to 2016 as apply to the application,

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(III) is satisfied that any requirements of, or made under those regulations are complied with as regards the application,

(IV) is satisfied that the development to which the permission relates was—

(A) **commenced, and**

(B) **substantial works were carried out**, before the expiration of the appropriate period or any extension of that period, and

(V) is satisfied that in the case of a permission—

(A) where the expiry of the appropriate period as extended occurred or occurs during the period from 19 July 2016 to the day preceding the day that section 28(2) of the Planning and Development (Housing) and Residential Tenancies Act 2016 comes into operation, the application is duly made within 6 months of the said commencement date, or

(B) where the appropriate period as extended expires on or after the date of commencement of section 28(2) of the Planning and Development (Housing) and Residential Tenancies Act 2016, the application is duly made within the period prescribed for the purposes of section 43(2).

(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—

(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,

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- (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), (1A) 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—
- (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) 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

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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.'

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:

Noting recent changes to the 2000 Act (see 'Summary of Recent Changes to Legislation' above), there are 3 subsections under which an extension of duration of permission can be granted. These are subsections (1), (1A) and (1B) of section 42 of the Act.

Subsection 1A applies to developments of 20 or more houses and does not apply to the subject application.

There are 4 criteria under subsection (1), listed under clause (a)(i). Criterion (III) requires that the Planning Authority must be satisfied that 'substantial works were carried out pursuant to the permission during that period'. The Applicant indicates in their Application Form that:

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'Not Commenced due to financial constraints due to Covid 19

Preliminary works were carried out on the existing dwelling prior to the COVID 19 pandemic (2019) in preparation for works to commence.

The advent of the Covid 19 restrictions resulted in the unavailability of construction contractors to commence the work. This coupled with the developers financial constraints (due to loss of income from COVID restriction), have resulted in the works been unable to commence.

With the easing of Covid 19 restrictions and constraints, works can now commence on the project once an extension of duration of permission is permitted by the planning authority '

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. In relation to the subject application, as indicated by the applicant in their application form, substantial works have not commenced.

Conclusion

The application was made after changes in the law which were commenced with immediate effect and became effective on 9th September 2021. These changes to the law have removed the statutory basis for an extension of duration of permission **where substantial works have not taken place.**

Noting recent changes to the 2000 Act (see 'Summary of Recent Changes to Legislation' above), there are 3 subsections under which an extension of duration of permission can be granted. These are subsections (1), (1A) and (1B) of section 42 of the Act.

Subsection 1A applies to developments of 20 or more houses and does not apply to the subject application.

There are 4 criteria under subsection (1), listed under clause (a)(i). Criterion (III) requires that the Planning Authority must be satisfied that 'substantial works were carried out pursuant to the permission during that period'. The applicant has to date not commenced development in relation to the subject application, as indicated by the applicant in their letter Application Form.

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. In relation to the subject application, as indicated by the applicant in their in their Application Form, substantial works have not been carried out and a commencement date is unknown.

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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 41(1B) to temporarily appear in S.42 Section 41(1B) provides for

extensions of permission to December 2023 and various criteria for making such extensions. One of these criteria is that works shall have commenced, it has been established that works have not commenced on the subject site, therefore the Planning Authority recommends a refusal on the request 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 substantial works must have taken place.

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REG. REF. SD17A/0023/EP

LOCATION: 1, Wheatfield Crescent, Clondalkin, 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:

7/6/22


Eoin Burke, Senior Planner