



Planning and Development Acts 2000 to 2019

Planning Authority: Dún Laoghaire-Rathdown County Council

Planning Register Reference Number: D19A/0181

Appeal by Becton Dickinson Penel Limited of Pottery Road, Dun Laoghaire, County Dublin against the decision made on the 17th day of September, 2019 by Dún Laoghaire-Rathdown County Council to grant subject to conditions a permission to Kouchin Properties Limited care of Hughes Planning and Consultants of 70 Pearse Street, Dublin in accordance with plans and particulars lodged with the said Council.

Proposed Development: (i) Construction of a new pedestrian footbridge to Clonkeen Park; (ii) construction of an additional two number floors with rooftop plant enclosures of office accommodation (circa 1,302 square metres) over the existing 'The Highline' building and associated internal alterations, resulting in a five-storey over basement office building; (iii) demolition of the existing 'Mentec House' and construction of a six-storey over basement 'Build-to-Rent' housing development providing 78 number apartments (five number studios, 58 number one-bed and 15 number two-bed). The development will include two number commercial/retail units (circa 168 square metres and circa 475 square metres), a cinema/tv room (circa 53 square metres), a games room (circa 50 square metres), a lobby (circa 49 square metres), a refuse store (circa 36 square metres), a concierge and management office (circa 8 square metres) and a communal lounge (circa 71 square metres) opening

onto a landscaped garden (circa 190 square metres) at ground floor level. The development will provide 136 number bicycle parking spaces and 163 number car parking spaces in total, comprising 63 number existing car parking spaces at grade spaces at 'The Highline' and 31 number car parking spaces at grade and 69 number car parking spaces at basement level of 'Mentec House'; (iv) new cycle ways and footpaths on the Pottery Business Park Access Road to the junction with Pottery Road and (v) all associated site and infrastructural works required to facilitate the development which include foul and surface water SUDS drainage, lighting, landscaping, boundary treatments and hard landscaping, all at Clonkeen Park and 'The Highline' and 'Mentec House', Dún Laoghaire Industrial Estate, Pottery Road, Dún Laoghaire, County Dublin, as amended by the further public notice received by the planning authority on the 19th day of June, 2020.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

Having regard to the zoning objective for the site, to the pattern of development in the area and to the nature and design of the proposed development, it is considered that the proposed development, subject to compliance with the conditions set out below, would be a compatible use in the area, would be consistent with the zoning objective for the site and would, therefore, be in accordance with the proper planning and development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board did not agree that the residential component of the proposed development would be incompatible with the nature of contiguous uses, or would fail to promote the objectives of the zoning of the site to provide for economic development and employment where residential use is open for consideration, or undermine the primary function of the existing industrial estate/business park. Nor did it consider that the proposed development would seriously injure the residential amenities of future occupants or result in incompatible uses side by side within the industrial estate. The proposed development would not, therefore, be contrary to the policies and objectives of the Dún Laoghaire-Rathdown County Development Plan 2016-2022 and to the proper planning and sustainable development of the area

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 19th day of June, 2019 and the 21st day of August, 2019 and by the further plans and particulars received by An Bord Pleanála on the 13th day of November, 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2.
 - (a) Appropriate noise abatement measures shall be provided to ensure that the sound pressure levels at the proposed apartments and the public areas around them do not exceed 55 dB LAR,T in daytime, 50 dB LAR, T in the evening time and 45 dB LAEQ, T at night time, as defined by the Environmental Protection Agency.
 - (b) No residential unit shall be occupied prior to the installation of the acoustic screen/barrier, in accordance with details submitted to An Bord Pleanála on the 13th day of November 2019, and other such measures have been completed and verified to be effective in achieving the required maximum sound pressure levels.
 - (c) The thereby permitted acoustic screen/barrier and other such measures shall be maintained at all times to ensure that the maximum sound pressure levels are not exceeded.

Reason: In the interest of residential amenity.

