



An
Bord
Pleanála

Inspector's Report ABP-312171-21.

Development	Change of use of existing holiday home to dwelling with permanent residence.
Location	No. 19 Course Side Lodges, Fota Island Resort, Foaty Island, Co. Cork.
Planning Authority	Cork County Council.
Planning Authority Reg. Ref.	21/6606.
Applicant(s)	Ronan O'Donoghue.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Ronan O'Donoghue
Observer(s)	Fota Island Resort.
Date of Site Inspection	26/01/2021.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject appeal site is located in the Fota Island Resort, located approximately 6km to the north of Cobh, Co. Cork. The resort is located within a former walled estate which extends to 310ha. There are three entities operating under the Fota name including the wildlife park, Fota House and Gardens, which are operated by Irish Heritage Trust and the Office of Public Works, and the Fota Island Resort Hotel and golf club. Access to the site is via the N8 and N25 from Cork City to the west and the resort lies to the south of the N25 road with the entrance to the resort located off the R624 Regional Road. Fota Island is also accessible by train, with a station located to the west of the island and adjacent to the entrance to Fota Wildlife Park and the House and Gardens.
- 1.2. The Resort part of the wider estate, comprises a 5-star hotel and golf club, with planning permission granted for its development, including a 9-hole golf course and 287 holiday homes, in 2004. The golf course has been extended since the original permission, now offering 27 holes, and the resort has hosted the Irish Open in golf on a number of occasions. Currently, there are approximately 120 holiday homes constructed in four areas of the estate including a small number adjacent to the hotel Fuschia Woods, and others known as The Courtyard Lodges and The Aviary. The house the subject of this appeal, is located within the 25-holiday home development which lies immediately to the east of the golf course and is known as the Course Side Lodges.
- 1.3. The house, the subject of this appeal, comprises a detached two storey house, with full habitable room height available within the attic. The house occupies a floor area 128m² and offers accommodation over two floors, including an open plan living / dining / kitchen, utility and WC at ground floor level and 3 bedrooms, 2 ensuite, and a family bathroom at first floor level. No. 19 has a south-eastern rear aspect and includes 2 car parking spaces to the front.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for development consisting of the change of use of existing holiday home to dwelling with permanent residence, all at No. 19 Course Side Lodges, Fota Island Resort, Foaty Island, Co. Cork.

- 2.2. The application included a number of supporting documents including plans, particulars and completed planning application form.
- 2.3. Following a third-party submission in relation to the proposed change of use, the applicant submitted unsolicited information seeking to address the objection. The submission is summarised as follows:
- The applicant has registered a legal document, namely a deed of release of covenant allowing the application for use as a permanent residence.
 - Of the 25 properties that make up Course Side Lodges, only five are part of the resort's rental pool. The majority of the units are not used by tourists on short-term lets, they are used as long term lets.
 - Course Side Lodges are remote from the hotel and not looked on favourably by families / tourists as there are no amenities close by.
 - The resort has an option to purchase properties placed on the market but have not purchased any of the 7 properties in Course Side Lodges which were offered for sale over the last number of years.
 - There are only a handful of properties with a deed of release of covenant allowing application for full time residence on the resort.
 - In relation to operational difficulties, the resorts point is contradictory as permission was granted for a mix of full-time residences and holiday homes.
 - There are houses at Fuschia Woods permanently occupied by the owners of the resort which could be included in the rental pool if there was a shortage of lettings.
 - There is only an 80% occupancy rate in the height of summer leaving 20% properties not used.
 - The application is the only one applied for since the construction of the resort in 2006 and the LAP refers to a mix of tenure options that support the resorts tourism, leisure and recreational function.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse planning permission for the development for the following stated reason:

1. The Cobh Municipal District Local Area Plan 2017 recognises the significant value of Fota Island and makes allowance to accommodate appropriate tourism and recreation related proposals for the expansion or intensification of the existing uses and states that further development shall be associated with the estate's unique tourism, leisure and recreational function. The proposed change of use of a single holiday home within the existing Fota Island Resort to permanent residence would be contrary to the Local Area Plan objective for the Island to maintain the significant value of the Island and would be contrary to condition no. 46 of Planning Ref: 03/2631. It will also set an undesirable precedent for similar proposals which may undermine the tourism value of the resort. The proposed development is therefore contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, planning history, third-party submissions and the relevant Development Plan and Local Area Plan policies and objectives. The report also includes a paragraph on EIAR / AA and Flood Risk.

The report sets out the planning history of the site and cites in full, condition 46 of the parent permission for the overall development of the resort which precludes the use of the houses as permanent or principal residences. The report also notes that the applicant was advised that the possibility of a number of units being used as permanent residences would be a concern for the planning authority. It was noted that the LAP does envisage a mix of tenure options what will support the estates tourism, leisure and recreation functions, but that in order to better manage the number of units that would be used as permanent residences, it would be preferable

that the management company would make the application which would include a statement of compliance in relation to the conditions of the parent permission. The report notes the submission from the hotel raising concerns.

