



The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1.

Dear Sir / Madam,

AN BORD PLEANÁLA

LDG- _____
ABP- _____

07 APR 2025

Fee: € _____ type: _____
Time: 17:02 By: hand. tm

Date: 7 April, 2025
Our Ref: KK JN 17229

RE: RESPONSE TO SECTION 5 REFERRAL BY MR. THOMAS MURPHY IN RELATION TO WHETHER THE INSTALLATION OF CHIMNEYS/EXTRACTION HOODS, IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT AT UNIT 10, DOCKLANDS INNOVATION PARK, 128-130 EAST WALL ROAD, DUBLIN 3

AN BORD PLEANALA REF.: 322042-25

DUBLIN CITY COUNCIL REG. REF.: 0020/25

1.0 INTRODUCTION

- 1.1 On behalf of our client, EWR Innovation Park Ltd, Building 1, Swift Square, Northwood Park, Northwood, Dublin 9, we, John Spain Associates, 39 Fitzwilliam Place, Dublin 2, hereby submit this response to the Section 5 Referral submitted by Mr. Thomas Murphy, in relation to a Section 5 Declaration which was sought by Mr Murphy in relation to Unit 10, Docklands Innovation Park, 128-130 East Wall Road, Dublin 3.
- 1.2 This response in reply to correspondence received from An Bord Pleanála (dated the 11th of March 2025) inviting our client to submit a response by the 7th of April 2025 (i.e. within 4 weeks of the date of the ABP Letter) in respect of the referral of the question set out in Section 5 Declaration Reg. Ref.: 0020/25 to An Bord Pleanála for a decision.
- 1.3 The Section 5 application related to a request for a declaration from the Dublin Council on the following question:
- "Does the installation of extractor fans to deal with fumes provided in the premises constitute development and, and is it exempted development?"*
- 1.4 A Section 5 Declaration issued by Dublin City Council on the 10th of February 2025, stated 'The installation of extractor fans at Unit 10 constitutes development and is exempted development with regard to Section 4(1)(h) of the [planning % Development Act 2000 (as amended)]'.
- 1.5 We note that the Referral to ABP includes reference to 'whether the change of use from science & technology to bakery' is development and if it is exempted development. However, this did not form part of the Section 5 Declaration considered by DCC, which only related to the installation of extractor fans. Section 5(1) of the Planning and Development Act 2000, as amended, states that "If any question arises as to what, in any particular case, is or is not development or is or is not exempted

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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.”. Section 5(2) (a) continues that the planning authority shall issue ‘...the declaration on the question that has arisen and the main reasons and considerations on which its decision...’ As such, it is noted that the declaration on the question to DCC does not relate a change of use and as such this is considered to be of no relevance to this Referral.

- 1.6 A detailed response was submitted to Dublin City Council in respect of the Section 5 application, and Section 2 below provides a summary response to the issues raised. In summary, it is considered the installation of the extractor fans constitute exempted development per Section 4(1)(h) of the Planning and Development Act 2000 (as amended). The scale and scope of the extractor fans is not considered excessive and is 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.

2.0 RESPONSE TO GROUNDS OF REFERRAL

- 2.1 In summary, the Section 5 Referral refers to that DCC determined that the change of use from science and technology to a bakery and the installation of chimneys/extraction hoods to facilitate that change, is development, but decided that it is exempted development.
- 2.2 However, as mentioned in Section 1, the Section 5 Declaration by DCC related to the query in relation to where the installation of extractor fans is exempted development. This is evident from both the Section 5 Declaration and the DCC Planner's Report which makes no reference to any consideration of change of use from science and technology to a bakery.
- 2.3 In respect of the installation of extractor fans, it is noted that Section 4(1)(h) of the Planning and Development Act 2000 (as amended) relating to exempted development states the following: *“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”.*
- 2.4 As shown within the imagery supplied by the appellant, reproduced below, the rear ventilation is located in an access area to the rear of the unit, and as further shown in the image, is of the same design, scale, layout and implementation as that of the adjacent units which are shown in the background of this image. The location of this image is to the rear of the units and would not be a public thoroughfare nor used or visible to any member of the public. As such, it is considered that the extractor fans constitute exempted development under the provisions of Section 4(1)(h) of the Planning and Development Act.

