



Development

The proposed works to the former convent building consist of:

(i) The development of 18 apartments including modifications to the façade of building and the addition of balconies at first, mezzanine, second and third floor levels, minor extensions to the convent building and the provision of 1 additional floor at first floor level on part of the building;

(ii) Minor modifications to the façade and the addition of balconies at first, mezzanine and second floor levels to 7 permitted apartments under 14/6792; and

(iii) All associated internal modifications.

Location

The former St. Joseph's Convent of Mercy, Town-Plots, The Ramparts, Kinsale, Co. Cork

Planning Authority	Cork County Council
Planning Authority Reg. Ref.	17/7332
Applicant(s)	Cumnor Construction Ltd
Type of Application	Permission
Planning Authority Decision	Grant, subject to 4 conditions
Type of Appeal	Section 48(10)(b)
Appellant(s)	Cumnor Construction Ltd
Observer(s)	None
Date of Site Inspection	n/a
Inspector	Hugh D. Morrison

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1.0 Site Location

Former St. Joseph's Convent of Mercy, Town-Plots, The Ramparts, Kinsale, Co. Cork.

2.0 Proposed Development

1.2. Modifications to the existing convent building and all ancillary site development works.

1.3. The proposed works to the former convent building consist of:

- The development of 18 apartments including modifications to the façade of building and the addition of balconies at first, mezzanine, second and third floor levels, minor extensions to the convent building and the provision of 1 additional floor at first floor level on part of the building;
- Minor modifications to the façade and the addition of balconies at first, mezzanine and second floor levels to 7 permitted apartments under 14/6792; and
- All associated internal modifications.

1.4. The proposed development will result in alterations to the residential scheme originally permitted by 04/53026 & PL65.211819 and 14/6792, which will reduce the total number of apartments permitted from 38 to 31 units.

2.0 Planning Authority Decision

2.1. Decision

Grant subject to 4 conditions, the fourth of which states the following:

At least one month before commencing development or at the discretion of the Planning Authority within such further period or periods of time as it may nominate in writing, the developer shall pay a contribution of €4726.57 to Cork County Council in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority. The value of this contribution is calculated in accordance with the Council's Development Contributions Scheme on 01/01/18, and shall be increased

monthly at a rate of 8% per annum in the period between the date on which this value was calculated, and the date of payment.

***Reason:** It is considered appropriate that the developer should contribute towards the cost of public infrastructure and facilities benefiting development in the area of the Planning Authority, as provided for in the Council's Development Contribution Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act, and that the level of contribution payable should increase at a rate which allows both for inflation and for phasing in of the target contribution rates, in the manner specified by the scheme.*

2.2. Planning Authority Reports

2.2.1. Planning Reports

The case planner states that, as an additional 193 sqm would result from the proposal, a development contribution of €4726.57, i.e. €24.49 x 193 sqm, is required.

2.2.2. Other Technical Reports:

n/a

3.0 Planning History

04/53026 & PL65.211819: The parent permission for the site.

The proposed development includes:

Conservation, conversion, partial demolition of, and a five storey extension to, the former industrial school building and the conversion of the former convent, school and church to a total of 79 apartments and a new resident's gym facility;

(a) The erection of 94 dwellings;

(b) The provision of a new vehicular access to Winter's Hill;

(c) The provision of pedestrian access at Blindgate, Ramparts Road and Winter's Hill;

(d) The provision of 295 car parking spaces within the development; and

(e) The demolition of ancillary structures, site clearance and associated site development works.

A considerable number of applications to modify the parent permission were submitted and determined, culminating in the following one:

14/6792: Permission for amendments to permission 04/53026 (Conversion and reconstruction of the Convent/Industrial School Buildings as well as the construction of 86 dwellings on site). The amendments have evolved from the further refinement of the elevation of houses C2, C4, C6, C8, C10, C12, C14, C16, C18, C20, C22, C24, C26, C28, C30, C32, C34, C36 to match the remaining house in those terraces, extension of duration of permission granted under 07/53035.

4.0 Policy Context

4.1. Development Plan

Sections 7.11.2 and 7.22.1 of Volume 2 of the Kinsale Development Plan 2009 – 2015 (DP) state the following:

The development of the town will require continual investment by the Local Authority in the town's infrastructure. This includes car parking, new service roads, sanitary services, recreation facilities such as play and community facilities. It is therefore planning policy that:-

Developers will be required to make financial contributions, as a condition of a grant of planning permission, towards the cost of infrastructure services, already provided, or proposed to be provided at a future date by the Local Authority, and which are necessary to properly develop the area in the public interest, or which otherwise facilitate private development. The works required would be carried out to determined design and specification and under the supervision of the Planning Authority.

