



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311660-21

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<b>Development</b>	Retention planning permission for opening in party wall between Units 7 & 8, associated access ramp in Unit 8, and amalgamation of Units 7 & 8.
<b>Location</b>	Units 7 & 8, Docklands Innovation Park, 128-130 East Wall Rd, Dublin 3
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	3241/21
<b>Applicant(s)</b>	EWR Innovation Park Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Atlantic Diamond Ltd.
<b>Observer</b>	None
<b>Date of Site Inspection</b>	12th April 2022
<b>Inspector</b>	Stephen Ward

## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 652m<sup>2</sup> and comprises two combined units in the Docklands Innovation Park. The Park is located at the junction of East Wall Road and Merchant's Road in the north inner-city Docklands area. It is bounded by East Wall Road to the north, the Beckett Building (offices) and St. Joseph Educational National School to the west, 3-4 storey residential development to the south, and Merchant's Road to the east, which has a line of 2 storey terraced dwelling houses along its eastern side.
- 1.2. The Park is accessed off East Wall Road via a gated entrance on the northern boundary. It comprises 19 no. units arranged around the perimeter boundaries and a central block with numerous smaller units (no.'s 23 to 37). The units house a mixture of commercial and light industrial uses and range in height from single storey to three storeys. There is parking to the front of the units and the remainder of the site mostly comprises hard standing and circulation space.
- 1.3. Units 7 & 8 are located on the eastern side of the Park and back onto Merchant's Road. They are effectively mirrored units of similar design and layout and have a total floor area of 740m<sup>2</sup>. They include 2-storey sections to the front, which mainly comprise reception, office, and welfare facilities. The main floorspace in each unit comprises an open-plan single storey space. Unit 7 is described as a 'warehouse' and Unit 8 is described as a 'Production Floor'. Roller shutter doors at the front of the units lead onto uncovered storage areas.

## 2.0 Proposed Development

- 2.1. It is proposed to retain the existing opening and access ramp in the party wall of Units 7 & 8 to facilitate the amalgamation of the two units. The opening is 2.4m wide and c. 2.5m high. The access ramp aligns with the opening and rises c. 400mm from Unit 8 to Unit 7. The application states that all alterations are internal and do not affect the external appearance of the units; that no additional floor area would be created; and that the permitted use of both units as 'light industrial' will not change.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. By order dated 16<sup>th</sup> September 2021, the Planning Authority decided to grant retention permission subject to 6 conditions, most of which are standard in nature. Condition no.'s 3 & 4 are as follows:

*3. No permission is granted as part of this application for any change of use of the subject units, and shall be restricted to light industrial uses only*

**Reason:** *To clarify the scope of the planning permission*

*4. No additional floorspace shall be formed by means of internal horizontal division within the units hereby permitted unless authorised by a prior grant of permission.*

**Reason:** *In order to control the intensity of the development in the interest of amenity and to ensure that adequate car parking and service facilities will be provided within the development.*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The assessment of the Planning Officer can be summarised as follows:

- The application involves very minor internal works which would not result in additional floor space or a change/intensification of existing operations. This would not impact on the demand for car parking and there are no objections to the works carried out.
- The application does not involve a change of use and a condition should apply to any permission clarifying this matter. The third-party objection regarding unauthorised use should be referred to the Enforcement Section.
- The third-party concerns raised about compliance with Part M of the Building Regulations are a matter to be dealt with under a separate legal code.
- It is recommended that retention permission be granted subject to conditions. This forms the basis of the DCC decision.

### 3.2.2. Other Technical Reports

- Drainage Division: No objection to development subject to conditions.

### 3.3. **Prescribed Bodies**

- Transport Infrastructure Ireland (TII): No objection to the proposal were raised. The TII however did highlight that the development falls within an area set out in a Section 49 Levy scheme for light rail, which lists several exemptions where the levy does not apply. If the application is successful and not exempt, the Section 49 contribution scheme levy should be included.

### 3.4. **Third Party Observations**

- 3.4.1. One third party observation was received from Atlantic Diamond Ltd, with an address in the Docklands Innovation Park. The matters raised are covered in the grounds of appeal.

