



## Development

(i) Construction of a new pedestrian footbridge to Clonkeen Park. (ii) Construction of an additional 2 no. floors with rooftop plant enclosures, of office accommodation (c. 1,302 sqm) 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 no. apartments (5 no. studios, 58 no. one-bed and 15 no. two-bed). The development will include: 2 no. commercial/retail units (c.168 sqm and c.475 sqm), a cinema/tv room (c.53 sqm), a games room (c.50 sqm), a lobby (c.49 sqm), a refuse store (c.36 sqm), a concierge and management office (c.8 sqm) and a communal lounge (c.71 sqm) opening onto a landscaped garden (c.190 sqm) at ground floor level. The development

will provide 136 no. bicycle parking spaces and 163 no. car parking spaces in total, comprising 63 no. existing car parking spaces at grade spaces at 'The Highline' and 31 no. car parking spaces at grade and 69 no. 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. (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.

**Location**

Clonkeen Park, Dún Laoghaire, Co. Dublin: and 'The Highline' (Eircode A96 KW29) & 'Mentec House' (Eircode A96 K6P3) Dún Laoghaire Industrial Estate, Pottery Road, Dún Laoghaire, Co. Dublin.

**Planning Authority**

Dún Laoghaire Rathdown County Council

**Planning Authority Reg. Ref.**

D19A/0181

**Applicant(s)**

Kouchin Properties Ltd.

**Type of Application**

Permission

**Planning Authority Decision**

Grant subject to conditions

<b>Type of Appeal</b>	Third Party v. Decision
<b>Appellant(s)</b>	Becton Dickinson Penel Ltd.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	11 <sup>th</sup> February, 2020
<b>Inspector</b>	Robert Speer

## 1.0 Site Location and Description

- 1.1. The proposed development site is located on Pottery Road, between Rochestown Avenue to the east and Clonkeen Road & Clonkeen Park to the west, approximately 400m southeast of the Deansgrange neighbourhood centre (at the crossroads junction of Deansgrange Road, Clonkeen Road and Kill Lane), where it occupies a position within the Dún Laoghaire Industrial Estate / Pottery Road Business Park. This is an established industrial area on the western side of Pottery Road with the National Rehabilitation Hospital (presently undergoing redevelopment) situated on the opposite side of the roadway. The immediate site surrounds are dominated by a variety of industrial, commercial, office & business uses, including a mixed-use four-storey office building to the northeast, a Lidl supermarket, and the BD Penel Ltd. pharmaceutical manufacturing facility to the southeast. There is a small housing estate (Clonkeen Crescent) to the northwest with the lands to the southwest comprising parkland and playing pitches known as Clonkeen Park.
- 1.2. The site itself has a stated site area of 1.314 hectares, is 'T'-shaped, and comprises the 2 No. three-storey-over-basement office buildings known as 'Mentec House' and the 'Highline' building, the adjacent parking and circulation areas, a section of the business park access roadway, and part of Clonkeen Park. The existing buildings are located to the rear of the business park with a low wall and railing separating them from that part of the site area which extends into the adjacent parkland. Beyond this boundary, the site extends into Clonkeen Park and includes a heavily vegetated tree stand, a small stream that passes alongside the north-eastern fringe of the parkland, and the existing footpath / cycleway that links the park through to Kill Lane to the northwest and surrounding housing such as the Meadowvale Estate.

## 2.0 Proposed Development

- 2.1. The proposed development consists of the following:
- The demolition of 'Mentec House' and the construction of a six-storey over basement 'Build-to-Rent' housing development providing 78 No. apartments (5 No. studios, 58 No. one-bed units and 15 No. two-bed units); 2 No. commercial / retail units (c. 168m<sup>2</sup> and c. 475m<sup>2</sup>); a cinema/tv room (c. 53 sqm); a games room (c. 50m<sup>2</sup>); a lobby; (c. 49m<sup>2</sup>); a refuse store (c. 36m<sup>2</sup>); a

concierge and management office (c. 8m<sup>2</sup>); and a communal lounge (c. 71m<sup>2</sup>) opening onto a landscaped garden (c. 190m<sup>2</sup>) at ground floor level.

- The construction of an additional 2 No. floors of office accommodation (c. 1,302m<sup>2</sup>) with rooftop plant enclosures over the existing 'Highline' building with associated internal alterations to provide a five-storey over basement office building.
- The construction of a new pedestrian footbridge from the Dún Laoghaire Industrial Estate / Pottery Business Park access road to Clonkeen Park.
- The provision of new cycle ways and footpaths along the Pottery Business Park access road to its junction with Pottery Road.
- All associated site and infrastructural works required to facilitate the development including: car & bicycle parking, foul and surface water (SUDS) drainage, lighting, landscaping, boundary treatments, and hard landscaping.

2.2. Amended proposals were subsequently submitted in response to requests for further information and clarification with the principle changes comprising:

- The revision of the resident support facilities within the 'Build-to-Rent' housing development to include:
  - The provision of a laundry room.
  - The substitution of the previously proposed communal lounge with a community / function room (with kitchen / cooking facilities).
  - The substitution of the previously proposed cinema / TV room with a multimedia room.
  - The replacement of the previously proposed games room with a residents lounge featuring a pool table / games area and a new sheltered external terrace.
- The alteration of the 'Build-to-Rent' building as follows:
  - The reduction of the parapet height within the southern section of the building by 0.85m thereby providing for a 'stepping down' of the construction.

- That section of the parapet immediately above the building's stairwell to be reduced in height by 0.85m and set back from the building's rear façade with its external finish amended to match that featuring on the wall to the stairwell thereby providing for a visual break in the elevation onto Clonkeen Park.
  - The use of double-glazing systems with a minimum performance standard at specified locations within the external facade of the construction.
- The revision of the works proposed to the 'Highline' building as follows:
    - The reduction of the plant room by 0.4m in height.
    - The use of a light RAL colour louvre system cladding to the plant room in order to reduce its visual impact.
  - Revisions to the span / design of the proposed footbridge.
  - Amendments to the proposed boundary treatment, including the provision of 'Greenscreen' fencing with ivy planting alongside the boundary with the BD Penel Ltd. manufacturing facility.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Following the receipt of responses to requests for further information and subsequent clarification, on 17<sup>th</sup> September, 2019 the Planning Authority issued a notification of a decision to grant permission for the proposed development, subject to 41 No. conditions. These conditions are generally of a standardised format and relate to issues including external finishes, services, infrastructural works, construction management, mobility management, landscaping, Part V, and development contributions, however, the following conditions are of note:

Condition No. 2 – Clarifies the permitted use of the development as residential rental accommodation for a minimum period of 15 No. years from first occupation and requires the submission of a revised

deed of covenant for agreement in writing with the Planning Authority.