The level of development contributions required will be determined by the Development Contributions Scheme prepared by the Council under Section 48 of the Planning and Development Act 2000 and any supplementary Development Contributions Scheme prepared under Section 49 of the said Act.

The Council, taking into consideration the capital expenditure necessary for the provision of infrastructure, will require the payment of financial contributions in accordance with the Development Contributions Scheme.

4.2. Natural Heritage Designations

n/a

5.0 The Appeal

5.1. Grounds of Appeal

The applicant has appealed condition 4 attached to the draft permission. As this condition relates to a development contribution, they have appealed under Section 48(10)(b) of the Planning and Development Act, 2000 – 2018. The following considerations are cited:

- Under the parent permission a levy of €357,645 has been paid in full in accordance with the Kinsale Town Council Development Contribution Scheme (DCS), then operative.
- Whereas 158 dwellings were originally permitted for the site, this number has subsequently contracted to 96 under 14/6792, which was granted following the dissolution of Kinsale Town Council. Under the Cork County Council DCS 2004, a levy of €146,940 was imposed by condition, which, although it was not appealed, remains a matter of engagement between the applicant and the Planning Authority.
- The subject condition was attached under the Cork County Council DCS 2004. This action was misplaced for the following reasons:
 - Local Government Reform extends the Kinsale Development Plan 2009 – 2015 (DP) until the next review of the Cork County Development Plan 2014 – 2020 (CDP).
 - The DP specifically refers to the Kinsale Town Council DCS 2004.
 - The Cork County Council DCS 2004 has not been reviewed or updated.Under the Kinsale Town Council DCS, apartments within the former convent building do not attract a levy.

- Under Section 11A(2) of the Electoral, Local Government and Planning and Development Act 2013, "...the development plan shall continue to have effect

until such time as a development plan that includes the administrative area of the specified planning authority is made for the purposes of section 11B.”

Work on the current CDP commenced before dissolution and did not include within its scope Kinsale. Thus, the DP 2009 – 2015 remains operative until the CDP is reviewed in 2020.

- The Cork County Council DCS 2004 has not been revised to take account of relevant Government Guidelines. As it predates the dissolution of Kinsale Town Council, it neither addresses the infrastructure needs of this town nor the cost of providing for such needs.
- The current proposal complies with the policies and objectives of the DP and, likewise, the permission granted to it should do so too, e.g. Section 7.11.2. The DP refers to the DCS and so for another DCS to be applied would require a variation in the DP.
- The Kinsale Town Council and Cork County Council DCSs differ in several respects. Critically, the former DCS exempts apartments within the former convent building on the site, whereas the latter does not.
- In correspondence, Cork County Council has confirmed that the levy paid under the parent permission related to apartments in the new extension, i.e. not apartments in the converted convent building.
- The Kinsale Town Council DCS has not been revised or updated and so the exemption to apartments within the converted convent building still applies.

5.2. **Planning Authority Response**

Notwithstanding a Section 132 request for a response, none has been forthcoming.

5.3. **Observations**

None

5.4. **Further Responses**

None

6.0 Assessment

- 6.1. The current appeal relates only to the development contribution cited under condition 4 of the draft permission granted by the Planning Authority to 17/7332. In these circumstances, I concur with the applicant's view that the provisions of Section 48(10)(b) of the Planning and Development Act, 2000 – 2017, apply and so there is no need for a *de novo* assessment.
- 6.2. The proposal would entail the provision of an additional 193 sqm of new build residential floorspace. The Planning Authority duly applied the Cork County Council DCS 2004 to this floorspace to calculate the development contribution in question, i.e. €24.49 (being the rate relevant from 1st January 2015 into the present) x 193 sqm = €4726.57. The applicant challenges the application of this DCS to their proposal and contends that the Kinsale Town Council DCS remains the applicable one. It states that the latter DCS exempts apartments within the former convent building.
- 6.3. Under Section 48(10)(b), the question that arises is whether or not the terms of the DCS have been properly applied in the attachment, in this case, of condition 4. As the parties are not agreed as to which DCS is the proper one to apply, I will begin my assessment by addressing this disagreement before proceeding to the aforementioned question.
- 6.4. The applicant contends that, notwithstanding the dissolution of Kinsale Town Council in June 2014, its DCS 2004 remains the operative one for the town. The Planning Authority, in attaching condition 4, applied the Cork County Council DCS 2004 and so, by implication, it considers that this is the operative DCS for Kinsale.
- 6.5. The applicant supports its contention by reference to the following considerations:
- Under 11A(2) of the Electoral, Local Government and Planning and Development Act 2013, as the Cork County Development Plan 2014 – 2020 (CDP) was adopted on 8th December 2014 and thus after the dissolution of Kinsale Town Council, the Kinsale Development Plan 2009 – 2015 (DP) remains the operative development plan for Kinsale, until the CDP is next reviewed in 2020.
 - Under Section 7.11.2 of the DP, reference is made to the DCS prepared by the Council under Section 48 of the Planning and Development Act, 2000 –

2018. This reference was to the Kinsale Town Council DCS 2004 and so, subject to updates in levies, this DCS remains the operative one for Kinsale.