The report also notes the permission granted under PA ref: 18/6935, noting that the decision included a condition regarding the use of the houses granted for other purposes. These units are all located together in one paddock and are not interspersed throughout the development, reducing the potential for conflict between different tenures. It is further noted that the Draft CDP does not make any reference to tenure, while reference to same in the current Cobh MD LAP appears to relate to the completion of the residential element of the original permission for the overall resort, as evidenced in the decision to grant permission for 92 units under PA ref: 18/6935.

The report concludes that to allow individual cases to change to permanent residences on a piecemeal basis would be difficult to control, could have serious negative impact on the existing high-quality tourism and recreation product, would be contrary to the overriding objective for the island and would be contrary to the proper planning and sustainable development of the area.

3.2.2. The Planning Officer recommends that permission for the change of use be refused. This Planning Report formed the basis of the Planning Authority's decision to refuse permission.

3.2.3. **Other Technical Reports**

None.

3.2.4. **Prescribed Bodies**

None.

3.2.5. **Third Party Submissions**

There is one submission from the hotel raising the following issues:

- Condition 46 of permission 03/2631 clearly states that the sold land shall not be used as a permanent or principal residence.

- If a precedent is set permitting change of use, this will jeopardise the tourism product and ability to increase and protect the viability of tourism attractions in the area.
- Operational difficulties could arise if permanent residences were interspersed in the resort amongst holiday homes, such as noise of holiday makers disturbing residents etc.

4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

PA ref: 03/2631: Permission granted for the construction of a major tourist development including a four-storey hotel, 297 holiday houses, recreational centre, restoration of Huntsmans Lodge and a nine-hole golf course. Condition 46 of this grant of permission states as follows:

46. The proposed houses in the development shall not be used as permanent or principal residences. Occupation of any specific house by the owner, a relative of the owner, or a tenant for more than 6 months in any calendar year shall be regarded as evidence of breach of this condition. The developer shall only dispose of houses subject to a restrictive covenant to this effect in a manner to be agreed with the Planning Authority. Before development commences, the applicant shall enter into an agreement with the Planning Authority to this effect pursuant to Section 47 of the Planning and Development Act and a management company provided for in condition 42 shall monitor compliance with this condition and shall advise the Planning Authority of the results of such monitoring on request.

PA ref: 18/6935: Permission granted for the retention of an existing playing field, and permission to demolish an existing metal shed and construct 92 No. two-storey lodges (Unit Nos. 1-44 inclusive to be used for short-term holiday lettings) and 5 No. bin storage buildings together with all associated site development works including erection of an access control barrier. The proposed development will be accessed via the existing resort entrance.

The Board will note that this permitted development includes the provision of houses primarily within 2 distinct areas referred to Paddock 2 and Paddock 3. I note that the Course Side Lodges, completed under permission PA ref: 03/2631, are identified on the plans as Paddock 1. Condition 2 of this grant of planning permission, and referring to units 1-44, all located within Paddock 2, adjacent to the existing Course Side Lodges, states as follows:

2. Unit nos. 1-44 inclusive shall remain in single ownership and shall be used for short-term holiday letting in perpetuity. Prior to commencement of development, the applicant shall enter into an agreement with the Planning Authority to this effect pursuant to Section 47 of the Planning and Development Act 2000 (as amended).

Reason: To ensure the development accords with the permission.

5.0 Policy and Context

5.1. Development Plan

- 5.1.1. The Cork County Development Plan, 2014 is the relevant planning policy document. The subject site lies within the Metropolitan Green Belt where it is the stated objective to reserve them generally for use as agriculture, open space and recreation. Section 4.5.8 of the CDP, however, recognises the long-established commercial and tourism enterprises at Fota and it is noted that it is not the intention of the plan to restrict their continued operation or to prevent appropriate proposals for expansion / intensification of the existing uses, subject to maintaining the specific function and character of the Greenbelt in the area, and subject to normal proper planning and sustainable development considerations. In this regard, Objective RCI 5-6: Long Established Uses applies.
- 5.1.2. In terms of housing, Objective RCI 4-1 relates to housing within the Metropolitan Cork Greenbelt. The Plan notes that this area is the area under the strongest urban pressure for rural housing and as such, applicants must satisfy the PA that an exception housing need based on social and / or economic links to a particular area exists.