3. Prior to the commencement of development, the developer shall submit details of a proposed covenant or legal agreement which confirms that the Build to Rent residential development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be sold separately for that period. The period of fifteen years shall be from the date of occupation of the first residential unit within the scheme.

Reason: In the interest of the proper planning and sustainable development of the area.

4. Prior to expiration of the 15-year period referred to in the covenant, the developer shall submit ownership details and management structures proposed for the continued operation of the Build to Rent residential development as a Build to Rent scheme. Any proposed amendment or deviation from the Build to Rent model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and clarity

5. Prior to commencement of development, the developer shall submit an Operational Management Plan for the proposed Build to Rent residential development. The Operational Management Plan shall provide details of the management structure in place and shall provide the following information relating to:

- (a) reception/concierge,
- (b) staffing,
- (c) moving in/out,

- (d) occupiers facilities,
- (e) car parking management/allocation including details for car sharing,
- (f) deliveries,
- (g) security,
- (h) health and safety, and
- (i) building maintenance.

Reason: To provide for the satisfactory completion and maintenance of the development in the interest of residential amenity.

6. The development shall be carried out on a phased basis in accordance with the Sequence of Construction Plan (drawing number 3457-P-1.50) submitted to the planning authority on the 19th day of June, 2019. The developer shall notify the planning authority in writing in advance of the commencement of each phase of the proposed works. The proposed pedestrian and cycle bridge shall be constructed and operational prior to the occupation of the residential apartments on site.

Reason: In the interest of orderly development and to ensure the physical and social infrastructure is in place for the benefit of residents and the wider area.

7. Prior to commencement of development, the developer shall submit for the agreement of the planning authority, a written agreement outlining that members of the public have full right and liberty for the free passage and use of the proposed pedestrian and cyclist bridge which will connect Clonkeen Park with the Pottery Road Business Park.

Reason: In order to accommodate unrestricted access at all times through the subject site and to ensure pedestrian/cyclist permeability between Clonkeen Park and the Pottery Road Business Park.

8. Prior to the commencement of development, panels of all external finishes including materials, colours and textures shall be erected on site for the written agreement of the planning authority. This shall include materials and finishes for the proposed cyclist and pedestrian bridge (i.e. railings, surface finishes, paving etc.).

Reason: In the interest of visual amenity.

9. The developer shall ensure that the proposed development is carried out in accordance with the construction requirements as specified within the submitted Acoustic Design Report received by the planning authority on the 19th day of June, 2019.

Reason: In the interest of amenity.

10. The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. The car parking spaces associated with the Build to Rent development shall be assigned permanently for the residential development and shall be reserved solely for that purpose. These residential spaces shall not be utilised for any other purpose, including for use in association with any other uses of the development hereby permitted, unless the subject of a separate grant of planning permission.

Reason: To ensure that adequate parking facilities are permanently available to serve the proposed residential units and the remaining development and to prevent inappropriate commuter parking.

11. The developer shall carry out at their own expense, the recommendations and alternative measures as accepted by the designer in the submitted Quality Audit prepared by Roadplan Consulting dated March 2019 submitted to the planning authority with the application.

Reason: In the interest of the proper planning and sustainable development of the area.

12. A minimum of 10% of all car parking spaces for both the build to rent and office elements of the development shall be provided with functioning electric vehicle charging stations/points and ducting shall be provided for all remaining car parking spaces, facilitating the installation of electric vehicle charging points/stations at a later date. Proposals providing this requirement shall be submitted to, and agreed in writing with, the planning authority prior to the occupation of the development.

Reason: In the interest of sustainable transport.

13. The developer shall implement the measures outlined in the Travel Plan submitted prepared by Roadplan Consulting dated March 2019. Prior to first occupation of the new commercial units and new residential units, the planning authority shall be advised of contact details for the appointment Travel Plan Manager who shall implement, monitor and review the plan.

Reason: In the interest of the proper planning and sustainable development of the area.

14. The appointed Travel Plan Manager (Mobility Manager) shall provide an annual report to the planning authority for a period of five years showing what soft and hard measures have been implemented to promote an increased use of sustainable travel modes to access the development. This annual report shall include results of an annual travel survey carried out in a similar format to the original baseline survey.