- Condition No. 3 - Requires each apartment to be used as a single dwelling unit and prohibits their subdivision for use as two or more separate habitable units.
- Condition No. 4 – Requires the submission of an Operational Management Plan to provide details of the management structure for the scheme.
- Condition No. 5 – Requires adherence to the phasing detailed in the ‘Sequence of Construction Plan’ (Drg. No. 3457-P-1.500) received on 19<sup>th</sup> June, 2019.
- Condition No. 6 – Requires the submission of a written agreement outlining that members of the public have full rights for the free passage and use of the proposed pedestrian and cyclist bridge connecting Clonkeen Park with the Pottery Road Business Park.
- Condition No. 8 – Requires the development to be carried out in accordance with the construction requirements specified in the ‘*Acoustic Design Report*’ received on 19<sup>th</sup> June, 2019.
- Condition No. 10 – States that the car parking spaces are to be used in conjunction with a permit scheme to be administered by a management company. The spaces are not to be used by, sublet, or sold to any party not resident / visiting the BTR development.
- Condition No. 11 – Requires the implementation of the recommendations and alternative measures accepted by the Designer in the Quality Audit prepared by Roadplan Consulting dated March, 2019.
- Condition No. 22 – Requires the appointment of a suitably qualified aquatic ecologist as an Ecological Clerk of Works to monitor the construction phase of the development with the monitoring programme to be agreed with the Local Authority Biodiversity Officer.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports:

Reviews the proposed development in the context of the applicable land use zoning and notes that the 'Build-to Rent' apartment units will be located within the Pottery Road Business Park on lands zoned as 'E' with the stated land use zoning objective '*To provide for economic development and employment*' where residential use is '*open for consideration*' and may only be permitted where the Planning Authority is satisfied that the proposal is compatible with the overall policies and objectives for the zoning, would not have undesirable effects, and would otherwise be consistent with the proper planning and sustainable development of the area. Reference is made to '*Policy E8: Residential Use in Employment Zoned Land*' whereby it is an objective to achieve a satisfactory balance with regard to the residential component of development on lands zoned Objective 'E' to ensure that such lands remain available to facilitate their primary objective i.e. the encouragement of enterprise and the creation of employment. On the basis that the additional office & commercial floorspace proposed as part of the wider scheme will accord with the requirements of Section 3.1.2.8 of the Development Plan, which include that the floorspace of the employment element on site remains no less than that prior to redevelopment, and noting the planning gain attributable to the footbridge proposed between the development and Clonkeen Park, it is concluded that the proposed 'Build-to-Rent' units' are acceptable in this instance.

The planning assessment subsequently provides for a comprehensive analysis of other issues including the overall design (e.g. the adequacy of the resident support facilities), height, scale, density and architectural treatment of the proposed development in light of the site context and the requirements of the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018*'. Consideration is also given to the implications arising as a result of the site location adjacent to an established pharmaceutical manufacturing facility as regards ensuring an adequate level of residential amenity for future occupants of the proposed development.

Following the receipt of responses to requests for further information and subsequent clarification, which included the submission of amended drawings



detailing a revised design, it was recommended that permission be granted, subject to conditions.

### 3.2.2. *Other Technical Reports:*

*Housing:* An initial report stated that the on-site proposal to transfer 7 No. one-bedroom units was capable of complying with the requirements of Part V of the Planning and Development Act, 2000, as amended, the County Development Plan, and the Housing Strategy, 2016-2022, subject to agreement being reached on land values & development costs and funding being available. It was thus recommended that a condition be attached to any grant of permission requiring the applicant / developer to enter into an agreement in accordance with Part V of the Act, as amended, prior to the commencement of development, unless the applicant / developer had applied for and been granted an exemption under Section 97 of the Act.

A subsequent report (dated 3<sup>rd</sup> May, 2019) revised the position of the Housing Dept. by stating that, on review, the fact that the proposed development was for 100% 'Build to Rent' units, there were legal aspects which needed to be considered in relation to the acceptability of the applicant's on site Part V proposals. In the event of a grant of permission it was stated that alternative Part V compliance options would need to be explored.

A further report (9<sup>th</sup> July, 2019) recommended the inclusion of a Part V condition in any grant of permission.

*Transportation Planning:* An initial report provided for a comprehensive review of the submitted plans and particulars, including the Transport Impact Assessment which concluded that the junction with Pottery Road would operate within capacity throughout the study timeframe (15 No. years) resulting in small / minimal queues and delays in the AM and PM peak hours for the year 2035. It subsequently recommended that further information be sought with regard to the provision of bicycle parking facilities to serve the commercial and recreational aspects of the development.

Following the receipt of a response to a request for additional information, a further report was prepared which recommended that clarification be sought as regards the proposed bicycle and car parking arrangements. More specifically, it was deemed

necessary to improve the location, accessibility, security and passive surveillance of the proposed bicycle parking whilst concerns also arose in relation to the location of the disabled parking and those spaces designated for car-club / car-sharing use. The report concluded by recommending the attachment of a series of conditions in the event of a grant of permission.

Upon consideration of the applicants' response to the request for further clarification as regards the bicycle and car parking arrangements, a final report was prepared which stated that there was no objection to the proposed development, subject to conditions.

*Parks & Landscape Services:* An initial report recommended that further information be sought with regard to the following:

- The provision of communal open space and play opportunities / facilities
- A Landscape Design Rationale (to include an overall landscape masterplan)
- A Tree Report (comprising a detailed Tree Survey and Arboricultural Impact Assessment, Tree Constraints Plan, Tree Protection Plan and Arboricultural Method Statement)
- An on-site investigation by a qualified ecological consultant (to include a bat survey) to assess the potential impacts of the proposed works on biodiversity and ecological considerations. This was to include a determination as to the necessity for a Japanese Knotweed Control / Eradication Plan.

A subsequent report of the same date (18<sup>th</sup> April, 2019) provided an amended analysis of the proposal and recommended a comparable request for further information (although the contents of this request would appear to have been phrased as conditions to be attached to any grant of permission).

Following the receipt of a response to a request for additional information, a further report was prepared which raised concerns as regards the 'aggressive' removal of trees and recommended that clarification be sought in respect of a number of items, including an alternative bridge design which would reduce the tree removal, water pollution concerns, and an explanation as to how the proposal would enhance the biodiversity and ecological value of the area.

An additional report also sought further clarification as regards the bat survey / assessment, the ecological report, and an updated Construction and Environmental Management Plan.

Upon consideration of the applicants' response to the request for further clarification, whilst a series of final reports raised a number of concerns, they ultimately concluded by recommending the inclusion of certain conditions in the event of a grant of permission.

*Drainage Planning (Municipal Services Department):* Initial reports (dated 24<sup>th</sup> April, 2019 & 1<sup>st</sup> May, 2019) recommended that further information be sought in respect of the proposed surface water drainage arrangements. Concerns were also raised as regards the design of the proposed footbridge to Clonkeen Park given that the river is subject to flooding. It was stated that a conceptual design for the footbridge was required at this stage which should focus on minimising any impeding of flood waters by way of a higher freeboard and a more ample span. It was further noted that whilst the site-specific flood risk assessment had acknowledged that a footbridge was proposed for construction, it was unclear if the bridge had been taken into consideration in the FRA and what its impact would be on the flooding regime.

Following the receipt of a response to a request for additional information, a further report was prepared which stated that the updated proposals were satisfactory and that there was no objection to the proposed development, subject to conditions.

*Waste Section:* An initial report stated that the Construction Traffic Management Plan was acceptable as it related to environmental management, however, no consideration had been given to waste management in the completed development or to environmental management either during the construction stage or in the completed development in the context of the adjoining public park.

Following the receipt of a response to a request for additional information, a further report was prepared which recommended the imposition of a series of conditions in the event of a grant of permission.

*Public Lighting:* States that the submitted lighting design is acceptable.

*Appropriate Assessment (Screening Report):* States that the proposed development is inland and located at a remove from the closest European Site (the South Dublin Bay Special Area of Conservation) with no known hydrological links to same. It is

subsequently concluded that in light of the scale and nature of the development proposed, and its location relative to the South Dublin Bay SAC, there is no likelihood of any significant effect on any Natura 2000 site.

### **3.3. Prescribed Bodies**

3.3.1. *Irish Water:* No objection, subject to conditions.

