



An
Bord
Pleanála

Inspector's Report ABP-320081-24

Development	Construction of logistics yard for garden centre with all associated site works.
Location	Haynestown, Dundalk, Co. Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	23/60205
Applicant(s)	Haggardstown Landscaping Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant with Conditions.
Type of Appeal	First Party Against Condition
Appellant(s)	Haggardstown Landscaping Ltd.
Observer(s)	None.
Date of Site Inspection	3 rd September 2024.
Inspector	Heidi Thorsdalen

1.0 Site Location and Description

- 1.1. The site is located in Haynestown, Dundalk. It is situated c. 350 m southeast of M1 Junction 16, N52 Dundalk South, and c. 170 m south of the N52 (R215).
- 1.2. The site comprises the southern portion of agricultural fields located adjacent to a row of detached dwellings and the Haggardstown Garden Centre. The site has a road frontage onto the L7165 and abuts the Dublin to Belfast railway line embankment to the rear. There are hedgerows and trees along the western and eastern boundaries, a mix of boundary wall and hedgerow along the southern boundary, and open fields to the north. The appeal site is undulating with the lowest point at the boundary with the L7165 rising by c. 2.5 m to the rear of the adjacent dwelling. The stated area of the site is 0.357 hectares (ha).
- 1.3. The existing Haggardstown Garden Centre is located to the south, and with a stated area of c. 0.25 ha which comprises c. 600 m² retail building, c. 290 m² greenhouse and open air display.

2.0 Proposed Development

- 2.1. On review of the planning application and further information documentation, the latter included a Traffic and Transport Assessment (TTA) and a revised site layout plan, the proposed development comprises the following:
 - Construction of a logistics yard for the existing garden centre.
 - A general use yard (c. 2,100 m²) and plant and tree storage area (c. 250 m²).
 - A car parking area with 23 no. spaces and 10 no. cycle parking spaces.
 - A pedestrian access gate providing direct access to the Garden Centre for staff.
 - A new vehicular entrance off the L7165, a c. 60 m long internal road and gates.
 - Installation of a permeable gravel yard and road surface with hydra paving on footpaths.
 - Erection of boundary fencing and planting of hedgerow.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Louth County Council granted permission for the proposed development on 20th June 2024, PA ref. 23/60205.

3.1.2. Condition 2 is relevant to this appeal, and states:

“2. In accordance with the Council’s Development Contribution Scheme 2023 made under the provisions of section 48 of the Planning and Development Act 2000, as amended, the developer shall pay a contribution to the Planning Authority, in the amount specified below (or such increased amount in accordance with the changes on an annual basis to the Wholesale Price Index for building and construction published by the Central Statistics Office) towards the costs already incurred or to be incurred by the Planning Authority on the provision of each of the public facilities listed below, which will benefit development in the area of the Planning Authority. Unless otherwise agreed in writing with the Planning Authority before development is commenced the said contribution shall be paid in full before such commencement.-

Road improvements €8.00 x 3570 sq.m = €28,560.00

Community, recreational and amenity €2.00 x 3570 sq.m = €7,140.00

Total Contribution due = €35,700.00

Thirty Five thousand, Seven Hundred Euro only.

Reason: *The provision of such public infrastructure and facilities in the area of the Planning Authority has benefited or will benefit the proposed development and it is considered reasonable that the developer should contribute towards the cost of their provision.”*

3.2. Planning Authority Reports

3.2.1. Planning Reports:

- Planning Report (signed 25th August 2023): It is noted that the proposed is not a use generally permitted under zone E2 Business and Technology, however, having regard to Section 13.21.2.4 of the Louth County Council Development Plan 2012-2027 (LCCDP) and the associated adjacent land use the proposed development is in principle acceptable subject to Further Information. Further Information request for a Traffic and Transport Assessment (TTA); sightlines; and confirmation of site levels.
- Planning Report (signed 20th June 2024): It is noted that issues raised in Further Information has been addressed, and the proposed is found acceptable and in compliance with LCCDP subject to conditions. Louth County Council Development Contribution Scheme 2023 Category 10 – Non-Building Storage, having regard to its Note 3, is considered applicable to the proposed development. Development contribution calculations as per Condition 2 (see Section 3.1 above) are also set out in the report.

3.2.2. Other Technical Reports:

- Placemaking and Physical Development (2nd August 2023): Further information requested.
- Placemaking and Physical Development (13th June 2024): No objections subject to conditions.

3.3. Prescribed Bodies

- Iarnród Éireann Infrastructure (9th August 2023): No objection subject to conditions.
- Transport Infrastructure Ireland (15th August 2023): Further information requested relating to impact on national road, variance with Spatial Planning and National Roads Guidelines for Planning Authorities (2012) and submission of a Traffic and Transport Assessment.
- Transport Infrastructure Ireland (14th June 2024): No objection subject to conditions.

3.4. Third Party Observations

- None.