Reason: In the interest of the proper planning and sustainable development of the area.

15. The proposed basement car park shall be in accordance with the Dún Laoghaire-Rathdown County Development Plan 2016-2022 - Section 8.2.4.10 (Design of Underground and Multi Storey Car Parks) and comply with the requirements of the Institution of Structural Engineers booklet entitled 'Design Recommendations for Multi Storey and Underground Car Park (Fourth Edition)' (2011).

Reason: In the interest of the proper planning and sustainable development of the area.

16. Vegetation clearance and tree removal shall take place outside the bird breeding season (March 1st – August 31st).

Reason: To protect birds and bird breeding habitats during the nesting season.

17. Prior to the commencement of the proposed development, the developer shall retain a suitably qualified aquatic ecologist as their Ecological Clerk of Works to monitor the proposed construction phase and the monitoring programme shall be agreed with the planning authority's Biodiversity Officer.

Reason: To mitigate the potential impacts during construction on biodiversity and the adjacent stream and its water quality, which is used by the Protected EU Annexed Species Otter

18. All the buildings proposed for demolition and all mature trees proposed for felling shall be examined for evidence of bats prior to demolition/felling by a bat specialist, including an examination of internal roof features. If required, a National Parks and Wildlife Services derogation licence shall be obtained.

Reason: To mitigate the potential impact of increased nocturnal illumination at the proposed development on bats, which are afforded a regime of special protection under the European Habitats Directive.

19. The developer shall ensure that:
 - (a) Sensor lights shall be used for the proposed pathway/cycleway.
 - (b) All recommendations of the Bat Report shall be implemented.

Prior to the commencement of development, the developer shall submit to the planning authority a letter from their bat consultants, that they are satisfied that these recommendations have been implemented and that the final design of the external illumination proposed for the development, shall be to the required specification recommended by the bat specialist and includes sensor lighting of the proposed pathway/cycleway.

- (c) The developer shall submit a report from the bat specialist to the planning authority after the installation of the external lighting, at the proposed development, confirming that it is operating according to specification.

Reason: To provide appropriate advice for the protection of bats which are afforded a regime of special protection under the European Habitats Directive.

20. The developer shall ensure that all works on site shall be undertaken in accordance with the Management Plan and biosecurity requirements as set out in the Invasive Alien Plant Species Survey and Management Plan.

Reason: In the interest of biodiversity.

21. The developer shall comply with all measures outlined in the submitted Environmental Management Construction Plan.

Reason: In the interest of the proper planning and sustainable development of the area.

22. Prior to the commencement of development, the developer shall retain the professional services of a qualified Landscape Architect, as his/her Landscape Consultant, throughout the course of the development works and shall notify the planning authority (Parks and Landscape Services) of that appointment in writing. The developer shall engage the Landscape Consultant to procure, oversee and supervise the Landscape Contract for the implementation of the permitted landscape proposals. When all landscape works are fully inspected and completed to the satisfaction of the Landscape Consultant, he/she shall prepare, sign and submit a Practical Completion Certificate (P.C.C) to the planning authority (Parks and Landscape Services), as verification that approved landscape plans and specification have actually been fully implemented.

Reason: To ensure full and verifiable implementation of the approved landscape design proposals for the permitted development, to the approved standards and specification.

23. Prior to the commencement of development, the developer shall submit to the planning authority (Parks and Landscape Services), a final Landscape Plan which will consult with a suitable qualified woodland botanist and this will be in consultation with the planning authority's Biodiversity Officer. The proposed Landscape Plan shall include native tree species, native plants appropriate to the area and compensatory ecological measures to be agreed with the planning authority's Biodiversity officer including bird boxes, artificial otter holt and swift nest boxes. In addition, the developer shall provide:
- (a) a Landscape Specification for all materials (hard and soft), for workmanship and Landscape Maintenance (18 months minimum period),
 - (b) details of hard landscape design for all boundaries, (walls, fences, screens), lighting, seating, kerbing, edging, surfacing and water features and all civil engineering elements (existing and proposed utilities, services, drainage and ancillary infrastructure),