### **3.4. Third Party Observations**

3.4.1. A total of 8 No. submissions were received from interested third parties and the principle grounds of objection / areas of concern contained therein can be summarised as follows:

- The design, scale and height of the development is out of character with the surrounding area.
- The prevailing pattern of development is dominated by family residences of different sizes unlike the proposed apartment units.
- The impact on wildlife and ecological considerations.
- Concerns as regards pedestrian safety given the likely increase in the number of cyclists using Clonkeen Park consequent on the proposed development.
- The siting of a residential development in a commercial / business area.
- The increased traffic generation and demand on infrastructural services.
- The potential impact on the residential amenity of neighbouring properties.
- The implications for the continued operation of a neighbouring manufacturing facility and adherence to its Integrated Pollution Control Licence given the siting of the proposed residential development relative to same.

3.4.2. It should also be noted that 2 No. of the submissions received were generally supportive of the redevelopment of the existing industrial estate and were satisfied that the overall design had taken cognisance of the need to protect the residential amenity of neighbouring properties.

## 4.0 Planning History

### 4.1. *On Site:*

PA Ref. No. D16A/0426. Application by Celtory Limited for permission for 1. Construction of two storey set back extension to top of existing three storey over basement office unit. 2. Revised cladding and glazing to external structure to include new external lift shaft. 3. Revision to undercroft car park. 4. All other associated site works, drainage works, landscaping and boundary works. This application was declared withdrawn.

PA Ref. No. D18A/0980. Was granted on 21<sup>st</sup> January, 2019 permitting The Road Safety Authority permission for 1. External and internal alterations to the ground floor of the existing building, more specifically a c. 228m<sup>2</sup> undercroft car parking area (ancillary to the existing office building on site). External alterations include the erection of new walls, doors and windows. Internal alterations include an internal fit-out to provide a separate entrance lobby, stairwell/lift providing access between the ground and first floor levels, reception area, waiting area, office space, interview area and of staff/customer toilet facilities. 2. Change of use from undercroft car parking area to RSA driving test centre. The driving test centre will also utilise part of the first floor office space (which comprises c. 327m<sup>2</sup>) featuring in the existing building. It will be accessed via the existing road serving the subject site and will be served by the existing car parking area on site, the surface of which will be upgraded as part of this application. 3. All ancillary works and SuDS drainage works necessary to facilitate the development.

PA Ref. No. D19A/0732. Was granted on 30<sup>th</sup> January, 2020 permitting The Road Safety Authority permission for a) double-sided directional signage on Pottery Road at the entrance to the Dún Laoghaire Industrial Estate and b) miscellaneous directional / information signage in the undercroft of the Highline Building and in the vicinity of same.

## 5.0 Policy and Context

### 5.1. National and Regional Policy

5.1.1. The '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' generally encourage more sustainable urban development through the avoidance of excessive suburbanisation and through the promotion of higher densities in appropriate locations. In general, appropriate locations for such increased densities include city and town centres, 'brownfield' sites (within city or town centres), sites within public transport corridors, inner suburban / infill sites, institutional lands and outer suburban / 'greenfield' sites. The proposed development site may be categorised as an 'inner suburban / infill' site where the provision of additional dwellings, proximate to existing or due to be improved public transport corridors, has the potential to revitalise areas by utilising the capacity of existing social and physical infrastructure. In respect of infill residential development potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and the privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill. Moreover, in order to maximise the return of investment by the State in public transport, it is important that land use planning underpin the efficiency of public transport services by sustainable settlement patterns – including higher densities – on lands within existing or planned transport corridors. Accordingly, the Guidelines recommend that increased densities should be promoted within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station. The capacity of public transport (e.g. the number of train services during peak hours) should also be taken into consideration in considering appropriate densities. In general, minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards, should be applied within public transport corridors, with the highest densities being located at rail stations / bus stops, and decreasing with distance away from such nodes.

5.1.2. The '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018*' (which update the '*Sustainable Urban Housing:*

Design Standards for New Apartments, Guidelines for Planning Authorities, 2015') provide detailed guidance and policy requirements in respect of the design of new apartment developments. Where specific planning policy requirements are stated in the document, these are to take precedence over any conflicting policies and objectives of development plans, local area plans and strategic development zone planning schemes. Furthermore, these Guidelines apply to all housing developments that include apartments that may be made available for sale, whether for owner occupation or for individual lease. They also apply to housing developments that include apartments that are built specifically for rental purposes, whether as 'build to rent' or as 'shared accommodation'. Unless stated otherwise, they apply to both private and public schemes. These updated guidelines aim to uphold proper standards for apartment design to meet the accommodation needs of a variety of household types. They also seek to ensure that, through the application of a nationally consistent approach, new apartment developments will be affordable to construct and that supply will be forthcoming to meet the housing needs of citizens. Chapter 5 of the Guidelines specifically refers to the 'Build-To-Rent' sector and advises of the need to comply Specific Planning Policy Requirements 7 & 8.

- 5.1.3. The '*Urban Development and Building Heights, Guidelines for Planning Authorities, 2018*' are intended to set out national planning policy guidance on building heights in relation to urban areas, as defined by the census, building from the strategic policy framework set out in Project Ireland 2040 and the National Planning Framework. They aim to put into practice key National Policy Objectives contained in the NPF in order to move away from unsustainable "business as usual" development patterns and towards a more compact and sustainable model of urban development. Greatly increased levels of residential development in urban centres and significant increases in the building heights and overall density of development are not only to be facilitated, but are to be actively sought out and brought forward by the planning processes and particularly so at local authority and An Bord Pleanála levels. In this regard, the Guidelines require that the scope to consider general building heights of at least three to four storeys, coupled with appropriate density, in locations outside what would be defined as city and town centre areas, and which would include suburban areas, must be supported in principle at development plan and development management levels. There is a presumption in favour of buildings of

increased height in the town/city cores and in other urban locations with good public transport accessibility.

## 5.2. Development Plan

### 5.2.1. *Dún Laoghaire Rathdown County Development Plan, 2016-2022:*

#### *Land Use Zoning:*

The extent of the site area situated within the Dún Laoghaire Industrial Estate is zoned as 'E' with the stated land use zoning objective '*To provide for economic development and employment*'. The remainder of the site area within Clonkeen Park is zoned as 'F' with the stated land use zoning objective '*To preserve and provide for open space with ancillary active recreational amenities*'.

#### *Other Relevant Sections / Policies:*

#### *Chapter 2: Sustainable Communities Strategy:*

#### *Section 2.1: Residential Development:*

#### *Policy RES3: Residential Density:*

It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development. In promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and objectives contained in the following Guidelines:

- 'Sustainable Residential Development in Urban Areas' (DoEHLG 2009).
- 'Urban Design Manual - A Best Practice Guide' (DoEHLG 2009).
- 'Quality Housing for Sustainable Communities' (DoEHLG 2007).



- ‘Irish Design Manual for Urban Roads and Streets’ (DTTaS and DoECLG, 2013).
- ‘National Climate Change Adaptation Framework
- Building Resilience to Climate Change’ (DoECLG, 2013).

*Policy RES7: Overall Housing Mix:*

It is Council policy to encourage the establishment of sustainable residential communities by ensuring that a wide variety of housing and apartment types, sizes and tenures is provided within the County in accordance with the provisions of the Interim Housing Strategy.

*Chapter 3: Enterprise and Employment Strategy:*

*Section 3.1.2: Strategy, Policies and Objectives:*

*Policy E7: Light Industrial and Related Uses*

It is Council policy, when determining planning applications on industrial sites, to consider the employment-generating value of light industry areas in the County and the value of maintaining an adequate supply of light industrial space and employment in order to help ensure a diverse range of employment opportunities in the County.

