

Comhairle Chontae Atha Cliath Theas

PR/1110/22

Record of Executive Business and Chief Executive's Order

Reg. Reference: SD17A/0280/EP **Application Date:** 05-Jul-2022
Submission Type: New Application **Registration Date:** 05-Jul-2022

Correspondence Name and Address: Elaine Butler Callaghs, Ballyconnell, Cavan, H14
FW94

Proposed Development: 2 semi-detached, dormer bungalows and all ancillary works on site to rear of existing dwelling.

Location: 18, Ballynakelly Cottages, Newcastle, Co. Dublin

Applicant Name: Gerard Butler & Linda Byrne & Elaine Butler

Application Type: Extension Of Duration Of Permission

Description of Site and Surroundings:

Site Area:

Stated in original application as 0.074 ha.

Site Description

The site is located within an established cul-de-sac of cottages, Ballynakelly Cottages, to the south east of Newcastle Village and comprises the rear garden of an existing single storey cottage house.

Proposal:

Proposal is **to extend the duration of permission for SD17A/0280**, which is a permitted development for the following:

'Construct 2 semi-detached dormer bungalows to the rear of existing dwelling (dwelling No. 1 – 4 beds, 136. 92sq.m; dwelling No. 2 – 3 beds, 139. 45sq.m).'

Proposal for Extension of Duration of Permission:

The applicant is seeking an extension of duration up to the 14th December 2027.

Relevant Dates:

The final grant of permission for SD17A/0093 was 30th January 2018 and would have expired on 31st January 2023. Under S.254A of the Act, 56 days of this period are to be disregarded in the calculation 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 28th March 2023.

Comhairle Chontae Atha Cliath Theas

PR/1110/22

Record of Executive Business and Chief Executive's Order

The application for extension of duration was received on 5th July 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' in the South Dublin County Development Plan 2022-2028.

Relevant Planning History on Subject Site:

Subject Site

Other than the Parent Permission (SD17A/0280), there is no recent relevant Planning History for the subject site.

Adjacent sites

There is no recent relevant planning history on adjacent sites.

Relevant Enforcement History

None on file.

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.

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.

Comhairle Chontae Atha Cliath Theas

PR/1110/22

Record of Executive Business and Chief Executive's Order

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 have any particulars been provided of substantial works carried out before the permission will expire.

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 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,

Comhairle Chontae Atha Cliath Theas

PR/1110/22

Record of Executive Business and Chief Executive's Order

- (III) substantial works were carried out pursuant to the permission during that period, and
 - (IV) 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,
 - (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

Comhairle Chontae Atha Cliath Theas

PR/1110/22

Record of Executive Business and Chief Executive's Order

(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,

(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)*.

Comhairle Chontae Atha Cliath Theas

PR/1110/22

Record of Executive Business and Chief Executive's Order

- (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 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.'

Comhairle Chontae Atha Cliath Theas

PR/1110/22

Record of Executive Business and Chief Executive's Order

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 the development has 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. 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 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 Application Form, substantial works have not been carried out and a commencement date is unknown.

Comhairle Chontae Atha Cliath Theas

PR/1110/22

Record of Executive Business and Chief Executive's Order

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 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/1110/22

Record of Executive Business and Chief Executive's Order

REG. REF. SD17A/0280/EP

LOCATION: 18, Ballynakelly Cottages, Newcastle, Co. Dublin

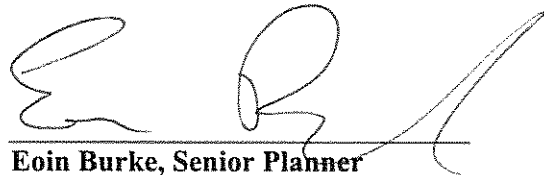
Colm Harte

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:

29/8/22


Eoin Burke, Senior Planner