



An  
Bord  
Pleanála

## Inspector's Report ABP-322044-25

### Question

Whether the installation of chimneys/extraction hoods on the roof of Unit 2 is or is not development or is or is not exempted development.

### Location

Unit 2, Docklands Innovation Park,  
128-130 East Wall Road, Dublin 3

### Declaration

Planning Authority

Dublin City Council North

Planning Authority Reg. Ref.

0016/25

Applicant for Declaration

Thomas Murphy

Planning Authority Decision

Is exempted development

### Referral

Referred by

Thomas Murphy

Owner/ Occupier

EWB Innovation Park Limited

Observer(s)

None

Date of Site Inspection

27/05/2025

Inspector

Gillian Kane

## **1.0 Site Location and Description**

- 1.1.1. 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 2, a mid terrace unit, is located on the eastern side of the park, facing East Wall Road.

## **2.0 The Question**

- 2.1.1. Whether the installation of chimneys/extraction hoods on the roof of Unit 2 is or is not development or is or is not exempted development

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

- 3.1.1. On the 10<sup>th</sup> February 2025, the Planning Authority issued a declaration stating: “ the installation of chimneys / extraction hoods on the roof of Unit 2 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: Structures are visible from within the park but are not visible from the public road. Does not materially affect the external appearance of the Unit so as to render it inconsistent with the character of the structure or of neighbouring structures. Having regard to the scale and location of the structures within an existing innovation park with a number of permitted uses, development is exempted development having regard to section 4(1)(h) of the Act.

## **4.0 Planning History**

- 4.1.1. **ABP-308391-20** Planning Authority reg. ref, 4327/19) Planning permission granted for the retention of a range of various uses for Units 2, 7, 9, 13, 14, 15, 17 and 19. Condition no. 2 of the Boards decision states:
2. Unit 2 and Unit 7 shall be restricted to light industrial uses only. Reason: In the interests of orderly development and clarity
- 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 throughway 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**

- Unit 2 is in use as a bakery for sale off-premises.
- Retention permission was granted for unit 2 (ABP-308291-20) for cultural / dance studio. This use was removed at Further information stage, indicating that light industrial use would resume. The Board attached condition no. 2 defining the use of Unit 2.
- Three air handling units / flues extend above the ridge level. The fumes they expel have a negative impact on the amenity of the area, in particular the school and the play area in the vicinity.
- The installation of vents is 'works, which constitutes development.
- The vents are visible and materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or neighbouring structures. The vents therefore cannot be considered to be exempted development under section 4(1)(h) of the Planning and Development Act 2000, as amended. Photo submitted

### **6.2. Planning Authority Response**

6.2.1. None on file

### **6.3. Owner/ occupier's response**

- The section 5 declaration and the subsequent planning report make no reference to the use of the building, only the units at roof level.
- The provision of air vents comprise exempted development having regard to section 4(1)(h) of the Act, due to the limited scale, size and nature of the plant, and is in keeping with the surrounding area.
- The ventilation is not visible from street level within the park, nor from East Wall Road.
- There are a number of units within the park with roof plant. These do not materially alter the external appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structure.

- The implemented chimney / extraction hoods fall under the definition of exempted development per section 4(1)(h) of the Planning and Development Act 2000, as amended.
- The subject unit is occupied by a commercial bakery supplying wholesale baked goods in accordance with the permitted light industrial use.
- Industry (light) is defined in the development plan and part 2 Article 5 of the Regulations as “the use of a building, or part thereof, or land for industry (not being a special industry) in which the processes carried on or the machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit and may include a service garage but not a petrol station.”
- The unit is a commercial bakery supplying premises throughout Dublin and falls under the light industry definition, having no negative impacts listed in Part 2.
- The Board is requested to uphold the Planning Authority’s section 5 declaration confirming that the development is exempted development.

## 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. Is or is not development

- 10.1.1. 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 extraction hood / chimney on the roof of unit 2 where there were none is the carrying out of works on land and thus constitutes development.
- 10.1.2. I note that the referrer raised the use of the Unit in the appeal to the Board. 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.*
- 10.1.3. 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 question 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. The question before the Board therefore remains
- “Whether the installation of chimneys/extraction hoods on the roof of Unit 2 is or is not development or is or is not exempted development”

## 10.2. Is or is not exempted development

- 10.2.1. The extraction hoods are not visible from within the innovation park or from East Wall Road. Only a single chimney, extending a little over the ridge line is visible from within the park, and only as one is standing right in front of Unit 2. Nothing is visible from the elevation facing East Wall Road.
- 10.2.2. I am satisfied that that the extraction hood / 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 the scale, size and similarity to other roof level plant in the wider park area. I am satisfied that the subject extraction hood / chimney are development that is exempted development under section 4(1)(h) of the Planning and Development Act 2000, as amended.

## 10.3. Restrictions on exempted development

- 10.3.1. 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 installation of chimneys/extraction hoods on the roof of Unit 2 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** Thomas Murphy referred this declaration for review to An Bord Pleanála on the 6th day of March, 2025:



**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 pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that the installation of chimneys/extraction hoods on the roof of Unit 2 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 that the installation of chimneys/extraction hoods on the roof of Unit 2 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

30 May 2025

### Form 1 - EIA Pre-Screening

<b>Case Reference</b>	
<b>Proposed Development Summary</b>	Whether the installation of chimneys/extraction hoods on the roof of Unit 2 is or is not development or is or is not exempted development.
<b>Development Address</b>	Unit 2 Docklands Innovation Park, D3
	<b>In all cases check box /or leave blank</b>
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (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)	<input checked="checked" type="checkbox"/> No, No further action required.

Inspector:  Date: 30/05/2025