*Policy E8: Residential Use in Employment Zoned Land*

It is Council policy to achieve a satisfactory balance with regard to the residential component of development on lands zoned Objective ‘E’ to ensure that such lands remain available to facilitate their primary objective for the lands which is the encouragement of enterprise and the creation of employment. Generally, any residential development proposals on ‘E’ zoned lands should ensure that the employment element on site in terms of floor space should be no less than that on site prior to redevelopment and must ensure that the employment element on site in terms of overall floor space remains the primary land use.

The Plan has a central tenet of ‘planning for the knowledge economy’ – that is, the importance of planning ‘people places’ rather than environments solely to attract business. The land-use zoning objective for employment lands must be flexible enough to reflect this new mixed-use context, whilst reinforcing the primacy of the employment use.

An element of residential use in employment zoned areas may be considered in appropriate locations where a proposed development makes a positive contribution to the area in terms of adding to the richness and diversity of uses. The appropriate location for residential use would generally be in close proximity to public transport nodes and adjacent to facilities such as shops, crèches, restaurants and hotels and other community infrastructure.

*Policy E11: Office Development:*

It is Council policy to facilitate significant office development in commercial and employment centres. The appropriate locations for office development would generally be in Major Town Centres, District Centres, and Employment zoned areas.

*Chapter 8: Principles of Development:*

*Section 8.1: Urban Design:*

*Section 8.1.2: Urban Design at the Local Level:*

*Policy UD6: Building Height Strategy:*

It is Council policy to adhere to the recommendations and guidance set out within the Building Height Strategy for the County.

(Please refer to Appendix 9: ‘*Building Height Strategy*’ of the Development Plan).

*Section 8.2: Development Management:*

*Section 8.2.3: Residential Development:*

*Section 8.2.3.1: Quality Residential Design*

*Section 8.2.3.3: Apartment Development*

*Section 8.2.3.5: Residential Development – General Requirements*

Section 8.2.5: *Enterprise and Employment*

**5.2.2. Deansgrange Local Area Plan, 2010-2020:**

*Chapter 2: Urban Structure*

*Chapter 3: Movement and Accessibility*

Section 3.1: *Pedestrian and Cycle Movement:*

Section 3.1.3: *Zone C: Proposed Improvements:*

A significant weakness with pedestrian and cycle facilities in this area is the failure of existing pedestrian and cycle routes through the park to connect with the adjacent business park areas. As highlighted within Section 4 “Business Parks” of this LAP, there is good potential for an attractive interface between the Pottery Business Park and Clonkeen Park with pedestrian and cycle access to connect with existing routes through Clonkeen Park incorporated. A pedestrian and cycle link at this location would facilitate direct access between the Pottery Business Park and the village, where a variety of services including QBC provision are available. Such a link would encourage sustainable travel modes for employees, improve access to park amenities and facilitate greater pedestrian and cycle permeability from the village right through to Pottery Road and the National Rehabilitation Hospital. A pedestrian and cycle link through the National Rehabilitation Hospital Grounds, approved as part of the overall redevelopment of that site, connects with Rochestown Avenue and will further enhance permeability for residents and visitors. This proposal would also afford an improved level of usage and surveillance for Clonkeen Park.

*P3:* It is an objective of the Council to seek the provision of a pedestrian and cycle link between Pottery Road and Clonkeen Park via the Pottery Business Park.

Section 3.4: *Parking:*

*T8:* It is an objective of the Council to require that any parking areas developed within both the Deansgrange Business Park and the Pottery Road Business Park shall serve a dual use function, and provide an element of parking provision, for users of Clonkeen Park at off peak times when demand for park use is greatest at evenings and weekends.

#### *Chapter 4: Business Parks:*

##### *Section 4.1.2: The Pottery Road Industrial Estate:*

The Pottery Road Industrial Estate comprises approximately 6.5Ha and is located off Pottery Road. Immediately adjacent to the north of the estate is the residential area of Clonkeen Crescent. To the west is Clonkeen Park, to the south is the residential area of Mackintosh Park and to the east is Pottery Road and the grounds of the National Rehabilitation Hospital. The Industrial Estate has approximately 330m of frontage onto Pottery Road.

Just over half of the site area, the southern portion, comprises the factory grounds of B&D Pharmaceuticals Ltd. This facility is separate to the northern portion of the Industrial Estate and has its own vehicular access onto Pottery Road from the south eastern corner of the site. The northern end of the Industrial Estate accommodates a variety of uses including office-based industry, a discount foodstore, an NCT car testing centre, a driver testing centre and a number of light industrial uses.

##### *Section 4.3.4: Access and Layout: Pottery Business Park:*

The B&D pharmaceutical plant accesses onto Pottery Road from the south eastern corner of the overall employment lands. A second access centrally located within the northern portion of the overall employment lands serves the remaining businesses within the PBP. Deficiencies with access and layout arrangements for the PBP include the absence of a right hand turning lane and poor provision for pedestrians and cyclists. In addition, there are no links with the pedestrian and cycle routes, which run through the adjacent Clonkeen Park. Such provision would significantly improve pedestrian and cycle permeability within this area and improve access to park amenities for employees and visitors. The provision of this link would be subject to an on site investigation of any physical constraints, level differences etc. The overall layout of the Pottery Business Park is also considered poor in terms of amenity area provision for employees and visitors. These issues will need to be addressed in any significant future redevelopment proposals.

Measures, which will address deficiencies with the PBP entrance, are included within the proposed Pottery Road Improvement Scheme. This scheme provides for a right-hand turn with stacking lane at the existing entrance and will also incorporate cycle tracks and footpaths along Pottery Road and at the entrance to the PBP. These

measures will afford significant benefits for the safety and free flow of traffic, cycle and pedestrian movements along Pottery Road, while also ensuring safe and efficient access arrangements for the business park with adequate provision for the separation of pedestrian and cycle movements from vehicular traffic. The Pottery Road Improvement Scheme is included as an objective under the 2010 – 2016 County Development Plan.

#### Section 4.3.5: *Employment: Office Based Industry*

##### *Objectives for Business Parks:*

*BP1:* To encourage and support the upgrade and redevelopment of the employment zoned lands within the plan area in order to achieve modern high quality working environments with attractive and high quality interfaces with adjacent public spaces, including street frontages and areas of interface with the adjacent Clonkeen Park.

*BP2:* To encourage and support the upgrade and redevelopment of the employment zoned lands within the plan area in order to achieve modern high quality working environments with the appropriate facilities, amenities and services necessary to attract new office based industry while also facilitating the continued provision of a mix of employment opportunities and service provision.

*BP4:* To support and facilitate the provision of direct pedestrian and cycle links between the employment zoned lands within the plan area and Clonkeen Park and to strengthen pedestrian and cycle links between the employment lands and adjacent neighbourhood and village centres in order to improve pedestrian and cyclist permeability within the overall area.

#### *Chapter 7: Residential*

##### *Section 7.4: New Residential Development*

Given the existing built up nature of the plan area though, opportunities for new residential development, will be largely restricted to:

- a) Infill Residential Developments.
- b) Residential elements within Neighbourhood Centre sites.

- c) Limited scope for a residential element within the Deansgrange Business Park, to complement and improve surveillance within Clonkeen Park.

### 5.3. Natural Heritage Designations

5.3.1. The following natural heritage sites are located in the general vicinity of the proposed development site:

- The South Dublin Bay Proposed Natural Heritage Area (Site Code: 000210), approximately 2.2km north of the site.
- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 2.3km north of the site.
- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 2.3km north of the site.
- The Dalkey Coastal Zone and Killiney Hill Proposed Natural Heritage Area (Site Code: 001206), approximately 2.5km southeast of the site.
- The Loughlinstown Woods Proposed Natural Heritage Area (Site Code: 001211), approximately 3.7km southeast of the site.
- The Dingle Glen Proposed Natural Heritage Area (Site Code: 001207), approximately 4.0km southwest of the site.
- The Dalkey Islands Special Protection Area (Site Code: 004172), approximately 4.6km east of the site.
- The Rockabill to Dalkey Island Special Area of Conservation (Site Code: 003000), approximately 4.6km east of the site.
- The Fitzsimon's Wood Proposed Natural Heritage Area (Site Code: 001753), approximately 4.8km west of the site.