## 4.0 **Planning History**

- **ABP Ref. 308391-20 (P.A. Ref. 4327/19)**: Permission granted (April 2021) for retention of a range of various uses for Units 2, 7, 9, 13, 14, 15, 17 and 19. Notable conditions include the following:

*2. Unit 2 and Unit 7 shall be restricted to light industrial uses only.*

**Reason:** *In the interests of orderly development and clarity.*

*3. No additional floorspace shall be formed by means of internal horizontal division within the units hereby permitted unless authorised by a prior grant of permission.*

**Reason:** *In order to control the intensity of development in the interest of amenity and to ensure that adequate car parking and service facilities will be provided within the development*

- **ABP Ref. 306778–20 (Strategic Housing Development – SHD)** The Board decision to grant permission granted on 17<sup>th</sup> August 2020 was subsequently

quashed by order of the High Court in July 2021. The SHD included the following:

*“demolition of the existing two number / three number storey light industrial / commercial units on the site (Units 1 to 43) circa 11,059 square metres, retaining units 11, 15, 16 (circa 2,606 square metres) on site and construction of 336 number residential apartment units comprising of 161 number one-bed units, 171 number two-bed units and four number three-bed units in six number blocks ranging in height from four number storeys to 10 number storeys over basement level”.*

- **P.A. Ref. 3885/09** Dublin City Council (DCC) - issued a decision to grant permission for the following development on 2nd of November 2009:

*“Planning permission for the change of use of Units 9 and 10 from light industry to science and technology based industry along with associated internal layout changes. The works within the park include the removal of two small walled yard areas and roller shutters and their replacement with windows/screens, as well as additional fire escape doors to the rear, along with associated modifications to the parking and making good.”*

- **P.A. Ref. 3974/00** – DCC – issued a decision to grant planning permission for the following development on 7th February 2001:

*“Change of use from industrial to training facility for the faculty of Tourism and Food, incorporating new canopy in yard and mechanical plant in yard and on roof.”*

- **P.A. Ref. 1460/00** – DCC – granted planning permission for the following development on 5th July 2000.

*“Minor alterations to existing elevations, new louvred screens and plant on existing roof.*

- **P.A. Ref. 1812/92** – DCC – 1992 – Permission refused for change of use of Unit 19 from industrial to office/ software use. Reasons for refusal related to:
  - contravene materially the zoning objective for the area indicated in the Dublin City Development Plan 1991, namely zoning Objective 'G', 'to provide for general industrial use';

- inadequate provision of carparking; and
- the proposal would set an undesirable precedent for similar conversions within the complex.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The operative Development Plan is the Dublin City Council Development Plan 2016-2022. The subject site is within the 'Z14' zoning objective, Strategic Development and Regeneration Areas. The Z14 objective is "*to seek the social, economic and physical development and/or rejuvenation of an area with mixed use of which residential and 'Z6' would be the predominant uses*".

5.1.2. Z14 areas are capable of accommodating significant mixed-use development, therefore, developments must include proposals for additional physical and social infrastructure/facilities to support same.

Zoning objective Z6 states – '*To provide for the creation and protection of enterprise and facilitate opportunities for employment creation*'.

5.1.3. The site is located in SDRA 6 Docklands (Strategic Development Zone (SDZ) and Wider Docklands Area) and Development Plan Sections 15.1.1.6 and 15.1.1.7 therefore apply. Section 16.22 outlines guidance in relation to 'Industry, Warehousing and Business Park Development', while Section 16.38 sets out car parking standards (including Table 16.1 'Maximum Car Parking Standards for Various Land-Uses'). Section 16.38.1 relates specifically to Dublin Docklands and outlines that the future development of the area needs to be weighted heavily in favour of the sufficient use and patronage of public transport, with a consequent reduction in the car parking requirements for significant commercial development proposals. The maximum car parking standards set out in Table 16.1 should not, as a general rule, be required for future commercial development in the Docklands area.

## 5.2. Environmental Impact Assessment Screening

Having regard to the nature and scale of the proposed development, comprising limited internal works to a commercial premises in a serviced urban area, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 5.3. Natural Heritage Designations

The nearest designated site is the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) which is located approx. 600m to the site's north. The South Dublin Bay SAC (Site Code: 000210) is located approximately 2km to the south east.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. An appeal has been lodged by Atlantic Diamond Ltd. of Docklands Innovation Park, the grounds of which can be summarised as follows:

- Unit 7 was the subject of a recent permission (P.A. Ref. 4327/19) and the current application is a violation of that permission, including relevant condition which can be summarized as follows:
  1. *Development to be in accordance with the plans and particulars lodged.*
  2. *Unit 2 and Unit 7 shall be restricted to light industrial uses only.*
  3. *No additional floorspace shall be formed by means of internal horizontal division within the units unless authorized by a prior permission.*
- The reason for condition no. 3 requires a consideration of the intensity of the development in the interests of amenity and to ensure that adequate car parking and service facilities are provided in the event of additional floorspace by means of internal division. Therefore, the external car park should be considered, and no information has been submitted regarding car parking or sustainable transport facilities.