4.0 Planning History

4.1. No planning history noted for the appeal site.

4.2. Relevant planning history for the Garden Centre and adjacent dwellings:

- PA Ref. 85/583: Permission granted for retention of garden centre and conversion of garage to store, Haggardstown Garden Centre.
- PA Ref. 22/126: Permission granted for revised boundary layout to separate existing large shed and yard to the rear and upgrade wastewater treatment system for existing dwelling. Planner's Report (30/03/22) makes reference to the existing large shed and potential use as storage facilities for adjoining garden centre, and further notes no permission for such use and for the matter to be referred to Planning Enforcement. No reference to any enforcement case on file.

5.0 Policy Context

5.1. Louth County Council Development Contribution Scheme 2023

- 5.1.1. The Planning Authority decision of 20th June 2024 was made under the Louth County Council Development Contribution Scheme 2023 (hereafter referred to as the Contribution Scheme) which came into effect on 18th September 2023.
- 5.1.2. Section 3 of the Contribution Scheme sets out classes of public infrastructure and facilities for which funding is provided:
- Class 1: Transportation, Surface Water and Flood Protection
 - Class 2: Community, Amenity & Recreation
- 5.1.3. Section 8 lists 15 development categories and applicable level of contribution across Table 1 and 2. With the exception residential (Category 1) and commercial (Category 2), developments are to be apportioned based on 80% towards Class 1 and 20% towards Class 2. Note 3 outlines that where a development does not correlate

exactly with a development category, it would be considered within the context of the most relevant category.

- 5.1.4. Development categories 8, 10 and 15 and contribution levels as per the Contribution Scheme are outlined below:

Development Category	Description	Rate
8	THE USE OF LAND FOR: a) the provision of commercial paid car parking vehicles. b) the provision of open storage of motor vehicles or other objects or substances for sale.	€60 per square metre or part thereof
10	NON-BUILDING STORAGE: The provision on, in, over, or under land of plant or machinery or of tanks or other structures (other than buildings) for storage purposes.	€10.00/m ²
15	Development not coming within any of the foregoing classes will refer to both built and open.	€60 per square metre or part thereof.

- 5.1.5. Section 9 sets out circumstances where full or partial exemptions from payment of contributions may be considered, including:

“9.5 Change of Use:

Change of use applications which have the benefit of planning permission are exempt from development contributions where the change of use and internal alterations do not lead to the need for new or upgraded infrastructure/services or will not result in a significant intensification of demand being placed on existing infrastructure.”

- 5.1.6. Section 11 outlines that double charging is to be avoided, and an allowance would be made in respect of pre-existing authorised development in place prior to the introduction of Development Contributions. Contribution rates are index and will be

adjusted from 1st January each year. No revised rates have been published by Louth County Council since the adoption of the Contribution Scheme.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A 1st Party appeal has been lodged by EPH Services on behalf of the applicants, Haggardstown Landscaping Ltd. The applicants are appealing against Condition 2 and development contributions being applied on the following grounds:

- The proposed development meets the provisions of Section 9.5 Change of Use of the Contribution Scheme and should be exempt from the development contribution applied in Condition 2.
- It is stated that the approved use of the appeal site does not require any new or upgraded infrastructure or infrastructure connections i.e. surface, foul water drainage or power.
- It is stated that the approved use of the appeal site does not represent an intensification of the existing Garden Centre, and the additional space allows for more efficient and effective operations of the business and that it is highly unlikely to have a discernible impact on the traffic conditions of the strategic road network.
- It is submitted that the proposed parking provision is deemed appropriate to meet current and potential future needs of both businesses, resolving an ongoing and unsatisfactory parking problem in front of the garden centre, and eliminating the congestion and hazards created by unauthorised parking.
- It is requested that the Board omits Condition 2.

6.2. Planning Authority Response

6.2.1. The main points of the Planning Authority's response (dated 23rd July 2024) can be summarised as follows:

- Reference to the Planner's Reports (see section 3.2 above).

- It is submitted that the proposed development does not represent an exemption under 9.5 Change of Use. Change of use exemption applies where the demands on public infrastructure generally remain unchanged e.g. change of use of an office to a shop and where contributions have previously been applied.
- It is stated that the site is currently a greenfield in agricultural use and has not previously been developed.
- It is submitted that no previous development contributions applied to the garden centre (85/583).
- The proposed scale, use and works as granted permission represent a considerable increase to the existing Haggardstown Landscaping business.
- The proposed will result in a demand on public roads infrastructure and will benefit on expenditure incurred by the Authority on amenity projects.
- Request that Condition 2 and development contribution are upheld.

6.3. Further Responses

6.3.1. The main points of the Applicant's response (EHP Services on behalf of the applicant, 20th August 2024) to the response by the Planning Authority can be summarised as follows:

- It is stated that the Planning Authority has not submitted a credible case as to why the approved development should not be eligible as an exemption under Section 9.5 of the Contribution Scheme.
- It is submitted that Section 9 and specifically Section 9.5 does not set out a requirement for any prior development, refer to specific types of change of use, or requires that a contribution has previously been paid.
- It is submitted that the Planning Authority's statement that the Garden Centre approved under Ref. 85/583 has not previously paid a contribution cannot be verified, and that this is irrelevant to the qualifying criteria of Section 9.5.
- It is submitted that Section 9.5 has only one qualifying criterion, and that it has been demonstrated that the development does not represent an intensification

of use, an increase in the scope and operation of the existing business, or attract any more customers or deliveries to the premises than existing, and that the development is ancillary to the pre-existing business.