### 5.4. EIA Screening

5.4.1. Having regard to the nature and scale of the development proposed, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, there is no real likelihood of

significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- There are serious concerns as regards the implications of the presence of residential properties in close proximity to the boundary of the appellant's manufacturing facility both in terms of current and future operations and the residential environment within the development.

BD Penel Ltd. has operated a major manufacturing centre supplying products for the treatment of diabetes from a facility located to the immediate south of the application site since 1969. This facility is operational 24-hours a day and 7-days a week and supplies 50% of the world's insulin pen needles. Whilst the main production activities are conducted from within the production buildings on site, ancillary activities are carried out to the northwest of the facility immediately adjacent to the proposed development site.

There have been a number of developments on the appellant's site over the years, including operational changes and revisions to the products manufactured, and in recent years a number of building developments (e.g. additional office and warehouse space) have been completed. At all times the appellant has deliberately relocated and / or consolidated certain activities and plant etc. on site in an effort to avoid impacting on the residential area of Mackintosh Park to the south (such as by way of noise emissions) and on those amenity areas to the south and west. These have been concentrated in the west / north-western corner of the site as the development beyond this point is of a commercial / business nature and thus is not considered to comprise a noise sensitive location.

The operation of the existing facility is subject to an Integrated Pollution Control Licence issued by the EPA which requires adherence to the following as regards sound pressure levels at noise sensitive locations in the vicinity:

Schedule B.4 Noise Emissions Daytime dB LAR,T (30 minutes)	Evening time dB LAR,T (30 minutes)	Night-time DB LAEQ,T (15- 30 minutes)
55	50	45 <sup>1</sup>

(<sup>1</sup> There shall be no clearly audible tonal component or impulsive component in the noise emission from the activity at any noise sensitive location).

The IPC licence also places an obligation on the appellant to carry out a noise survey of the site operations annually.

Three noise sensitive locations are specified in the licence (please refer to the drawing appended to the grounds of appeal), which have been agreed with the EPA as follows:

- AN-2 located to the southeast of the site at the boundary with Mackintosh Park.
- AN-3 located to the south of the site at the boundary with Mackintosh Park.
- AN-6 located to the southwest of the site in the amenity area adjacent to the residential area at Meadow Vale.

At the time the original IPC licence was granted, and also when it was revised in 2017, the area to the north of the facility (the Dún Laoghaire Industrial Estate / Dún Laoghaire Business Park / Pottery Business Centre) did not fall within the definition of a noise sensitive location and, therefore, the aforementioned noise emission levels do not apply with respect to same.

The closest noise monitoring location to the application site is AN-5 and surveys conducted in this area indicate that the noise levels from plant within the appellant's manufacturing facility exceed the limits set out in the IPC licence, however, it is reiterated that as this is not a noise sensitive location there is no obligation to attenuate the noise emissions to those levels.

- The proposed development of residential properties on the application site will introduce a noise sensitive location adjacent to the existing manufacturing facility thereby obliging the appellant to extend its noise monitoring programme to include that location in order to comply with its IPC licence. This is likely to show that the noise levels exceed the required limits with the



result that the facility will be non-compliant with its licensing requirements. Any such non-compliance will have to be reported and the appellant may be subject to enforcement action by the EPA which could include a Court Order requiring cessation of the activity giving rise to the pollution and / or prosecution. It is also possible that future residents of the proposed development could make complaints as regards the noise levels from the existing facility.

- While it is acknowledged that the Acoustic Design Report submitted by the applicant in response to the request for further information states that the noise levels within the proposed apartments will satisfy the relevant noise criteria for the interior of dwellings, it is not evident that these will be achieved when windows and / or doors are open or if they can be met in the external spaces that may also be considered noise sensitive locations. Therefore, without additional noise attenuation measures, it is very likely that the appellant will not be in compliance with its IPC licence on an on-going basis and will open to noise nuisance complaints.
- It is unreasonable that the proposed residential development could potentially impact on the appellant's long-established operations. Aside from the disruption to current operations and the associated costs, it would not be operationally possible to relocate activities and plant etc. away from the west / northwest corner of the facility without impacting on existing noise sensitive locations to the south and west.
- It should be noted that the proposed development site is zoned as '*E: To provide for economic development and employment*' and that residential use is only '*open for consideration*' on such lands. Moreover, in general terms, uses which are '*open for consideration*' may only be permitted where they would '*be compatible with the overall policies and objectives for the zone, would not have undesirable effects, and would otherwise be consistent with the proper planning and sustainable development of the area*'. In this regard, it is submitted that the siting of residential development relative to the appellant's facility and the manner in which the noise emissions have been addressed in the application will have undesirable effects on both the current operation and the residents of the proposed units.

- Policy EI20 of the Development Plan states that *'It is Council policy to implement the provisions of National and EU Directives on air and noise pollution and other relevant legislative requirements in conjunction with other agencies as appropriate'*. In regard to noise, the narrative to this policy includes the statement that the Council adopted the 'Dublin Agglomeration Environmental Noise Action Plan, 2013-2018' in December, 2013.

It is not clear if the subject application has been assessed against the relevant provisions of the 'Dublin Agglomeration Environmental Noise Action Plan', the 'ProPG Planning & Noise Guidance', or BS4142: Methods for Rating and Assessing Industrial and Commercial Sound, nor whether these implications have been fully appreciated.

- In the event the Board is minded to grant permission, it is requested to attach a condition requiring the installation of measures on or adjacent to the boundary that will attenuate the sound pressure levels at the nearest apartment block and the public areas around same to the limits set out in the IPC licence. This condition should also require the attenuation measures to be approved prior to construction and completed in advance of the occupation of any residential unit with an obligation to maintain them on an on-going basis. Should these measures not be forthcoming, the Board should consider whether it would be appropriate to grant permission on the basis that the proposed development will have an undesirable impact on the appellant's manufacturing operations and on the residential environment within the development contrary to the Development Plan and that sufficient regard has not been given to the provisions of National and EU Directives on air and noise pollution in this instance.

## 6.2. Applicant Response

- Following a review of the proposal in order to address the appellant's concerns, it is considered that noise levels could be suitably reduced through the introduction of noise abatement measures on the subject site. More specially, the introduction of an acoustic screen / barrier on the common

boundary (please refer to the Appendix 'A' which identifies the applicable wall on site) could be required as a condition of any decision to grant permission.

- The following sample wording of a condition that could facilitate the introduction of a suitably designed acoustic screen / barrier on site is suggested:

*'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 55dB LAR,T in daytime; 50dB LAR,T in the evening time; and 45dB LAEQ,T at night-time, as defined by the EPA:-*

*a) No residential unit shall be occupied prior to the installation of the acoustic screen / barrier and other measures have been completed and verified to be effective in achieving the required maximum sound pressure levels; and*

*b) The approved acoustic screen / barrier and other measures shall be maintained at all times to ensure that required maximum sound pressure levels are not exceeded'.*

- The accompanying correspondence from the appellant dated 8<sup>th</sup> November, 2019 (provided at Appendix 'B') supports the inclusion of a condition such as outlined above (or similar). It also states that the appellant is not objecting to the development as a whole, but only to the potential impact on its day to day operations. The inclusion of the aforementioned condition would negate any potential noise issues and would address the appellant's concerns.