5.2. Cobh Municipal District Local Area Plan 2017

- 5.2.1. Fota Island is included within the Cobh MD LAP area and is identified as 'Other Locations' within the plan. It is a strategic aim of the Cork County Development Plan, 2014 to recognise Other Locations, as areas which may not form a significant part of the settlement network, but do perform important functions with regard to tourism, heritage, recreation and other uses.
- 5.2.2. It is noted that Fota Island is generally comprised of Fota Wildlife Park and Fota House to the western extent of the island with Fota Island Resort covering the remainder of the island. The island is identified as having an extremely important tourism and recreation function in East Cork and the LAP notes that the PA may consider a revised proposal for the completion of the permitted residential offering at the resort for a mixture of different tenure options that will support the estates tourism, leisure and recreational functions.

5.3. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site is the Great Island Channel SAC (Site Code: 001058) and the Cork Harbour SPA (Site Code: 004030) which are located approximately 200m to the east of the site.

5.4. EIA Screening

- 5.4.1. The subject appeal does not relate to a class of development which requires mandatory EIA.
- 5.4.2. Having regard to:
- (a) the nature and scale of the development, which does not comprise any physical development, and
 - (b) the location of the development, although close to, but outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded that 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

This is a first-party appeal against the decision of the Planning Authority to refuse planning permission for the proposed re-allocation of the car parking spaces. The issues raised are summarised as follows:

- Part of the reason for refusal was contradictory to the pre-planning email advise given by the Planner which was misleading and inconsistent.
- Planning permission was granted by Cork County Council for the construction of 92 houses of which only 44 were to be used as short-term letting, leaving 48 to be used for permanent residence. Questions why this was granted, and the subject application refused?
- It was not possible to get the management company to submit an application for the change of use and provide a holistic overview of the nature of tenure within the resort as the management company was obstructionist in nature.
- The current applicant is one of few property owners that were give a release from the restrictive covenant at purchase stage and as such, very few owners have the legal right to seek permission to change the use. As such, a grant of permission will not set a precedent.
- Fota Island Resort did not have the legal right to lodge a submission on the planning file or remove site notices, as per the covenant attached.
- It is submitted that Adare Manor and the K Club etc have a mix of short-term lets and permanent residences and this has not had a detrimental effect on other resort business models.

It is requested that permission be granted for the change of use.

6.2. **Planning Authority Response**

The Planning Authority submitted a response to the third-party appeal noting that the relevant issues have been covered in the technical reports already forwarded to the Board. The PA has no further comments to make.

6.3. **Observations**

There is one observation noted on the appeal file from the original third-party objector. The submission restates the issues raised with the Planning Authority as detailed in Section 3.2.5 of this report.

7.0 **Assessment**

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development & Planning History
2. Other Issues
3. Appropriate Assessment

7.1. **Principle of the development**

- 7.1.1. The proposed development seeks to change the use of a holiday home to a permanent residence within the Fota Island Resort, Co. Cork. The subject site comprises part of the wider Fota Island Resort which is a significant tourism offer in East Cork. The Course Side Lodges group of 25 holiday homes is located to the east of the overall estate, adjacent to the golf course. No. 19, lies to the east of the estate road which provides access to the houses and the layout of this group does not provide for any obvious boundaries between units. All of the houses are detached and have car parking to the front.

- 7.1.2. The planning permission for the resort was permitted under PA ref: 03/2631 and of the permitted 297 holiday houses, approximately 120 have been constructed, including the subject appeal site. Notwithstanding the submission of the Deed of Release & Covenants document submitted with the appeal, the Board will note that Condition 46 of this grant of permission explicitly provided that the proposed houses shall not be used as permanent or principal residences, with occupation of any specific house by the owner, relative or tenant for more than 6 months per calendar year being regarded as evidence of breach of this condition. The condition further required that the applicant enter into a S47 agreement to this effect. In principle, I do not consider that the proposed change of use is acceptable and would, if permitted, be contrary to a specific condition of planning permission.
- 7.1.3. The Board will note that the subject site lies within the Cork Metropolitan Green Belt where it is the stated objective to reserve them generally for use as agriculture, open space and recreation. Section 4.5.8 of the CDP, however, recognises the long-established commercial and tourism enterprises at Fota and it is noted that it is not the intention of the plan to restrict their continued operation or to prevent appropriate proposals for expansion / intensification of the existing uses, subject to maintaining the specific function and character of the Greenbelt in the area, and subject to normal proper planning and sustainable development considerations.
- 7.1.4. The Plan also notes that the Cork Metropolitan Green Belt is also under the strongest urban pressure for rural housing and as such, restrictive policies are in place. While I acknowledge that the proposed development is not seeking permission to construct a new rural dwelling, I consider it appropriate to note that the development of the island has occurred within a substantial tourism base and context, and the conditions attached to the parent permission would confirm this.
- 7.1.5. The Board will note that the Cobh Municipal District Local Area Plan 2017 identifies the island as having an extremely important tourism and recreation function in East Cork. The LAP also states that the PA may consider a revised proposal for the completion of the permitted residential offering at the resort for a mixture of different tenure options that will support the estates tourism, leisure and recreational functions. I note that the applicant has sought to emphasise this provision in the LAP in the first-party appeal.

