

Comhairle Chontae Atha Cliath Theas

PR/0967/22

Record of Executive Business and Chief Executive's Order

Reg. Reference: SD17A/0139/EP **Application Date:** 03-Jun-2022
Submission Type: New Application **Registration Date:** 03-Jun-2022

Correspondence Name and Address: Stephen Mason, Architectural and Planning Services
2, Clonkeefy, Castlerahan, Ballyjamesduff, Co.
Cavan

Proposed Development: Permission for residential development comprising 9 dwellings. The proposed development is comprised of: (1) 2 Type A, 2 bed two storey semi-detached houses; (2) 1 Type B, 3 bed two storey detached house with attic conversion; (3) 2 Type C, 3 bed two storey end terrace houses with attic conversions; (4) 2 Type D, 2 bed two storey mid terrace houses with attic conversions; (5) 2 Type E, 3 bed two storey end terrace houses with attic conversions; (6) proposed new vehicular access road from St. Johns Road (located on lands owned by South Dublin County Council); (7) connections to all services and all ancillary site development works and (8) a pedestrian access gate at the intersection of Commons Road and Fonthill Road (located on lands owned by South Dublin County Council).

Location: Lands fronting Fonthill Road and to the rear of St. Johns Road, Clondalkin, Dublin 22

Applicant Name: Paul Crowley

Application Type: Extension Of Duration Of Permission

(COS)

Description of Site and Surroundings

Site Area: stated as 0.27 Hectares in the application form for Reg. Ref. SD17A/0139.

Comhairle Chontae Atha Cliath Theas

PR/0967/22

Record of Executive Business and Chief Executive's Order

Site Description

The subject site is irregular in shape and located to the south of St. John's Road and to the north of Fonthill Road. The adjoining site to the east is currently under construction to provide a primary health care facility. The northern and western boundaries adjoin the rear gardens of existing and under construction housing. The site is currently vacant and has vehicular access off St. John's Road.

Proposal

The applicant is seeking to **extend the duration of permission of Reg. Ref. SD16A/0450 to September 2027 (5 years)**, which relates to permission for residential development comprising 9 dwellings.

The proposed development is comprised of: (1) 2 Type A, 2 bed two storey semi-detached houses; (2) 1 Type B, 3 bed two storey detached house with attic conversion; (3) 2 Type C, 3 bed two storey end terrace houses with attic conversions; (4) 2 Type D, 2 bed two storey mid terrace houses with attic conversions; (5) 2 Type E, 3 bed two storey end terrace houses with attic conversions; (6) proposed new vehicular access road from St. Johns Road (located on lands owned by South Dublin County Council); (7) connections to all services and all ancillary site development works and (8) a pedestrian access gate at the intersection of Commons Road and Fonthill Road (located on lands owned by South Dublin County Council).

Proposal for Extension of Duration of Permission

The final grant date for Reg. Ref. SD17A/0139 was issued on the 4th of September 2017. The permission therefore expires on the 4th of September 2022 (excluding s.251 Order dates).

The application for Extension of Duration was received on the 3rd of June 2022, which is 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 'RES': *'To protect and/or improve residential amenity'* under the South Dublin County Development Plan 2016-2022.

SEA Sensitivity Screening

No overlap.

Consultations

No referrals required.

Comhairle Chontae Atha Cliath Theas

PR/0967/22

Record of Executive Business and Chief Executive's Order

Relevant Planning History on Subject Site

SD19A/0333 & ABP Ref. PL06S.307611

Residential development consisting of the construction of a four to six storey building accommodating 44 apartments comprised of 22 one bedroom apartments and 22 two bedroom apartments; vehicular access to the proposed development will be via St. John's Road with 10 car parking spaces and 24 bicycle parking spaces and ancillary services all on a site of 0.31 hectares to the rear of St. John's Road with frontage onto Fonthill Road. **Permission granted by SDCC and ABP.**

SD16A/0317

Residential development comprising 9 dwellings. The proposed development is comprised of: (1) 2 Type A, two bed two storey semi-detached houses with attic conversions. (2) 1 Type B, 3 bed two storey detached house with attic conversion. (3) 4 Type C, three bed two storey end terrace houses with attic conversions. (4) 2 Type D, two bed two storey mid terrace houses with attic conversions. (5) Proposed new vehicular access road from St. John's Road (located on lands owned by South Dublin County Council). (6) Connections to all services and all ancillary site development works. (7) A pedestrian access gate at the intersection of Commons Road and Fonthill Road (located on lands owned by South Dublin County Council). **Permission refused as surface water attenuation is below the required standards and would be at risk of flooding, and lack of a registered wayleave and location of a fence over the existing foul sewer.**

SD15A/0329

Pedestrian access gate at the intersection of Common's Road and Fonthill Road. The pedestrian access gate is located on lands owned by South Dublin County Council. **Permission refused for as would not comply with policy that pedestrian links are directly overlooked.**

SD15A/0294 & ABP Ref. PL06S.245900

Residential development of 10 dwellings comprising of (1) 4 Type A, 2 bed two storey semi-detached houses with attic conversions; (2) 4 Type B, 3 bed two storey end terrace houses with attic conversions, (3) 2 Type C, 2 bed two storey mid terrace houses with attic conversions, (4) Proposed new vehicular access road from St. Johns Road (passing over lands owned by South Dublin County Council) and (5) Connections to all services and all ancillary site developments. **Permission refused due to inadequate levels of residential amenity, and would set an undesirable precedent. First party appeal against decision to ABP. ABP refused permission due to poor standard of residential amenity.**

Comhairle Chontae Atha Cliath Theas

PR/0967/22

Record of Executive Business and Chief Executive's Order

SD07A/0271

Residential development consisting of 4 no. three bedroom two storey, semi-detached houses and 37 no. two bedroom apartments in four blocks ranging in height from 3 to 5 storeys all with projecting balconies over a basement car park. **Permission refused due to being premature pending the determination to the precise route of Metro West, overdevelopment of a restricted site, visually obtrusive, and set an undesirable precedent.**

Relevant Enforcement History

None identified in APAS.

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 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.

Comhairle Chontae Atha Cliath Theas

PR/0967/22

Record of Executive Business and Chief Executive's Order

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.
- 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,

Comhairle Chontae Atha Cliath Theas

PR/0967/22

Record of Executive Business and Chief Executive's Order

- (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—*
 - (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*

Comhairle Chontae Atha Cliath Theas

PR/0967/22

Record of Executive Business and Chief Executive's Order

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) *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,*

Comhairle Chontae Atha Cliath Theas

PR/0967/22

Record of Executive Business and Chief Executive's Order

(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.

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 2 subsections under which an extension of duration of permission can be granted. These are subsections (1) and (1B) 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 proposed works have not commenced.

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. The applicant states on the application form that the proposed works have not commenced.

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(1B)(b)(v) are not met in this instance, and the Planning Authority therefore cannot grant permission for an extension of duration of permission.

Comhairle Chontae Atha Cliath Theas

PR/0967/22

Record of Executive Business and Chief Executive's Order

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 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(1B)(b)(v) are not met in this instance, and the Planning Authority therefore cannot grant permission for an extension of duration of permission.

Comhairle Chontae Atha Cliath Theas

PR/0967/22

Record of Executive Business and Chief Executive's Order

REG. REF. SD17A/0139/EP

**LOCATION: Lands fronting Fonthill Road and to the rear of St. Johns Road, 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:

28/7/22

Eoin Burke
Eoin Burke, Senior Planner