### 6.3. Planning Authority Response

- States that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

### 6.4. Observations

None.

## 6.5. Further Responses

### 6.5.1. Response of the Planning Authority:

- Reiterates that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

## 7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- The principle of the proposed development
- Noise considerations
- Appropriate assessment

These are assessed as follows:

### 7.2. The Principle of the Proposed Development:

7.2.1. At the outset, I would advise the Board that my rationale for reviewing the overall principle of the proposed development derives from the specific concerns raised in the grounds of appeal as regards the implications for neighbouring land uses arising from the introduction of a residential development (i.e. a noise sensitive receptor) into the Dún Laoghaire Industrial Estate / Pottery Road Business Park (which are considered in greater detail elsewhere in this report). In this regard, a key issue for consideration is whether the residential element of the proposal is compatible with the surrounding pattern of land usage.

7.2.2. The proposed 'Build-to-Rent' apartment units will be located within the confines of an existing industrial estate / business park on lands zoned as 'E' with the stated land use zoning objective '*To provide for economic development and employment*' where residential development is '*open for consideration*' in accordance with Table 8.3.9 of the County Development Plan. In determining the acceptability of a particular land use, Section 8.3.4 of the Plan explains that uses which are '*Open for Consideration*' may be permitted where the Planning Authority is satisfied that the proposed development would be compatible with the overall policies and objectives for the

zone, would not have undesirable effects, and would otherwise be consistent with the proper planning and sustainable development of the area.

- 7.2.3. Further credence is lent to the siting of residential development on lands zoned for employment purposes by reference to Section 3.1.2.8 of the Plan which states that in *'planning for the knowledge economy'* an emphasis is to be placed on the importance of planning for *'people places'* rather than environments solely to attract business. Therefore, the land use zoning objective for employment lands is to be interpreted flexibly in order to reflect this new mixed-use context whilst reinforcing the primacy of the employment use. By way of elaboration, the Plan states that an element of residential use on employment zoned lands may be considered in appropriate locations where a proposed development makes a positive contribution to the area in terms of adding to the richness and diversity of uses. It is envisaged that suitable locations will generally be sited in close proximity to public transport nodes and adjacent to facilities such as shops, crèches, restaurants, hotels and other community infrastructure. The foregoing provisions are subsequently given effect by Policy E8: *'Residential Use in Employment Zoned Land'* of the Plan as follows:

*'It is Council policy to achieve a satisfactory balance with regard to the residential component of development on lands zoned Objective 'E' to ensure that such lands remain available to facilitate their primary objective for the lands which is the encouragement of enterprise and the creation of employment. Generally, any residential development proposals on 'E' zoned lands should ensure that the employment element on site in terms of floor space should be no less than that on site prior to redevelopment and must ensure that the employment element on site in terms of overall floor space remains the primary land use'.*

- 7.2.4. From a review of the available information, it is apparent that in its assessment of the subject application and, more specifically, in determining that the Build-to-Rent' apartment units would be acceptable in principle at the location proposed, the Planning Authority placed a considerable emphasis on the planning gain arising from the proposal to provide a pedestrian link between Pottery Road and Clonkeen Park via the Pottery Road Business Park as part of the overall development pursuant to Objective P3 of the Deansgrange Local Area Plan, 2010-2020. In this respect, whilst

it was acknowledged that the application site was somewhat removed from the nearest neighbourhood centre at Deansgrange Village, it was considered that the proposal to provide a pedestrian / cycle link through to Clonkeen Park would improve access to the village centre with its associated services and amenities. It was also noted that the proposed connection to Clonkeen Park would ensure that local residents (including future occupants of the proposed Build-to-Rent units) would be within walking distance of the Bus Priority Route located on Kill Lane (c. 400m distant of the site itself) which connects to the Stillorgan Quality Bus Corridor. Cognisance was also taken of the wider benefits in terms of the improved permeability and access to Clonkeen Park arising from the proposed pedestrian / cycle link in addition to the creation of an active interface onto the park that would provide for passive surveillance of the area throughout the day and night. In further support of the proposal, the Planning Authority also noted the proximity of the site to nearby employment locations and suggested that the inclusion of a residential component in the proposed development would assist in sustaining existing and proposed employment generating uses both on site and in the surrounding area whilst preserving the primacy of the employment land use zoning.

7.2.5. Whilst I would acknowledge that residential development is open for consideration on the subject lands, it is clear that the primary purpose of the relevant land use zoning objective is to provide for economic development and employment uses and in this respect it is notable that the existing industrial estate / business park is entirely occupied by industrial, commercial, office & business uses with no precedent for residential use. Therefore, the proposal to develop a 'Build-to 'Rent' scheme within the existing industrial estate / business park at the location proposed is somewhat ad hoc and piecemeal. Were the proposal to form part of a more strategic framework plan which seeks to introduce a specific residential element into part of the industrial estate, it could perhaps be considered on its merits, however, in the absence of any such overriding strategy, it is my opinion that the introduction of a residential component on lands surrounded by industrial / commercial buildings within the confines of an existing industrial estate would be inappropriate on the basis that it does not relate to any specific framework for the future development of such lands.

7.2.6. At this point I would draw the Board's attention to Section 4 of the Deansgrange Local Area Plan, 2010-2020 which emphasises that both the Deansgrange Business

Park and the Pottery Road Industrial Estate have an important contribution to make to the local community and a major role to play in terms of securing economic development and employment for the area. The Plan subsequently refers to the significant potential of both business parks to provide for pedestrian and cycle links through to Clonkeen Park and specifically states that any major development proposals for the Deansgrange Business Park should be brought forward in the context of a Master Plan which should establish in broad terms the layout, scale, design and general use categories to guide future development within the employment zoned lands. Moreover, Section 4.5 of the Plan recognises that whilst the Deansgrange Business Park is primarily zoned for employment and economic development, a limited level of residential development may be considered appropriate at its interface with Clonkeen Park (although an excess of such development would compromise the employment and economic development use of the lands and would not be considered appropriate). In this regard, it is particular relevance to note that the LAP does not include any similar provision as regards residential development within the Dún Laoghaire Industrial Estate / Pottery Road Business Park.

- 7.2.7. Notwithstanding that many of the uses currently accommodated within the industrial estate / business park (such as offices, childcare services, a pharmacy and a foodstore) would generally be considered compatible with residential development, the application site immediately adjoins the Becton Dickinson Penel Ltd. manufacturing facility, the operation of which is subject to an Integrated Pollution Control Licence. In this regard, it is of particular relevance to note that previous noise monitoring carried out in accordance with the existing IPC licence has confirmed that the noise levels at the shared boundary between the BD Penel Ltd. complex and the application site (immediately alongside the proposed 'Build-to-Rent' units) presently exceed both the day-time and night-time emission limits specified for noise sensitive locations. Accordingly, I would have serious concerns as regards the compatibility of introducing a residential development at the location proposed given its proximity to a long established industrial operation which is known to give rise to elevated noise emissions. Furthermore, it is possible, having regard to the land use zoning objective, that over time the nature of the surrounding industrial estate / business park could change and that more incompatible uses could be permitted in the area.

In this respect, I would be of the opinion that presence of residential development within the industrial estate could unduly restrict and influence the type and nature of uses which could be established within the industrial estate on the grounds that certain industrial uses may be incompatible with residential development. Moreover, the residential component of the subject proposal could potentially serve to undermine existing industrial operations within the estate (as detailed elsewhere in this report).

- 7.2.8. Having regard to the foregoing, it is my opinion that the introduction of residential units at the location proposed would constitute a piecemeal and ad hoc development in the context of the existing industrial estate and is on the whole incompatible with contiguous land uses.