- The Cork County Council DCS 2004 remains the operative DCS for the County. It is based on infrastructure projects that exclude Kinsale and so it would be illogical to apply this DCS to the town now.

6.6. I note that Section 11C(a) of the Electoral, Local Government and Planning and Development Act 2013 states that the development plan for the administrative area of a town council “shall continue to have effect to the extent provided for by that plan and be read together with the development plan for the administrative area within which the dissolved administrative area is situated.” Thus, the DP and the CDP need to be read together. In this respect, the DP relates to the Kinsale Town Council DCS 2004 and the CDP relates to the Cork County Council DCS 2004.

6.7. I note, too, the validity of the applicant’s point that it would be illogical to apply Cork County Council’s DCS to Kinsale, as it is not based on infrastructural projects for the town and the corresponding scale of levies needed to fund the same. This being the case I consider that just as the DP remains the operative development plan for the town, so the Kinsale Town Council DCS 2004 is the appropriate one to apply therein, too.

6.8. Turning to the Kinsale Town Council DCS 2004, the applicant contends that this DCS excludes apartments in the converted convent building on the subject site from being levied. Support for this contention is provided in the form of a letter from Cork County Council dated 30th October 2015, which confirms that these apartments, as distinct from new build dwellings on the site, were not the subject of a development contribution that was levied and paid under the parent permission for the overall development (04/53026 & PL65.211819). However, the specific provision of the DCS, which allowed this exemption to be made is not cited.

6.9. I have read the Kinsale Town Council DCS 2004, including the section entitled “reduced contribution”. This section sets out 6 instances wherein 100% reductions in contributions apply. I will consider each of these in turn:

- “Provision of facilities by organisations which are considered to be exempt from planning fees as outlined in Part 12 Article 157 (1a-c) of the Planning and Development Regulations 2001” – This instance relates to development

proposed to be carried out by or on behalf of voluntary organisations, whereas the applicant is a limited company.

- “Voluntary organisations/voluntary or co-operative housing bodies as outlined in Part 12 Article 157(2) of the Planning and Development Regulations 2001” – This instance relates to the provision of housing by a housing authority or a body approved by a housing authority operating on a mainly not for profit basis, whereas the applicant is a limited company.
- “First 40 sqm of extensions to private dwellings except where new services are availed of” – This instance relates typically to domestic extensions, which are exempted development.
- “First 50 sqm of conventional houses (i.e. excluding apartments and duplexes)” – This instance relates to the provision of new residential floorspace, but it explicitly excludes apartments and duplexes.
- “Protected structures in so far as it relates to the element/s that merit the inclusion of the structure in the RPS and except where new services are availed of” – This instance is not relevant as, although the St. Joseph’s Convent is identified by the NIAH as being of architectural and social interest with a regional rating, the former convent is not a protected structure.
- “Social housing units” – Under the parent permission the reporting inspector acknowledges that, under Section 96(13)(b) of the Planning and Development Act, 2000 – 2018, conversions to provide dwellings do not count against a developer’s Part V obligations. Thus, she estimated that of the 125 new build dwellings, 25 would be likely to be the subject of such obligations. The current applicant has not indicated that the converted apartments in question would be used for social housing.

6.10. In the light of the above instances and my commentary upon them, I have been unable to identify any provisions in the DCS that would allow the requirement to pay a development contribution to be waved.

6.11. Given, then, the appropriateness of using the Kinsale Town Council DCS 2004, and given, too, that the levies in this DCS were last updated in 2009, the relevant levy to

be applied to the 193 sqm of new floorspace would be €64.61 per sqm and so the total development contribution due would be €12,469.73.

7.0 Recommendation

- 7.1. That the Planning Authority be instructed to amend condition 4 by substituting the figure of €4726.57 with the figure of €12,469.73.

8.0 Reasons and Considerations

Having regard to the provisions of Electoral, Local Government and Planning and Development Act 2013, it is considered that the Kinsale Development Plan 2009 – 2015 remains operative and along with it the Kinsale Town Council Development Contribution Scheme 2004. Accordingly, it is this Scheme, rather than the Cork County Council Development Contribution Scheme 2004, that is operative within Kinsale and so it is the one that is required to be applied to the new floorspace that would be provided under the current proposal for the subject site. The proper planning and sustainable development of the area would be upheld thereby.

Hugh D. Morrison
Planning Inspector

13th August 2018