



An
Bord
Pleanála

Inspector's Report ABP-322042-25

Question

Whether the change of use from science & technology to bakery and installation of chimneys/extraction hoods is or is not development or is or is not exempted development.

Location

Unit 10, Docklands Innovation Park,
128-130 East Wall Road, Dublin 3

Declaration

Planning Authority

Dublin City Council North

Planning Authority Reg. Ref.

0020/25

Applicant for Declaration

Thomas Murphy

Planning Authority Decision

Is exempted development

Referral

Referred by

Thomas Murphy

Owner/ Occupier

EWR Innovation Park Limited

Observer(s)

None

Date of Site Inspection

27/05/2025

Inspector

Gillian Kane

1.0 Site Location and Description

- 1.1. The subject site is located in the Docklands Innovation Park, close to the junction of East Wall Road and Merchants Road in Dublin 3. The Park accommodates 19 no. units behind a gated entrance with limited car parking centrally. Unit 10, a mid terrace unit, is located on the southern side of the park, backing on to Merchants Road.

2.0 The Question

- 2.1. Whether the change of use from science & technology to bakery and installation of chimneys / extraction hoods is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 10th February 2025, the Planning Authority issued a declaration stating that “The installation of extractor fans at Unit 10 constitutes development and is exempted development with regard to Section 4(1)(h) of the Planning and Development Act 2000, as amended”.

3.2. Planning Authority Reports

- 3.2.1. **Planning Report:** Notes that dimensions of the extractor fans have not been submitted but that they are not visible from the road within the Park or the public road. States that the fans do materially alter the external appearance of the Unit so as to render it inconsistent with the character of the structure or neighbouring structures. Is exempted development under 4(1)(h).

4.0 Relevant Planning History

- 4.1.1. **P.A. Ref. 3885/09** decision to grant 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.

- 4.1.2. **ABP-306778-20:** The Board SHD decision to grant permission was subsequently quashed by order of the High Court in July 2021. The SHD comprised the 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”.

5.0 Policy Context

5.1. Dublin City Development Plan 2022-2028

- 5.1.1. The subject site is zoned Z14 Strategic Development and Regeneration Areas (SDRA's). Z14 zones have the stated objective 'To seek the social, economic and physical development and/or regeneration of an area with mixed-use, of which residential would be the predominant use'.
- 5.1.2. The site is located in SDRA 6 Docklands. Chapter 13 of the development plan refers to the Docklands Innovation Park, stating: Redevelopment of this site should incorporate public open space along its north-western boundary where it can serve as an amenity and improved setting for the adjoining primary school and punctuate this long road. Development should be set back significantly from the south-eastern side boundary to provide for an improved interface with Merchant's Road and the residential dwellings opposite. Adequate space should be reserved along the southwestern boundary of the site for a pedestrian thoroughway in order to enhance connectivity through this large block, including to the local school. The specified locations for locally higher buildings are influenced by the placemaking benefits of framing public open space, by views from nearby residential properties being filtered by lower buildings, and by the need to maintain the amenities of the public street. All dwellings at ground floor level should have own-door access

5.2. Natural Heritage Designations

- 5.2.1. None on or adjoining the subject site.

6.0 The Referral

6.1. Referrer's Case

- Parent permission for Unit 10 was for light industrial use to science & technology (reg. ref. 3885/09). Works included the removal of two walled yard areas and roller shutters and their replacement with windows / screens, fire escape door to the rear and modifications to parking. Permission was implemented.
- Bakery use is unauthorised as it does not fit the development Plan definition of a technology-based industry.
- Various forms of air handling units including ventilation system have been installed to the rear of the unit to facilitate its change of use to a bakery.
- New works intrude on the fire exit passageway and reduce its width to 52cm, far below the legal minimum. Obstructing a fire exit in this manner must be unauthorised development.

6.2. Planning Authority Response

6.2.1. None on file.

6.3. Owner/ occupier's response

- The question raised by the referrer in the letter to An Bord Pleanála did not form part of the section 5 declaration considered by Dublin City Council, which only related to the installation of extractor fans.
- Section 5(1) of the Act provides for the asking of questions regarding development and exempted development. Section 5(2) states that the Planning Authority shall issue a declaration on the question that has arisen and the main reasons and considerations on which its decision is based. The question posed to Dublin City Council does not relate to a change of use and is of no relevance to the referral.
- The installation of extractor fans constitutes exempted development under section 4(1) of the Act.
- The scale and scope of the fans is not excessive, are in keeping with the general area, and do not materially affect the external appearance of the structure so as

to render the appearance inconsistent with the character of the structure or of neighbouring structures.

- The rear ventilation is located in an access area to the rear of the unit and is of the same design, scale, layout and implementation as that of adjacent units.
- The rear area is not a public thoroughfare and is not used by or visible to the public.
- Other units within the Docklands Innovation Park have roof plant installed. These systems do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.
- The roof openings were installed by a tenant of the unit prior to the current management company being installed on the 10th April 2017. This exceeds the 7 year and 119 day period and therefore no enforcement action can arise.
- The Board is requested to uphold the decision of the Planning Authority that the development is exempt.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. The following statutory provisions are relevant in this instance.