- Under the previous application, the applicant originally stated that there were 86 car park spaces available, which was later stated to be 113 spaces. However, there is no planning permission for the additional spaces and their provision involved the removal of trees, hedgerows, and wildlife habitat. High-lux lighting was also installed at roof level, which repels bats and fauna. An appropriate assessment cannot be carried out with such a lacuna of environmental information.
- Units 7 and 8 are not currently used as 'light industrial', which conflicts with condition no. 2. A grant of permission would consolidate an unauthorised development and result in a haphazard planning process.
- The Development Plan zoning objective Z14 applies and distinguishes between 'light industrial' and 'warehousing' uses. The applicant inaccurately claims that the units are in 'light industrial' use, while they are in fact currently used as a click-and-collect retail centre for vaping products. The application should include a change of use and it would be irrational to grant retention permission for an unauthorised use when the details provided are misleading.
- The development and the larger estate ignore the principles of 'universal design' and 'accessibility' as outlined in section 15.1 and Policy SN29 of the Development Plan.
- The DCC Section 48 Development Contribution Scheme should apply for the complete development including the unauthorized use.
- The DCC Section 49 Supplementary Development Contribution Scheme for light rail should apply for the complete development including the unauthorized use.

## 6.2. Applicant Response

6.2.1. The response by John Spain Planning and Development Consultants on behalf of the applicant addresses the grounds of appeal as follows:

- The proposal is to retain an opening between the units, which involves no notable increase in floor space or intensification/change of use. As such, there would be no need for additional parking or service requirements.



- Having regard to the historic uses on site, the current quantum of car parking sufficiently serves the overall development.
- In accordance with the terms of condition no. 3 of the previous permission, the purpose of the application is to regularize the internal opening through a grant of permission.
- The installation of lighting on the site is a separate matter. Furthermore, a previous appeal response (ABP Ref. 308391-20) included a bat survey (enclosed) which concluded that there is no known usage of the site by bats. No changes apply to the external environment or use of the property and no appropriate assessment issues arise.
- An accompanying letter from the occupant (Ecigarette) demonstrates the nature and operations of the use. It states that the company is one of Ireland's largest retailers of vape kits and vaping related products. Products are typically imported in bulk and then broken down into smaller units, processed, repackaged, and redistributed to both vaping shops and to fulfil individual orders. A click and collect service operated during Covid-19 restrictions but did not replace the primary light industry function. The service was ceased when the operator became aware that it was not permitted. There is no retail aspect to the appeal site.
- Given the absence of heavy machinery or intensive processing, the units fall under the definition of 'light industrial building' as per the Planning and Development Regulations.
- The use of the units falls within the definition of 'industrial process' as per the Planning and Development Regulations given that it involves the breaking down and repacking of goods.
- The internal opening does not affect the accessibility of the overall park. While the internal ramp does improve access, its purpose is to allow the wheeled transport of goods and is not for disability access purposes.
- Section 48 & 49 charges should only apply to the additional area created by the partial demolition of the internal wall (i.e. 0.6m<sup>2</sup>).

### 6.3. Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

### 6.4. Observations

None received.

### 6.5. Further Responses

6.5.1. A further response from the appellant to the applicant's response to the grounds of appeal was received by the Board on the 15th of December 2021. This response can be summarised as follows:

- The applicant acknowledges that the amalgamation of units is development. Section 48 & 49 development contribution fess should therefore be levied on the basis of the development area of 740.6m<sup>2</sup>.
- Under the terms of condition 3 of the previous permission, the adequacy of car parking for the overall park must be considered. The landlord's agent (CBRE) separately advertises the rental of these car park spaces.
- Bicycle parking proposals have not been provided in accordance with Table 16.2 of the Development Plan. The current inadequate bicycle facilities are located in areas where unauthorized removal of flora has occurred.
- The applicant's claims regarding manufacturing activities are contradicted by the nameplate on the unit as 'Ecigarette Wholesale Ltd'. The photos submitted show no dispensing equipment and the internal walls, floors, ceilings do not appear to be of food grade material.
- Under relevant legislation, manufacturers who wish to place an e-cigarette product on the market are required to notify the HSE. In the absence of documentation to confirm this, the Board must assume that the activities are accurately described as 'wholesaling', which is not an industrial activity.

## 7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- The nature and extent of the development
- Parking
- Accessibility and Health & Safety
- Nature conservation
- Development Contributions

### 7.2. The nature and extent of the development

7.2.1. In summary, the application has been described as the retention of the opening and access ramp between Units 7 & 8, together with the amalgamation of the two units. Having inspected the site I can confirm that the units have been amalgamated in accordance with the drawings as submitted.

