



An
Bord
Pleanála

Inspector's Report

ABP-321253-24

Development

Relocation of existing nursery to new site bounded by Tibbradden Lane and Mutton Lane including the construction of a potting shed, 3 polytunnels, a greenhouse and all associated site works.

Location

Site bounded by Tibbradden Lane and Mutton Lane, Rathfarnham, Dublin 16

Planning Authority

Dún Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D23A/0825

Applicant(s)

Mount Venus Nursery Ltd

Type of Application

Permission

Planning Authority Decision

Grant Permission with Conditions

Type of Appeal

First Party against financial contributions conditions (S. 48)

Inspector

Natalie de Róiste

1.0 Site Location and Description

- 1.1. The appeal relates to a proposal to relocate an existing plant nursery, (Mount Venus Nursery, currently located in the walled garden of Tibbradden House), to a larger site further south on Tibbradden Lane, in Tibbradden, County Dublin. The site measures c. 2.3 hectares, and is bordered to the north and west by Tibbradden Lane, to the east by Mutton Lane and to the south by fields in the ownership of the applicant. The site is rural in character.

2.0 Proposed Development

- 2.1. The development consists of the relocation of the existing business, with construction of a shed, three polytunnels and a greenhouse. A composting wc, septic tank, and percolation area is also proposed. Permeable gravel roads, paths, car parking and sales areas are to be laid out, and a large area is indicated as a growing area.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority recommended a grant of permission subject to conditions, including conditions on tree protection, drainage, and development contributions. The conditions under appeal are as follows:

11.The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €1,429.45 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Local Authority in respect of the provision of Surface Water Infrastructure benefiting development in the area of the Planning Authority, as provided for in the Development Contribution Scheme 2023-2028 made by Dún Laoghaire-Rathdown County Council on the 9th of October 2023. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index commencing from 1st January 2025. Contributions shall be payable at the index-adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Article 4.7 of the Scheme. Outstanding

balances as of the 1st of January each year shall be subject to indexation and adjusted accordingly until the contribution has been paid in full. (See Article 8.3 of the Scheme).

REASON: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Surface Water Infrastructure benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

Note on above Condition: Please note that with effect from 1st January 2014 Uisce Éireann are now the statutory body responsible for both water and wastewater services. Accordingly, the contribution payable has been reduced by the amount of the contribution associated with these services. Further details/clarification can be obtained from Uisce Éireann at Tel. 1800 278 278.

12. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €21,441.75 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Local Authority in respect of the provision of the Transport Infrastructure benefiting development in the area of the Planning Authority, as provided for in the Development Contribution Scheme 2023-2028 made by Dún Laoghaire-Rathdown County Council on the on the 9th of October 2023. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index commencing from 1st January 2025. Contributions shall be payable at the index-adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Article 4.7 of the Scheme. Outstanding balances as of the 1st of January each year shall be subject to indexation and adjusted accordingly until the contribution has been paid in full. (See Article 8.3 of the Scheme)

REASON: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Transport Infrastructure benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

13. The Developer shall, prior to commencement or as otherwise agreed in writing with the Planning Authority, pay the sum of €120,061.15 to the Planning Authority as a contribution towards expenditure that was/or is proposed to be incurred by the Local

Authority in respect of the provision of the Community & Parks facilities & Recreational amenities benefiting development in the area of the Planning Authority, as provided for in the Development Contribution Scheme 2023-2028 made by Dún Laoghaire-Rathdown County Council on the 9th of October 2023. These rates of contribution shall be updated effective from 1 January each year during the life of the Scheme in accordance with the SCSi Tender Price Index commencing from 1st January 2025. Contributions shall be payable at the index-adjusted rate pertaining to the year in which implementation of the planning permission is commenced, as provided for in Article 4.7 of the Scheme. Outstanding balances as of the 1st of January each year shall be subject to indexation and adjusted accordingly until the contribution has been paid in full. (See Article 8.3 of the Scheme)

REASON: It is considered reasonable that the payment of a contribution be required in respect of the provision of the Community & Parks facilities & Recreational amenities benefiting development in the area of the Planning Authority and that is provided, or that is intended will be provided, by or on behalf of the Local Authority.

A further condition regarding Development Contributions has **not** been appealed:

14. This development shall not be carried out without prior agreement, in writing, between the Applicant and the Planning Authority relating to the payment of development contributions.