7.1.6. In this regard, I refer the Board to the relatively recent grant of planning permission within the resort under PA ref: 18/6935 whereby planning permission was granted for, amongst other facilities, the construction of 92 houses. The layout of this permitted development extends from the southern area of the Course Side Lodges and the houses will be constructed in primarily two distinct areas. Condition 2 of this grant of permission, and referring to units 1-44, all located within Paddock 2, located adjacent to the existing Course Side Lodges, states as follows:

2. Unit nos. 1-44 inclusive shall remain in single ownership and shall be used for short-term holiday letting in perpetuity. Prior to commencement of development, the applicant shall enter into an agreement with the Planning Authority to this effect pursuant to Section 47 of the Planning and Development Act 2000 (as amended).

Reason: To ensure the development accords with the permission.

This grant of planning permission has grouped the houses proposed for short term holiday lettings adjacent to the Course Side Lodges in the form of detached and terraced houses, while the second area of detached residential units, which can be used for permanent residences, Paddock 3, include larger houses, on larger sites, with more detailed landscaping providing a greater level of privacy and amenity for potential permanent residents.

7.1.7. While the appellant in the current appeal has sought to apply the provisions of the LAP to the subject site, I am satisfied that the principal of introducing permanent residents or a wider tenure within the wider Fota Island Resort clearly relates to a consideration of a revised proposal for the completion of the permitted residential offering at the resort, and not specifically to facilitate a change of use of existing houses, constructed under the original permission. The recently permitted residential element has clearly defined the permanent and holiday let properties and as such, there will be little or no impacts arising on the residential amenity of permanent residents due to holiday makers at the resort.

7.1.8. The Board will also note the third-party observations in relation to the proposed change of use from the Company Secretary of the resort. While I acknowledge the comments of the first-party appellant in terms of the submission, I would agree that a grant of planning permission in this instance, would set an undesirable precedent for

similar applications within the resort. Overall, I would agree that allowing a change of use of units on a piecemeal basis would give rise to difficulties in terms of the operation of the resort and would have serious negative impact on the existing high-quality tourism and recreation product. I therefore conclude that a grant of permission for the change of use would be contrary to the policy objectives for the island and would be contrary to the proper planning and sustainable development of the area.

7.2. Other Issues

- 7.2.1. The Board will note the comments made in the first-party appeal regarding the perceived contradictory pre-planning advice received. It is suggested that the advice was misleading and inconsistent. At the outset I would note the provisions of Section 247 of the Planning and Development Act, 2000 as amended as it relates to pre-planning advice. Any advice is given in good faith and without prejudice to the formal consideration of any subsequent planning application. Article 247 (3) of the Local Government (Planning and Development) Act, 2000 (as amended) states that “the carrying out of consultations shall not prejudice the performance by a planning authority of any other of its functions under this Act, or any regulations made under this Act and cannot be relied upon in the formal planning process or in legal proceedings.” Having regard to the advice offered, I do not consider it to be misleading or inconsistent as contented.
- 7.2.2. With regard to the comments in relation to the release of the appellant from the restrictive covenant at purchase stage, I am satisfied that the planning permission pertaining to the overall development at Fota Island Resort remains relevant and I have addressed the provisions of conditions, and current policies, relating to the site.

7.3. Appropriate Assessment

- 7.3.1. The site is not located within any designated site. The closest Natura 2000 site is the Great Island Channel SAC (Site Code: 001058) and the Cork Harbour SPA (Site Code: 004030) which are located approximately 200m to the east of the site.
- 7.3.2. Given that the proposed development relates to a change of use and does not include any physical development, and that the house is already connected to water

services in the area, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

8.0 Recommendation

I recommend that planning permission be refused for the proposed development for the following stated reason.

9.0 Reasons and Considerations

1. The proposed change of use of an existing single holiday home within the established Fota Island Resort to permanent residence, would materially contravene condition no. 46 of Planning Authority Reference 03/2631, which explicitly provided that the proposed houses shall not be used as permanent or principal residences. A grant of planning permission in this regard, would set an undesirable precedent for similar proposals and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The subject site lies within the wider Fota Island Resort, and the Cobh Municipal District Local Area Plan 2017, recognises the significant value of the estate's unique tourism, leisure and recreational function. The LAP makes allowance to accommodate appropriate tourism and recreation related proposals for the expansion or intensification of the existing uses. The Board is satisfied that the proposed change of use of the single dwelling within the holiday let development would undermine the unique tourism, leisure and recreational function of the resort, and would be contrary to the Local Area Plan objective for the Island. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

A. Considine

Planning Inspector

11th March 2022