7.1.2. Section 2(1): In this Act, except where the context otherwise requires

"**works**" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...;

"**structure**" means any building, structure, excavation or other thing constructed or made on, in or under any land, or any part of a structure so defined and

(a) Where this context so admits, includes the land on, in or under which the structure is situated".

7.1.3. **Section 3(1):** in this Act, "**development**" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

7.1.4. **Section 4(1):** sets out developments that shall be exempted development for the purposes of this Act.

Section 4(1)(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures

- 7.1.5. **Section 5(1):** If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.
- 7.1.6. **Section 5(3)(a)** Where a declaration is issued under this section, any person issued with a declaration under subsection (2) (a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration. (b) Without prejudice to subsection (2), in the event that no declaration is issued by the planning authority, any person who made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2).
- 7.1.7. **Section 5(4):** Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

7.2. **Planning and Development Regulations, 2001**

- 7.2.1. Part 2 of the Planning and Development Regulations, 2001 refers to Exempted Development.

8.0 **EIA Screening**

- 8.1.1. The proposed development does not come within the definition of a 'project' for the purposes of EIA, that is, it does not comprise construction works, demolition or intervention in the natural surroundings. Refer to Form 1 in Appendix 1 of report.

9.0 AA Screening

- 9.1.1. Having regard to the nature and scale of the subject referral, the location of the site within an adequately serviced urban area, the physical separation distances to designated European Sites, and the absence of an ecological and/ or a hydrological connection, the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.

10.0 Assessment

- 10.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the above proposal in terms of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.
- 10.1.2. The Board will note that the question posed on the application form submitted to the Planning Authority was “does the installation of extractor fans to deal with fumes provided in the premises constitute development and is it exempted development”. The letter submitted by the referrer also refers to the use of Unit 10 as a bakery being an unauthorised use but this is not addressed by the Planning Authority in the planning report or the declaration.
- 10.1.3. I draw the Boards attention to section 5(3)(a) of the Planning and Development Act 2000, as amended which provides for the referral of a declaration to the Board:
- (3) (a) Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.*
- 10.1.4. I consider section 5(3)(a) to limit the referral to the Board to *only* the declaration issued under section 2(a). It is not considered reasonable or within the interests of natural justice to introduce entirely new questions at Board stage. The Board can re-format a question within a section 5 declaration but it is considered that the introduction of an entirely new element (use) goes beyond that remit. One could argue that the use of the word ‘fumes’ within the question on the application form

introduces the concept of use, however there is no information from any of the parties regarding the nature, source or cause of the fumes. I do not consider it sufficient to introduce the concept of use, albeit that it is reasonable to understand that the fumes might be arising from the bakery use alleged by the referrer.

Notwithstanding this, I consider that the question that must be addressed by the Board to be as posed to the Planning Authority, namely:

“whether the installation of extractor fans/ air ventilation units / chimney to deal with fumes is or is not development or is or is not exempted development”.

10.2. Is or is not development

- 10.2.1. As per section 3(1) of the Act, "development" is the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land. The installation of extractor fans / air ventilation systems to the rear of the unit where there were none is the carrying out of works on land and thus is constitutes development.

10.3. Is or is not exempted development

- 10.3.1. The subject extractor fans / air ventilation units are not visible from the front of the unit within the innovation park or from the rear of the unit as it faces Merchant Road. No chimney is visible on the roof from either elevation. I am satisfied that that the fans / ventilation unit / chimney constitute development that does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures, given that they are not visible to any but those within the unit. I am satisfied that the subject extractor fans / chimney / ventilation unit are development that is exempted development under section 4(1)(h) of the Planning and Development Act 2000, as amended.
- 10.3.2. Aerial imagery appears to show a lane running along the back of units 5-11 parallel to Merchants Road but there is no access to this area from any public area, only presumably within the units. I do not accept that this area is used as a fire escape as purported by the referrer.

10.4. Restrictions on exempted development

- 10.4.1. There are no restrictions on the subject exempted development.

11.0 Recommendation

11.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the change of use from science & technology to bakery and installation of chimneys/extraction hoods is or is not development or is or is not exempted development

AND WHEREAS Thomas Murphy requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 10th day of February, 2025 stating that the matter was development and was exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 6th day of March, 2025 and An Bord Pleanála reformatted the question to

whether the installation of extractor fans/ air ventilation units / chimney to deal with fumes is or is not development or is or is not exempted development

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) the planning history of the site,
- (e) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that the installation of extractor fans/ air ventilation units / chimney to deal with fumes is development and is exempted development

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the installation of extractor fans/ air ventilation units / chimney to deal with fumes is development and is exempted development


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.


Gillian Kane
Senior Planning Inspector

28 May 2025

Form 1 - EIA Pre-Screening

Case Reference	
Proposed Development Summary	Whether the change of use from science & technology to bakery and installation of chimneys/extraction hoods is or is not development or is or is not exempted development.
Development Address	Unit 10 Docklands Innovation Park, D3
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	NO No further action required.

Inspector:  Date: 28/05/2025