Figure 2.1: Image of Installed Ventilation Equipment to the Rear of Unit 10



Figure 2.2: Unit 10: Viewed from Internal Roadway



- 2.5 It is considered the provision of the extractor fans, as noted, comprise exempt development having regard to Section 4(1)(h) of the Act due to its limited scale, size and nature of the plant, and it is in keeping with the surrounding area. As shown in the image above the ventilation is not visible from street level, and there are a number of other units within the Docklands Innovation Park which have roof plant installed. The systems installed 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 structure. While the applicant alleges that this constitutes an

“inappropriate or incongruous insertion and therefore having a material impact on the setting of the park itself so as to render the appearance inconsistent with either the character of the structure on the subject site or neighbouring structures”, it is submitted, as shown within the accompanying imagery and the image provided by the applicant himself, that this is entirely in keeping with the setting of the park itself and is fully consistent with the character and appearance of the structure and neighbouring structures within the park.

- 2.6 We are further advised by our client, the owner of the park in question, that these roof openings had been installed by a tenant of the unit prior to the current management company, Mason Owen & Lyons, being appointed on site on the 10th of April 2017. While it is apparent that the above mentioned works constitute exempted development, nonetheless, it is considered of relevance in this instance to highlight that under Section 157(4) of the Planning and Development Act 2000, as amended, no enforcement proceedings can be taken in relation to unauthorised development which has been established for more than 7 years and 119 days (63 days for Christmas and 56 days for Covid) provided that it does not relate to use of land that is a breach of a condition of a planning permission, and no enforcement action or warning letter was issued within the 7 year and 119 day period.
- 2.7 As such, it is considered that the implemented ventilation systems and extractor fans fall under the definition of exempted development per Section 4(1)(h) of the Planning and Development Act 2000 (as amended).
- 2.8 We note DCC were in agreement that the installation of the extractor fans are exempt, with the DCC Planner's Report for the Section 5 Request under Reg. Ref.: 0020/25 stating:

‘While dimensions of the extractor fans have not been submitted with the proposal, I am satisfied that an adequate assessment can be made along with a site visit to the premises. The extractor fans/air handling units and extractor hood are located to the rear of Unit 10 in the innovation park. The structures are not visible from within the internal access roads nor visible from the public road, i.e. East Wall Road.

Having regard to the scale and location of the structures within an existing innovation park with a wide variety of permitted uses including light industrial uses, it is considered that the extractor fans to the rear of Unit 10 do not materially affect the external appearance of the Unit so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. As such the installation of the extractor fans would be considered exempted development.’

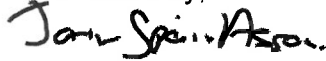
3.0 SUMMARY AND CONCLUSION

- 3.1 The Section 5 Referral relates to the question *“Does the installation of extractor fans to deal with fumes provided in the premises constitute development and, and is it exempted development?”* in relation to Unit 10, Docklands Innovation Park, 128-130 East Wall Road, Dublin 3.
- 3.2 It is considered that this constitutes exempted development per Section 4(1)(h) of the Planning and Development Act 2000 (as amended). The scale and scope of the extractor fans are not considered excessive and is 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.

3.3 As mentioned, additional reference is made to the change of use of the unit from science and technology to bakery, however it is considered that this question is not relevant to the Section 5 Declaration from DCC. As noted, the question raised was *"Does the installation of extractor fans to deal with fumes provided in the premises constitute development, and is it exempted development?"*. It is submitted that it has been demonstrated that in terms of the question which has been asked, the development which has taken place constitutes exempted development per Section 4(1)(h) of the Planning and Development Act 2000 (as amended) as it is development which 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.

3.4 Having regard to the above, it is respectfully submitted that the Board should uphold the Planning Authority's Section 5 Declaration confirming that the development is exempted development.

Yours faithfully,



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