REASON: Investment by Dún Laoghaire-Rathdown County Council in Local Authority works has facilitated and will facilitate the proposed development. It is considered appropriate and reasonable that the developer should contribute to the cost of same.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Three reports, that of 22 February 2024 requesting Further Information on transport, visual impacts, drainage, and water supply. That of 28 June 2024 requesting clarification of Further Information on surface and wastewater drainage, and water supply. That of 18 October 2024 recommending a grant of permission.

The initial planning report of 22 February 2024 includes a table regarding Development Contributions, duplicated below:

DEVELOPMENT CONTRIBUTIONS

Commercial:	
Sq. Metres Proposed New Floor Area	Proposed commercial development comprising a plant nursery and associated car parking. 454 sqm floorspace [incl. Polytunnels] as stated. 775sqm outdoor sales area, as stated.
Sq. Metres Proposed Demolition	Demolition of 0 sqm [as stated].

3.2.2. The final planning report of 18 October 2024 (incorporated into the Chief Executive's Order) included a stamped and handwritten note on the front page, indicating Contributions due, with values as per the disputed conditions.

3.3. Other Technical Reports

Transportation Planning: No objection subject to conditions.

Drainage Planning: Further Information requested, subsequently no objection subject to conditions.

Parks: No objection subject to conditions.

3.4. Prescribed Bodies

EHO: Further Information requested, subsequently no objection subject to conditions.

3.5. Third Party Observations

None

4.0 Planning History

4.1. None on site.

4.2. The appellant refers to a number of precedent files as follows, which comprise agricultural buildings which did not attract a development contribution:

- ABP-315086-22 DLRD Ref. D22A/0637 agricultural dry store building with ancillary works at Rathmichael Lane, Shankill.
- DLRD Ref. D21A/0905 agricultural rural type shed building for storage, adjacent to car park area at Stepside Golf Centre.
- DLRD Ref D23A/0791 a shed for the housing of farmed deer at Sika Lodge, Bridge Road, Glencullen.

The appellant refers to the following appeals on contributions for outdoor areas:

- ABP-313719-22 DLRD Ref. D21A/052 extension to Kilternan Cemetery park.
- ABP 312476-22 Fingal Ref. F20A/0550 extension to north apron at Dublin Airport

5.0 Policy Context

5.1. Dún Laoghaire Rathdown Development Plan 2022-2028

5.1.1. The subject site is zoned under Objective G which seeks 'to protect and improve high amenity areas'. The lands to the north and west are zoned under Objective B 'to protect and improve rural amenity and to provide for the development of agriculture'. There are objectives within the site 'to protect and preserve Trees and Woodlands'.

5.2. Dún Laoghaire Rathdown County Council Development Contribution Scheme 2023-2028

5.2.1. Article 1 of the Scheme deals with Legislations and Definitions, including the following:

Section 1.1.3 *Under Section 48(2)(b) a scheme may make provision for payment of different contributions in respect of different classes or descriptions of development. The Scheme makes provision for different contributions in respect of residential development and commercial development. For the purpose of the Scheme residential development includes houses, apartments and duplexes for residential use, whereas*

commercial development is any other type of development that is not residential development.

5.2.2. Article 4 sets out the level of contribution required. This article includes a table (Table A: Countywide) setting out the classes of public infrastructure which require funding, and the levy for different types of development on a countywide basis (except where an exemption or reduction applies provided by Article 7):

Table A: Countywide			
Classes of Public Infrastructure	€ per unit of Residential Development	€ per square metre of Domestic Extensions in excess of 40 sq.m	€ per square metre of Commercial class of Development
Class 1: Community & Parks facilities & Recreational amenities	€10,990.14	€94.91	€94.91
Class 2: Transport Infrastructure	€1,962.53	€16.95	€16.95
Class 3: Surface Water Infrastructure	€130.83	€1.13	€1.13
Total of Contributions Payable	€13,083.50	€112.99	€112.99

5.2.3. Article 5 of the Scheme deals with the Operation of the Scheme.

Section 5.3. *As noted in Article 1.1.3 of the Scheme, any development (including, for the avoidance of doubt, change of use) that is not residential in nature will be classified as commercial development.*

5.2.4. Article 7 of the Scheme deals with exemptions and reductions, and includes a list of 18 categories of exemptions and 5 categories of reductions.

7.1. The following categories of development will be exempted from the requirement to pay development contributions under the Scheme: -

xi. Carparking is exempt in the following circumstances:

a. Carparking in residential developments.

b. Carparking integrated within a structure when ancillary to the proposed use of the structure. (When not exempt, i.e. when use is non-ancillary, it will be measured on the basis of the gross floor area.)

c. Designated accessible carparking spaces in accordance with Technical Guidance Document M in all developments shall be exempt from

contributions, all designated accessible carparking spaces will be measured at 25 metres square.