- (c) details of soft landscape design to include detailed Planting Plan(s) and Planting Schedule as appropriate stating species/varieties, approximate quantities, sizes, rootball presentation and spacings. Planting mixes shall specify a diverse range of species/varieties/cultivars and a diversity of forms and plant sizes (multi-stems, feathered, semi-matures, etc.) using both native and exotic species and pollinator-friendly native species (in accordance with the All-Ireland Pollinator Plan 2015-2020), all designed to provide vegetation that is visually-appealing, bio diverse, and easily managed, and
- (d) a timescale for implementation of all proposals, including the specified landscape maintenance operations. The landscape contract shall include a post Practical Completion Certificate (signed by the landscape consultant) and a Defects Liability Clause of 18 months minimum.

Reason: To mitigate the potential impact of the loss of trees and habitats in the woodland and wildlife corridor.

24. Prior to the commencement of development, the developer shall appoint a qualified arborist as an Arboricultural Consultant for the entire period of construction. The developer shall inform the planning authority (Parks and Landscape Services) in writing of the appointment and name of the Consultant and their brief, prior to any mobilisation of plant, machinery or construction equipment. The Consultant's brief shall be as follows:

- (a) the developer shall implement all the recommendations for Tree Retention, Tree Protection and Tree Works, as detailed in the Arboricultural Method Statement and Tree Protection Plan and shall instruct his/her contractors,
- (b) prior to the commencement of development, and or any site clearance operations, the developer shall erect protective fencing around all retained trees, as shown on the Tree Protection Plan (drawing number 180823-P-12) submitted to the planning authority on the 19th day of June, 2019 and in accordance with Figures 2 or 3 of BS 5837: 2012, or as agreed with the planning authority (Parks and Landscape Services). Notices shall be fixed to the fencing, stating that the trees within the fence area are protected within the fence exclusion zone. There shall be no incursions of machinery or storage of materials, equipment, spoil or soils within the fenced zone, unless by prior written agreement with the planning authority (Parks and Landscape Services). The Arboricultural Consultant shall certify, in writing, to the planning authority (Parks and Landscape Services) when she/he is satisfied that all protective fencing is fully erected, and that the notices are attached thereto, and that she/he has given a toolbox talk to the contractor's supervisory staff regarding tree protection measures (which shall include photographic site evidence before works commence, during tree and landscape installation works and post installation to ensure it meets the design standards proposed), and

- (c) all tree works (felling, removal, surgery, etc.) as recommended in the original Tree Report shall be undertaken by a suitably qualified and insured Tree Surgeon, in accordance with British Standard BS 3998:1989 Recommendations for tree work and with current Health and Safety requirements. All tree works shall be completed before occupation of any units.

Reason: To ensure and give practical effect to the retention, protection and sustainability of trees during and after construction of the permitted development, and to verify that protection measures are in place.

25. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

26. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting. Such lighting shall be provided prior to the making available for occupation of any unit.

Reason: In the interests of amenity and public safety.

27. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, and the underground car park shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in the Design Manual for Urban Roads and Streets.

Reason: In the interests of amenity and of traffic and pedestrian safety.

28. Proposals for a development name, office/commercial unit identification and apartment numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility.

29. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

30. (a) Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.
- (b) The entire management of surface water shall be as shown in the information submitted to the planning authority on the 19th day of June, 2019.
- (c) The final structural design of the footbridge shall target that the depth of the soffit of this bridge (including the beams) is kept to a minimum.

Reason: In the interest of public health.

31. Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Irish Water.

Reason: In the interest of public health.

32. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

33. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July, 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

34. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

35. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

36. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Saturdays inclusive and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

37. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the protection of the trees on site and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of three years from the substantial completion of the development with others of similar size and species. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To secure the protection of the trees on the site.

38. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

39. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Terry Prendergast
Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this day of 2020.