7.2.2. I note the concerns raised in the appeal regarding the unauthorised retail/wholesale use of the building, as opposed to the permitted 'light industry' use. However, during my site inspection I noted that the building is closed to the public and there was no evidence of retail activity. And while the applicant accepts that a 'click and collect' service operated temporarily during the Covid-19 emergency measures, all indications from the premises and the company website are that the service has now ceased.

7.2.3. Consistent with the details submitted by the applicant, the primary processes carried out within the unit would appear to be the breaking down, packing, and packaging of products for distribution to customers. Accordingly, I am satisfied that the development is consistent with a 'light industrial building' as defined in the Planning & Development Regulations 2001 (as amended). I note that the concerns of the appellant have been brought to the attention of the planning authority and any investigation of unauthorised development is a matter of responsibility for Dublin City

Council. If the Board is minded to grant permission, a suitable condition could be attached to clarify the matter.

- 7.2.4. Ultimately, this is not an application for change of use. The application simply seeks to retain the opening and amalgamation of the units. No additional floorspace is proposed apart from that created by the wall removal, which amounts to an area of 0.6m<sup>2</sup>. This is clearly a *de minimis* increase which would not result in intensification of use. Furthermore, I also satisfied that the amalgamation of the units would not result in any material effects that would be likely to change or intensify the use of the property.
- 7.2.5. I note the provisions of Condition No. 3 of ABP Ref. 308391-20, which precluded additional floorspace being formed by means of internal horizontal division within the units. I consider that 'horizontal division' would only apply through the installation of an additional floor level or a mezzanine level, which has not occurred. In fact, no division has occurred of any kind. In any case, regardless of any instance of non-compliance with the terms of the previous permission, there would be no legal obstacle to the consideration of a retention application to regularise the matter.
- 7.2.6. Having regard to the above, I am satisfied that the proposed development would remain to be in accordance with the established use and Z14 zoning for the units and, accordingly, I have no objection in principle to the nature and extent of the proposed development.

### 7.3. **Parking**

- 7.3.1. The appeal raises concern about the existing parking arrangements within the overall park and the absence of proposals to cater for the proposed development. The relevant Development Plan parking requirements are based on floor area and are set out in Table 16.1 (Car Parking) and Table 16.2 (Cycle Parking) of the Plan.
- 7.3.2. Accordingly, having established that the proposed development would not result in any significant increase to floor area or intensification of use, I am satisfied that there would be no further parking requirements generated by the development. Furthermore, I note the policies of the Development Plan aimed at restricting further car-parking provision in the Docklands in favour of public transport. Therefore, I have no objection to the proposed development on grounds of parking.

#### **7.4. Accessibility and Health & Safety**

- 7.4.1. The appellant states that the application ignores the principles of 'universal design' as outlined and supported in the Development Plan. The concerns relate to external elements of the overall development as well internal elements of individual units. In response I would highlight that the application relates to internal modifications only and any issues relating to footpaths, roads, parking etc. within the overall estate are outside the scope of this appeal case.
- 7.4.2. Furthermore, I would highlight that the requirements of Technical Guidance Document M (Access and Use) of the Building Regulations underpin the principle of 'Universal Design'. Therefore, the issue of compliance with accessibility requirements under the Building Regulations would be evaluated under a separate legal code and thus need not concern the Board for the purposes of this appeal.
- 7.4.3. The appeal also raises issues in relation to health and safety regarding the relevant products associated with the unit, as well as obligations for notification and compliance with HSE requirements. Again, I consider that this is a matter for a separate legal code and thus need not concern the Board for the purposes of this appeal.

#### **7.5. Nature Conservation**

- 7.5.1. The appeal raises concerns about the loss of vegetation/ habitat and the installation of lighting within the overall park site. The appellant contends that this has an adverse impact on wildlife, including bats, and that an appropriate assessment cannot be carried out in the absence of such environmental information.
- 7.5.2. Again, I would highlight that the current appeal case relates to an internal opening and amalgamation of 2 units. The appeal concerns relate to an external area within the overall park which has no real connection or relationship with the proposed development. Accordingly, I am satisfied that these matters are outside the scope of this appeal and concerns in relation to any such unauthorized works and impacts on wildlife would be a matter of responsibility for the planning authority and the relevant wildlife protection authorities. The issue of Appropriate Assessment is dealt with in section 8.0 of this report.