Surface car parking is leviable at 25% of the Countywide commercial rate only and will be assessed on the basis of each car parking space being 12 square metres.

xiii. Agricultural buildings.

5.3. Development Contributions: Guidelines for Planning Authorities (DECLG 2013)

5.3.1. These non-statutory guidelines note that the primary objective of the development contribution mechanism is to partly fund the provision of essential public infrastructure, while an important balance needs to be struck between this aim and the need to encourage economic activity and promote sustainable development patterns. They set out the types of development that should have reduced rates or waivers (including town centre development, certain works to protected structures, works to businesses grant-aided by bodies such as the IDA, and temporary permissions).

6.0 The Appeal

6.1. Grounds of Appeal

6.2. A first party appeal was lodged against conditions no. 11, 12, and 13 of PA Ref D23A/0825 which relate to Section 48 contributions totalling €142,932.35. Condition 11 is for €1,429.45 for Surface Water Infrastructure, Condition 12 is for €21,441.75 for Transport Infrastructure, and Condition 13 is for €120,061.15 for Community and Parks facilities and Recreational amenities. The appellant submits that the Planning Authority have incorrectly applied the contribution for the following reasons:

- The outdoor sales area should not have been included; this is an outdoor area, with no building, structure or erection involved. The Planning Authority has acknowledged by email that this was levied in error, however a correction under Section 146A has not yet been undertaken.
- The buildings are agricultural buildings, which are exempt under the Development Contribution Scheme.

- The correct contribution should pertain to the surface car parking only, a total of €4,067.64.

6.3. Planning Authority Response

6.4. A response dated 4 December 2024 was received from the Planning Authority, referring the Board to the Planner's Report, and giving the opinion that the grounds of appeal do not raise any new matter which would justify a change of attitude.

6.5. A further response was elicited, requesting the Planning Authority specifically address the grounds of appeal, and supply further details on the calculation of the contribution. A response was received 10 February 2025. This referred the Board to the following documents:

- Section 49 Supplementary Development Contribution Scheme for Glenamuck District Distributor Road Scheme and Surface Water Attenuation Ponds Scheme.
- An Bord Pleanála's Inspector's Report for file PO06D.247024 (13 Glenamuck Cottages, Carrickmines, Dublin 18). This appeal, from 2016, was against a Section 49 Development Contribution for 2 houses.

6.6. First Party Response to Planning Authority's submissions

6.7. A first party response to the Planning Authority's submissions was received on 25 February 2025. Issues raised are summarised below:

- Planning Authority's first submission (standing over the planner's report) is at odds with their offer to issue a Section 146A correction.
- Items submitted by Planning Authority have no bearing on appeal – the appeal site is c. 7 km from Glenamuck
- Details of previous correspondence regarding calculations are reiterated.
- The Planning Authority have made no meaningful defence of their decision, and have not submitted requested documents. It has fallen to the applicant to set out the details of the calculation, and the basis on which they are calculated. The applicant has been disadvantaged by the entire process, incurring delay and costs.

7.0 Assessment

- 7.1. A first party appeal against Conditions 11, 12, and 13 of Planning Authority Reference D23A/0825 was made under the provisions of Section 48(10)(b) of the Planning and Development Act, 2000 (as amended) and therefore the Board is restricted to consideration of these financial contribution conditions only. My assessment is confined to the application of the terms of the Dún Laoghaire Rathdown County Council Development Contribution Scheme 2023-2028 and any index related increase that may be in place.
- 7.2. The Planning Authority's response refers to a Section 49 Scheme for Glenamuck/Kiltiernan; this covers an area which is c. 7 km west, as the crow flies. This Scheme has no relevance to the subject site. For clarity, there is no Section 49 scheme covering the subject site. Nor is there any Special Development Contribution Scheme under Section 48(2)(c) applicable to the subject site. The Planning Authority has failed to engage in a substantive manner with the appeal.
- 7.3. The Development Contribution Scheme provides contribution figures for three types of development in the countywide contribution scheme; these are *residential development*, *domestic extensions in excess of 40 sqm*, and *commercial development*.
- 7.4. The development is clearly not residential; or a domestic extension, and therefore it falls within the *commercial development* category. The Development Contribution Scheme clarifies twice (at Section 1.1.3 and Section 5.3) that all developments fall either under the residential or commercial umbrella. (These sections make no reference to the third category, domestic extensions in excess of 40 sqm, but this is clearly not such a development). Furthermore, I note that the applicant is a limited company engaged in trade for profit, and the proposed use of the lands is commercial in the typically understood sense of the word.
- 7.5. As such, contributions must be paid in line with the amounts set out in Table A for commercial class of development, unless an exemption or reduction applies. Article 7 of the Scheme sets out a number of categories of development (some of which are, or may be, commercial in nature) which are exempt entirely from Development Contributions, or which pay a reduced rate.

