

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

Dear Sir / Madam,

AN BORD PLEANÁLA	
LDG-	_____
ABP-	_____
07 APR 2025	
Fee: €	_____ Type: _____
Time: <u>17:03</u>	By: <u>hand</u>

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 2, DOCKLANDS INNOVATION PARK, 128-130 EAST WALL ROAD, DUBLIN 3

AN BORD PLEANALA REF.: 322044-25

DUBLIN CITY COUNCIL REG. REF.: 0016/25

1.0 INTRODUCTION

- 1.1 On behalf of our client, EWR Innovation Park Ltd, Building 1, Swift Square, Northwood Park, Northwood, Dublin 9, 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 2, Docklands Innovation Park, 128-130 East Wall Road, Dublin 3.
- 1.2 This response is 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.: 0016/25 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 chimneys/extraction hoods 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 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 & Development Act 2000 (as amended)'.
- 1.5 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 chimneys/extraction hoods falls under the definition of 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

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considered excessive and is in keeping with the general area, and 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.

2.0 RESPONSE TO GROUNDS OF REFERRAL

- 2.1 The Section 5 Referral refers to Unit 2 is in use as a bakery for sale off premises, and queries whether the unit can be considered as being light industrial in accordance with retention permission granted by An Bord Pleanála (under ABP Ref.: PL29N.308391 / DCC Reg. Ref.: 4327/19). It also queries three air handling units / flues extending above ridge level, and as they are visible the appellant considers they do not avail of the exemptions set out in Section 4(1)(h) of the Act and therefore are unauthorised development.
- 2.2 However, as mentioned in Section 1, the Section 5 Declaration by DCC related to the query in relation to whether the installation of chimneys/extraction hoods is exempted development. This is evident from both the Section 5 Declaration and the DCC Planner's Report which makes no reference to the use of the building.
- 2.3 In respect of the installation of chimneys/extraction hoods, 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 It is considered the provision of the air vents, 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 images below, the ventilation is not visible from street level within the park, nor from East Wall Road, 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.
- 2.5 As such, it is considered that the implemented chimneys/extraction hoods fall under the definition of exempted development per Section 4(1)(h) of the Planning and Development Act 2000 (as amended).

Figure 2.1: Unit 2 Viewed from Internal Roadway



Figure 2.2: View of the Innovation Park from East Wall Road



Source: Google Maps

- 2.6 The subject unit is currently occupied by a commercial bakery supplying wholesale baked goods throughout Dublin, in accordance with the permitted light industrial use.
- 2.7 Industry (light) is defined as follows within the Dublin City Development Plan 2022-2028 and Part 2 Article 5 of the Planning and Development Regulations 2000-2024:

"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."

- 2.8 The unit is in use as a commercial bakery supplying premises throughout Dublin and falls under the definition of Light Industrial, as the processes and baking carried out could be installed in any residential area due to the lack of negative impacts listed under Part 2 of Article 5 above.
- 2.9 Overall, it is considered the chimneys/extraction hoods at roof level are in keeping with the surrounding character and constitute exempted development under Section 4(1)(h) of the Planning and Development Act. The ongoing use of the unit falls under 'light industry' and falls under the definition of same. The chimneys/extraction hoods at roof level 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.
- 2.10 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.: 0017/25 stating:

'While dimensions of the chimneys/extraction hoods 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 chimneys/extraction hoods are located on the flat roof of Unit 2 in the innovation park. The structures are visible from within the overall centre but are not 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 number of permitted uses including the existing use of the unit as light industrial, It is considered that the chimneys/extraction hoods to the roof on Unit 2 does 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 chimneys/extraction hoods would be considered exempted development.'

3.0 SUMMARY AND CONCLUSION

- 3.1 The Section 5 Referral relates to the question "Does the installation of chimneys/extraction hoods constitute development and, and is it exempted development?" in relation to Unit 2, Docklands Innovation Park, 128-130 East Wall Road, Dublin 3.
- 3.2 It is considered that this does 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 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. The use of the unit as a small commercial bakery also conforms with the permitted use of the unit as 'light industry'.
- 3.3 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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