## 7.6. Development Contributions

- 7.6.1. The appeal argues that both Section 48 & 49 development contribution levies should apply to the entire floor area of 740.6m<sup>2</sup>, stating that the schemes apply no exemptions or reductions to applications for retention.
- 7.6.2. I acknowledge that sections 11 & 12 of both schemes outline the circumstances where exemptions and reductions apply, and that section 13 of both schemes excludes exemptions or reductions for retention applications. However, for exemptions or reduced rates to apply (and by extension, for section 13 to apply), I consider that a rate must apply in this first instance.
- 7.6.3. In this regard, I do not consider that the total floor area of the units is unauthorised. The application relates only to the internal opening and amalgamation, and I consider that the only floor area to be retained is that which was created by the wall removal i.e. 0.6m<sup>2</sup>.
- 7.6.4. For commercial/industrial development, Section 9 of the Dublin City Development Contribution Scheme (under Section 48 of the Act) outlines that contributions shall be payable at a rate of €96.00 per m<sup>2</sup>, while Section 10 of the Dublin City Supplementary Development Contribution Scheme LUAS Red Line Extension (under Section 49 of the Act) outlines that contributions shall be payable at a rate of €38.00 per m<sup>2</sup>. Neither scheme specifies that any payment will be required for floor area less than a square metre or part thereof. Accordingly, I would conclude that a square metre is the minimum threshold to require any payment. Given that the floor area in question (0.6m<sup>2</sup>) does not exceed that threshold, I conclude that neither a section 48 nor section 49 development contribution is payable in this instance.

## 8.0 Appropriate Assessment

- 8.1. The proposed development involves only minor internal works and the amalgamation of two established units. The nearest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) which is located approx. 600m to the north of the site. There are several other Natura 2000 sites in the Dublin Bay area to the east, including South Dublin Bay SAC (Site Code: 000210) located approximately 2km to the south east.

- 8.2. I acknowledge that the appellant raises concerns about the absence of adequate environmental information to carry out Appropriate Assessment.
- 8.3. The application site is on serviced land, within the existing built-up area of the city, and is not directly adjacent to any Natura 2000 sites. The units for which retention is sought are served by the city's water supply and foul sewerage network and by the municipal surface water drainage system for Eastwall. I acknowledge that there are indirect hydrological links via surface and wastewater flow to the estuaries of the River Tolka and the River Liffey as well as to Dublin Bay via the Ringsend Treatment Plant. However, due to the minimal scale of any emissions associated with the proposed development, together with the significant dilution capacity within Dublin Bay waters, I am satisfied that there would be no potential for significant effects on natura 2000 sites.
- 8.4. Having regard to the size of foul and surface water discharges from the site and the fact that there is no open water hydrological linkage with Dublin Bay, and having regard to the assessment of the indirect impacts of the proposed development in terms of foul and surface water drainage, there are no projects or plans which can act in combination with the proposed application which can give rise to significant effect to Natura 2000 sites within the zone of influence.
- 8.5. Accordingly, having regard to the nature and limited scale of the proposed works, and the separation distance between the appeal site and the nearest European Site, it is considered that no Appropriate Assessment issues arise as the proposed development, individually, or in combination with other plans or projects, would not have potential to give rise to significant effects on any European Sites in view of the sites' conservation objectives. Therefore, Appropriate Assessment, including the submission of a Natura Impact Statement, is not required. No mitigation measures have been relied upon in this conclusion.

## 9.0 Recommendation

I recommend that retention planning permission should be **granted**, subject to conditions as set out below.

## 10.0 Reasons and Considerations

Having regard to the Z14 zoning objective for the area, the provisions of the Dublin City Development Plan 2016-2022, and the scale and nature of the proposed development for which retention is sought, it is considered that the proposed development would not seriously injure the amenities of the existing buildings on site or the amenities of property in the vicinity, would not adversely impact on nature conservation, and would be acceptable in terms of traffic circulation and road safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be retained in accordance with the plans and particulars lodged with the application.

**Reason:** In the interest of clarity.

2. This permission does not authorise any change of use of the units. The units shall continue to be used as 'light industry' unless otherwise authorised by a prior grant of permission.

**Reason:** In the interests of orderly development and clarity.

3. No additional floorspace shall be formed by means of internal horizontal division within the units hereby permitted unless authorised by a prior grant of permission.

**Reason:** In order to control the intensity of development in the interest of amenity and to ensure that adequate car parking and service facilities will be provided within the development.



4. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows); advertisement structures, banners, canopies, flags, or other projecting element shall be displayed or erected on any of the units or within their curtilage, or attached to their glazing without the prior grant of planning permission.

**Reason:** To enable assessment of the impacts of any such changes on the amenities of the area.

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Stephen Ward  
Senior Planning Inspector

14<sup>th</sup> April 2022