7.6. The appellant makes the case that the buildings are agricultural in nature, and exempt from contributions under category xiii 'agricultural buildings'. The Development Contribution Scheme does not define what an agricultural building is, or make any other reference to agriculture. In the absence of any specific definition or interpretation in the Scheme, I draw the Board's attention to the Interpretation as set out in Section 2(1) of the Planning and Development Act 2000 (as amended):

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly;.

7.7. The drawings are largely consistent in showing the buildings as polytunnels, a greenhouse and a potting/store shed, for the nursery business. There is one drawing – attached to a letter from the ESB, dated 13th December 2023, submitted with the application – which shows the L-shaped building in the north-west of the site as containing “Offices + meeting room”. However, this appears to be an early draft of the project, with a number of differences in the layout of the buildings and roads to the project as submitted, and I am satisfied that it can be discounted. The finalised drawings make no indication of offices or a meeting room. The plan of the building as submitted (drawing no. 102) indicates it to be a potting shed and store shed. The other buildings are consistently shown as polytunnels and a greenhouse.

7.8. It appears clear to me that these buildings are agricultural in nature, being used for raising nursery plants, which is a type of agriculture, and as a result should be exempt from development contributions under Article 7.1(xiii).

7.9. Regarding the sales area, this is an outdoor area, with no buildings. The Development Contribution Scheme refers to “*€ per square metre of Commercial class of Development*” and does not specify that this needs to be enclosed or internal to a building. However, I note the precedents cited by the appellant, the copy of correspondence submitted by the appellant, and the lack of any relevant response submitted on either issue by the Planning Authority, and I consider the interpretation of ‘square metre’ as referring to gross floor area of buildings to be a reasonable one.

7.10. Having regard to car parking, the proposed parking area has 12 car parking spaces indicated. This is not residential, integrated into a structure, or designated as accessible, and as such is not exempt from contributions. The rate payable is 25% of the countywide commercial rate only, on the basis of each car parking space being 12 square metres, as per 7.1.x of the Development Contribution Scheme.

Classes of Public Infrastructure	€ per square metre of Commercial class of Development	25% of commercial rate	Per 144 sqm (12 car parking spaces @ 12 sqm each)
Class 1: Community & Parks facilities & Recreational amenities	€94.91	€23.73	€3416.76
Class 2: Transport Infrastructure	€16.95	€4.24	€610.2
Class 3: Surface Water Infrastructure	€1.13	€0.28	€40.68
Total of Contributions Payable	€112.99	€28.25	€4,067.64

7.11. Having regard to the foregoing I consider that the planning authority were incorrect in their application of the current Development Contribution Scheme and therefore the Development Contributions should be recalculated as above.

8.0 Recommendation

8.1. I recommend that conditions no 11 be amended, and conditions no 12 and 13 be removed for the reasons and considerations set out below.

9.0 Reasons and Considerations

9.1. Having regard to the current Dún Laoghaire Rathdown Contribution Scheme 2023-2028 which lists agricultural buildings as being exempt from the requirement to pay development contributions under the scheme, and having regard to the nature and use of the buildings involved (polytunnels, a greenhouse and a potting/store shed), I consider that the Planning Authority have incorrectly applied the terms of the Development Contribution Scheme by exacting contributions for these buildings, which are of an agricultural nature. The outdoor sales area is an open area, with no built element, and does not attract contributions. Contributions are payable on the car parking only.

10.0 Amended Condition 11

The developer shall pay to the planning authority a financial contribution of €4,067 (four thousand and sixty-seven euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment.

Classes of Public Infrastructure	€ per square metre of Commercial class of Development	25% of commercial rate (car parking rate)	Per 144 sqm (12 car parking spaces @ 12 sqm each)
Class 1: Community & Parks facilities & Recreational amenities	€94.91	€23.73	€3416.76
Class 2: Transport Infrastructure	€16.95	€4.24	€610.2
Class 3: Surface Water Infrastructure	€1.13	€0.28	€40.68
Total of Contributions Payable	€112.99	€28.25	€4,067.64

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Natalie de Róiste
Planning Inspector

04 March 2025