### 7.3. **Noise Considerations:**

- 7.3.1. The key issue raised in the grounds of appeal relates to the compatibility of the residential element of the proposed development with the adjacent Becton Dickinson Penel Ltd. manufacturing facility, the operation of which is subject to an Integrated Pollution Control Licence (Reg. No. P0648-02) issued by the Environmental Protection Agency. More specifically, the appellant has referenced the obligations imposed on its manufacturing operation by Condition No. 5: '*Emissions*' of the IPC licence and, in particular, the requirement to prohibit any exceedance of the noise emission limit values set out in Part B.4 of Schedule B: '*Emission Limits*' of the licence (as set out above in the summation of the grounds of appeal). This provision serves to reiterate Section 4.5 of Condition No. 4: '*Interpretation*' which states that noise from the installation is not to give rise to sound pressure levels measured at NSLs in the vicinity of the installation which exceed the limit value(s). It has also been asserted that the IPC licence requires the appellant to undertake a noise monitoring survey of the site operations annually (Condition 6: '*Control and Monitoring*': Part C.5 of Schedule C: '*Control and Monitoring*').
- 7.3.2. At present, the area to the north of the BD Penel Ltd. facility, which includes the application site, does not fall within the definition of a noise sensitive location and, therefore, the noise emission limits set out in the current IPC licence do not apply with respect to same. However, should the proposed development proceed, the residential component of the proposal (i.e. the 'Build-to-Rent' apartments) will



introduce a noise sensitive receptor to this part of the business park which would require adherence to the sound pressure levels specified on the licence for such noise sensitive locations. In this regard, it has been asserted that the appellant will be obliged to extend its noise monitoring programme to include the application site in order to comply with its IPC licence, however, the results of surveying already conducted from the noise monitoring location (i.e. AN-5) located closest to the application site seemingly indicate that noise levels from the manufacturing facility presently exceed the limit set out in the IPC licence with respect to noise sensitive locations. Accordingly, given that noise levels at the proposed 'Build-to-Rent' apartments will exceed the required limits, the appellant anticipates that its facility will be non-compliant with its IPC licence and thus could be subject to enforcement action by the EPA.

7.3.3. At this point, I would draw the Board's attention to Section 4.4.1 of the *'Guidance Note for Noise: Licence Applications, Surveys and Assessments in Relation to Scheduled Activities'* issued by the Environmental Protection Agency in January, 2016 which references the potential difficulties that may arise from constructing new dwellings in close proximity to pre-existing industrial facilities and states that *'the existence of a facility prior to the introduction of NSL's into its vicinity does not provide any allowance for non-compliance with appropriate noise limit values'*. By way of further comment, Section 7.2 of the guidance also states that in instances where a new noise sensitive receptor is built in closer proximity to the facility in question that was not present at the time of the licencing process, the annual noise survey should be amended and additional monitoring should be carried out at any such location on an ongoing basis. Therefore, it would appear that there is credence to the appellant's concerns as regards the potential implications for the continued operation of its manufacturing facility arising from the development of residential properties on those lands to the immediate north / northwest of same.

7.3.4. Given the proximity of the proposed development to the adjacent manufacturing facility, in its initial assessment of the subject application the Planning Authority sought the submission of an acoustic report by way of a request for further information with a view to establishing the potential noise impact on the residential amenity of future occupants of the proposed 'Build-to Rent' units. The applicant subsequently submitted an *'Acoustic Design Report'* on 19<sup>th</sup> June, 2019 which

comprised an assessment of the internal noise levels within the living spaces of the proposed residential units given the site location adjacent to the appellant's facility which operates on a 24-hour basis. A series of attended and unattended on-site noise measurements established that the noise levels emanating from the manufacturing facility would have the potential to cause annoyance to residents of the proposed apartment units and, therefore, a 5dB tonal penalty was included on the incident noise level when determining the façade construction requirements in order to ensure that the predicted internal noise levels are well within the criteria set by the BS 8233:2014 guidance on sound insulation and noise reduction for buildings.

7.3.5. Based on the results of the measured noise levels, glazing requirements have been calculated to achieve the required internal noise levels in accordance with BS 8233:2014 at the proposed development. This will entail the installation of Type 'A' or 'B' double-glazing options with differing acoustic performance values (34 & 39  $R_w$ ) at specified locations within the proposed development as detailed in Appendix 'A': *'Marked Up Glazing Requirements'* of the Acoustic Design Report. In summary, it is proposed to install glazing with a higher acoustic performance within those more exposed windows serving the living areas proximate to the noise source i.e. plant within the manufacturing facility. Further mitigation is to be provided through the use of a wall construction designed to achieve an acoustic performance of  $R_w$ 55dB or above. The roof construction will also be designed to achieve an acoustic performance of  $R_w$ 50dB or above. Accordingly, it has been submitted that the mitigation measures / construction standards detailed are predicted to achieve the indoor ambient internal noise levels set out in BS 8233:2014 and *'ProPG17: Planning & Noise Professional Practice: Guidance on Planning & Noise New Residential Development, May, 2017'*.

7.3.6. Whilst the aforementioned Acoustic Design Report would appear to confirm the feasibility of mitigating the noise impact of the appellant's facility to such an extent as to achieve acceptable noise levels within those internal spaces of the proposed 'Build-to-Rent' units, the grounds of appeal have questioned whether it will be possible to achieve these noise levels when apartment windows and / or doors are open or if they can be met within the neighbouring external spaces (i.e. the apartment balconies and the communal landscaped garden) given that these areas may also be considered to comprise noise sensitive locations. In response, the

applicant has submitted proposals for the erection of an acoustic screen / barrier along a section of the common boundary between the application site and the appellant's facility with a view to achieving the noise limit values set out in the IPC licence at both the proposed apartments and within the public areas around them. This is intended to be supplemented through the inclusion of a condition requiring the provision of appropriate noise abatement measures with verification of the effectiveness of same to be completed prior to the occupation of any residential unit.

7.3.7. In assessing the adequacy of the noise abatement / mitigation measures proposed by the applicant, it is necessary in the first instance to consider the location of the noise sources and their relationship with any noise sensitive location. In this regard, I would advise the Board that it is apparent from a review of Drg. No. 7: 'Noise Sources' of the appellant's most recent IPC licence application (reg. No. P0648-02) that Noise Source Nos. NS-2, NS-3, NS-4 & NS-5 are all located within the north-western corner of the manufacturing facility proximate to the proposed siting of the 'Build-to-Rent' units. This would seem to correspond with the appellant's earlier submission that a concerted effort had been made in recent years to locate noise sources away from those residential properties to the south / southeast of the facility i.e. Mackintosh Park (it should also be noted that there is a significant expanse of car parking and associated circulation space separating the main building complex from the boundary shared with Mackintosh Park). However, it is of particular relevance to note that the appellant's most recent noise monitoring survey carried out in 2015 (as detailed in the IPC licence application) has confirmed that the noise levels at Noise Monitoring Location AN-5 alongside the site boundary shared with the Dún Laoghaire Industrial Estate (in the immediate vicinity of the proposed apartment units) exceed both the day-time and night-time emission limits specified for noise sensitive locations.