- It is stated that the Planning Authority fails to provide any satisfactory explanation as to what pressures the development will impose upon the surrounding road network or clarify how a financial contribution will alleviate such pressures.
- It stated that the Appellant remains firmly of the opinion that the development meets the provisions of Section 9.5 of the Contribution Scheme, and request that the Board omits Condition 2.

7.0 Assessment

7.1.Preliminary Points

- 7.1.1. The appeal relates to Condition 2 only, which imposes a development contribution in accordance with the provisions of s. 48 of the Planning and Development Act 2000 (as amended) and as per the terms of the Louth County Council Development Contribution Scheme 2023.
- 7.1.2. Section 48(10)(b) of the Planning Act makes provision for an appeal to be brought to the Board where an applicant considers that the terms of the relevant development contribution scheme have not been properly applied in respect of any condition laid down by the Planning Authority.
- 7.1.3. In that context, the Board is required to apply the development contribution scheme as adopted by the Planning Authority and not to evaluate the merits or otherwise of the development contribution scheme itself. Furthermore, as this appeal relates to a development contribution only, under Section 139 of the Planning Act the Board is confined to consideration of whether the financial contributions were correctly applied.

7.2. Application of the Development Contribution Scheme

- 7.2.1. Condition 2 of PA ref. 23/60205 requires the payment of the sum of €37,700.00 to Louth County Council in respect of public infrastructure and facilities benefitting development in the area of the Planning Authority. The development contribution calculations applying Category 10: Non-building storage of the Contribution Scheme are set out in Condition 2 (see Section 3.1 above) and in Planning Report signed 20th June 2024.
- 7.2.2. Having regard to the Contribution Scheme, I consider that as the proposed use of the site provides for an expansion of open area storage and parking for the existing operations then the class of development closest in nature to the proposed development is Class 10, the definition of which is: Non-building storage, and the provision on, in, over, or under land of plant or machinery or of tanks or other structures (other than buildings) for storage purposes. I note that, based on the stated area figures within the application documentation, the development permitted will more than double the existing operational open area, c. 140% area increase. The development permitted as set out in the TTA is for the relocation of existing storage for the Haggardstown Landscaping operations from the Garden Centre, and for relocation of storage currently within other private premises which are stated as external to the Garden Centre. A direct access to adjacent residential property and externally located storage was observed during my site visit. The potential of the development permitted to accommodate for future growth in terms of storage and car parking are set out in the TTA, and in this regard, a current peak car parking demand of 15 no. spaces and a design capacity of 23 no. spaces are noted.
- 7.2.3. Whilst I note that the basis for the planning application fee was Class 7, the use of land for parking of motor vehicles or open storage of motor vehicles or other objects or substances, I do not however, find Development Category 8 of the Contribution Scheme applicable as this specifically refers to commercial paid car parking and open storage of motor vehicles for sale. I am satisfied that development category 15 is not applicable to the development permitted.
- 7.2.4. I note exemptions within Section 9, whether fully or partial, are only to be applicable in certain circumstance, and the definition of Section 9.5 states that “*change of use applications...are exempt from development contributions where the change of use*

and internal alterations...". I, therefore, consider that Section 9.5 limited to applications where a change of use is associated with an existing building and subject to other criteria outlined under Section 9.5 of the Contribution Scheme. Whilst I note the applicant's references to the removal of ad hoc parking and loading on the L7165, these are impacts on the local road network occurring as a result of existing operations, and I do not consider that an expansion of the operational business area to mitigate such impacts to be a criterion for exemption under Section 9.5. The applicant states that the development permitted is ancillary to existing, however I do not find that this alters my consideration of the application of the Contribution Scheme.

- 7.2.5. I have considered Section 11 of the Contribution Scheme, and no evidence have been submitted of any prior development contribution for the existing authorised development, as such, double charging is not considered applicable. Furthermore, no revised rates have been published by Louth County Council since the adoption of the Contribution Scheme.
- 7.2.6. I consider the development contributions calculations in Condition 2 to have been applied in accordance with the Contribution Scheme.

8.0 Recommendation

- 8.1. I recommend that condition No. 2 of PA ref. 23/60205 be **ATTACH** for the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the Louth County Council Development Contribution Scheme 2023, s. 48(10) of the Planning and Development Act 2000 (as amended) and relevant Guidelines, I consider that the terms of the Contribution Scheme have been properly applied in respect of Condition 2. In calculating the area liable to development contributions, the Planning Authority applied development category 10, non-building storage under Section 8 of the Contribution Scheme and apportioned contribution levels to Class 1 and 2 as set out in Section 8.

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.

Heidi Thorsdalen

Senior Planning Inspector

13th September 2024