7.3.8. Having established the location of the noise sources within the appellant's facility, it is necessary to consider the definition of a Noise Sensitive Location. Within the IPC licence, such locations are defined as '*Any dwelling house, hotel or hostel, health building, educational establishment, place of worship or entertainment, or any other installation or area of high amenity which for its proper enjoyment requires the absence of noise at nuisance levels*'. In this respect, some clarity is required for the purposes of defining an NSL as to whether a 'dwelling house' is considered to

include its wider curtilage and garden area or if it is limited to internal spaces only. Accordingly, I would refer the Board to Section 6.1 of the '*Guidance Note for Noise: Licence Applications, Surveys and Assessments in Relation to Scheduled Activities*' which states that in selecting noise monitoring locations, appropriate positions should be selected with reference to the definition of 'NSL' and that generally the main issue to be addressed is quantifying the noise level experienced by the affected people. This is usually taken as implying measurement outside the 'most exposed' window of the building, although for reasons of practicality (given that access may not be available for noise measurement within private property), it is accepted that it may be more appropriate to identify boundary locations in relation to ongoing or permanent monitoring locations. However, Section 7.3 of the guidance states that in situations where measurements are being taken at an NSL, generally the boundary of the NSL (e.g. just outside the garden of a domestic house) can be the most useful measurement position. This would seem to imply that those external balcony areas positioned directly opposite the boundary with the appellant's facility (immediately beyond which the appellant's noise sources are concentrated), which serve apartment units on the first, second, third, fourth and fifth floor levels of the proposed 'Build-to-Rent' block, (and possibly the communal landscaped garden), could be categorised as falling within the definition of a noise sensitive location. Therefore, should the apartment balconies be classified as NSLs then it would be necessary for the appellant to ensure that there is no exceedance of the noise emission limit values set out in its IPC licence for such locations.

- 7.3.9. Notably, the Guidance also states that in certain instances measurements at the boundary of an NSL may be supplemented by measurements taken close to the building of interest (i.e. façade levels) with the appropriate measurement position 1 to 2 metres from the façade and 1.2 to 1.5 metres above each floor level of interest. This would suggest a requirement to adhere to the noise emission value external to the building envelope (although if such an approach were to be taken the appropriate façade correction should be made when reporting the results obtained for direct comparison against the relevant noise criterion).
- 7.3.10. On the basis that the apartment units and their associated balcony areas (and possibly the surface level communal garden area) will constitute Noise Sensitive Locations for the purposes of the IPC licence thereby placing an obligation on the

appellant to abide by the emission limit values set out in Part B.4 of Schedule B: *'Emission Limits'* of that licence at those locations, I would have reservations as regards both the effectiveness of the noise mitigation proposed and the wider suitability of the selected site for residential development.

7.3.11. With regard to the proposed building construction and the installation of glazing with specified acoustic performance values, these measures will not in themselves satisfy the requirements of the appellant's IPC licence as regards the permissible noise levels within the external spaces of the NSLs (i.e. the apartment balcony areas). Similarly, should the windows to the apartments be open, the likelihood is that the noise levels experienced within the interior of same will be such as to exceed acceptable limits and thus future occupants will not be provided with an adequate level of residential amenity.

7.3.12. Furthermore, I would have reservations as regards the effectiveness of the applicant's proposal to erect an acoustic screen / barrier along a section of the common boundary between the application site and the appellant's facility with a view to achieving the noise limit values set out in the IPC licence at both the proposed apartments and within the public areas around them. It has already been established by way of previous monitoring that the noise levels experienced at the shared site boundary would not satisfy the licence requirements for NSLs and whilst it may be feasible to provide for some level of noise mitigation through the erection of an acoustic barrier along the site boundary, in my opinion, the applicant's response to the grounds of appeal is lacking in specific details and fails to demonstrate the effectiveness of any such barrier in advance of any decision to grant permission (instead relying on such matters to be agreed by way of condition). Given the height of the proposed apartment block and its proximity to the appellant's facility, I would suggest that in order to demonstrate the effectiveness of any acoustic screening it would be necessary in the first instance to identify the relevant noise sources and their relationship with the proposed NSLs. It would seem likely that this should form the basis for noise prediction modelling whereby the propagation of noise from the identified sources can be suitably assessed having regard to the apartment accommodation over all levels of the proposed development. The results of any such modelling would thus determine whether an acoustic barrier / screen of a specific height and performance value could feasibly achieve sufficient mitigation as to

satisfy the requirements of the IPC licence in terms of the noise levels for NSLs. In the absence of any such verification, I would be reluctant to grant permission for the proposal as submitted.

- 7.3.13. Having considered the foregoing, in my opinion, it has not been demonstrated that the future occupants of the proposed 'Build-to-Rent' units will enjoy an adequate level of residential amenity by reference to the noise levels emanating from the adjacent manufacturing facility. Moreover, I am not satisfied that the construction of residential properties and the associated introduction of noise sensitive receptors / NSLs at the location proposed would not serve to undermine the continued operation of the neighbouring industrial complex in light of the obligations arising from its designation as an IPC licenced facility.

#### 7.4. **Appropriate Assessment:**

- 7.4.1. From a review of the available mapping, including the data maps from the website of the National Parks and Wildlife Service, it is apparent that whilst the proposed development site is not located within any Natura 2000 designation, there are a number of Natura 2000 sites within the wider area with the most proximate of same being the South Dublin Bay Special Area of Conservation (Site Code: 000210) and the South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024) approximately 2.3km to the north, the Dalkey Islands Special Protection Area (Site Code: 004172) approximately 4.5km to the east, and the Rockabill to Dalkey Island Special Area of Conservation (Site Code: 003000) approximately 4.6km to the east. In this respect it is of relevance to note that it is the policy of the Planning Authority, as set out in Chapter 4: '*Green County Strategy*' of the Dún Laoghaire Rathdown County Development Plan, 2016-2022, to ensure the protection of natural heritage and biodiversity, including European sites that form part of the Natura 2000 network, in accordance with relevant EU Environmental Directives and applicable National Legislation, Policies, Plans and Guidelines.
- 7.4.2. In effect, it is apparent from the foregoing provisions that any development likely to have a serious adverse effect on a Natura 2000 site will not normally be permitted and that any development proposal in the vicinity of, or affecting in any way, the designated site should be accompanied by such sufficient information as to show how the proposal will impact on the designated site. Therefore, a proposed

development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive. Accordingly, it is necessary to screen the subject proposal for the purposes of 'appropriate assessment'.

7.4.3. Having reviewed the available information, including the screening exercise undertaken by the Planning Authority, and following consideration of the 'source-pathway-receptor' model, it is my opinion, given the nature, design and scale of the proposed development, the site location outside of any Natura 2000 designation, the limited ecological value of the lands in question, the separation distances involved between the site and nearby designations, and the availability of public services, that the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of the aforementioned Natura 2000 sites.

7.4.4. Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects, would not be likely to have a significant effect on any European site, in particular, specific Site Codes: 000210, 004024, 004172 & 003000, in view of the relevant conservation objectives and that a Stage 2 appropriate assessment (and the submission of a NIS) is not therefore required.

## **8.0 Recommendation**

8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the reasons and considerations set out below.

## **9.0 Reasons and Considerations**

1. Having regard to the site location within the Dún Laoghaire Industrial Estate / Pottery Road Business Park on lands zoned as 'E' where the overriding objective as expressed in the Dún Laoghaire Rathdown County Development Plan, 2016-2022 is 'to provide for economic development and employment', it

is considered that the residential component of the proposed development would be incompatible with the nature of contiguous uses, would fail to promote the objectives of the zoning of the site, and would undermine the primary function of the existing industrial estate / business park. The siting of the proposed 'Build-to-Rent' units would seriously injure the residential amenities of future occupants of those units and would result in incompatible uses side by side within the industrial estate. The proposed development would, therefore, be contrary to the policies and objectives of the Dún Laoghaire Rathdown County Development Plan, 2016-2022 and be contrary to the proper planning and sustainable development of the area.

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Robert Speer  
Planning Inspector

18<sup>th</sup> March, 2020