



An
Bord
Pleanála

Inspector's Report ABP.313052-22

Development	Change of use of duplex residential unit short term holiday letting
Location	2 Market Place, Townplots, Kinsale
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	21/7434
Applicant(s)	Brian Walsh and Niamh Hynes Walsh
Type of Application	Planning permission
Planning Authority Decision	Refuse permission
Type of Appeal	First party
Appellant(s)	Brian Walsh and Niamh Hynes Walsh
Observer(s)	None
Date of Site Inspection	25 th January 2023
Inspector	Mary Kennelly
Appendices	Extract Cork CDP 2022 Vol 5 (Kinsale) Guidance Note for LAs – Regulating Short-term Letting (July 2019) Circular PL4/2019

1.0 Site Location and Description

- 1.1.** The site is located in the centre of Kinsale Town. It is located to the west of the junction of Pearse Street and The Glen (R605). The Guardwell and St. Multose Church lie to the northwest and southwest of the site respectively. The Kinsale Museum is located to the east of Market Place. Kinsale Garda Station is located to the west on the corner with Church Street. The area is generally mixed use in character but is predominantly commercial (retail). Market Place is defined by two-storey terraced buildings, on either side of the street, many of which have shops on the ground floors with accommodation above. The buildings front directly onto the street with footpaths and on-street parking bays beyond.
- 1.2.** The appeal site comprises a mid-terraced 2-storey building with attic accommodation on the northern side of Market Place. The eastern end of the terrace on the northern side of the street contains a shop on the ground floor, but the remainder of the terrace appears to have been a predominantly residential property comprising two individual units. However, the central unit is in use as a doctor's surgery on the ground floor and a duplex apartment above. The southern side has shopfronts at ground-floor level along the entire street frontage. To the rear of Market Place is Market Lane which is mixed use in character. There are commercial and community uses as well as a terrace of 2-storey houses.
- 1.3.** The site area is given as 0.004ha. The appeal property comprises the entrance lobby on the ground floor and stairs, with living accommodation on the first floor (3 no. windows on each of the front and rear elevations) and 3 no. bedrooms at roof level (2 dormer windows at front and 2 velux lights at rear). The doctor's surgery (not part of site) occupies the remainder of the ground floor. The stated floor area of the duplex apartment is given as 88.3sq.m. There is a gated vehicular entrance at the western end of the terrace.

2.0 Proposed Development

- 2.1.** Permission is sought to change the use of the duplex apartment from permanent residential to a short-term letting apartment.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to **refuse** permission for one reason. The main elements of the reason for refusal may be summarised as follows:

1. The apartment would no longer be available as long-term residential accommodation in this rent-pressure zone where there is a limited supply of long-term accommodation available. It would therefore exacerbate the existing shortage in supply and availability of affordable long-term rented accommodation within Kinsale and the Bandon Kinsale Electoral Area Rent Pressure Zone.
2. The proposal would be contrary to the core principle of the current joint Housing Strategy for the Cork Planning Authorities which seeks to provide for a diverse range of housing needs to suit varying income levels and social circumstances.
3. The proposal would be contrary to the provisions of the Core Strategy of the Cork County Development Plan 2014, which seeks to secure national and regional policy and would contravene materially the provisions of Objective HOU 1-1 of the CDP and Strategic Housing Objective 1 of the Kinsale Town Development Plan to implement the joint strategy and the Council's aim to create sustainable residential communities.
4. The proposal would be contrary to overarching Government National Housing Policy to regulate short-term letting and return residential properties to long term housing market in light of Circular PL4/2019 (DHPLG) and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

It was noted that Kinsale is an attractive place in which to live, as well as being a popular tourist destination, both within and outside of the traditional tourist season. It was further noted that the Kinsale Town Development Plan 2009, (which was in

force at the time that the application was determined), sought to simultaneously protect and enhance the tourism function of the town and to promote population growth with the delivery of a range of housing types and tenures.

Reference was made to the national housing policy, including the recent legislative changes to require planning permission for a change of use to a short-term let (S3A (1) of P & D Act); Circular PL4/2019 'Note for Local Authorities for Regulating Short Term Letting'; and the Government's 'Housing for All' policy; to the Cork Joint Housing Strategy; and to the Kinsale Town Development Plan 2009. It was noted that the site was located within the Bandon Kinsale Rent Pressure Zone (RPZ), which requires private homeowners to obtain planning permission for changes of use to short-term letting. The Area Planner assigned significant weighting to the 'ramifications and intent of the RPZ' on the basis that the Kinsale TDP (2009) was so out-of-date and as an Bord Pleanála had recently tended to decide against such proposals, which it was considered reflected national policy to reverse the decline in the supply of permanent long-term lets.

The Area Planner also assessed the proposal in the context of recent housing needs data for Kinsale (Cork Co. Co. Housing Dept.), which it was noted had identified the greatest demand as being for 2-bed units. It was noted that Circular PL4/2019 required a balance to be struck between the competing demands of tourism and residential accommodation. However, the Area Planner was not aware of any shortage of tourist accommodation and noted that no evidence to this effect had been provided or of any difficulty letting the property for long-term lets.

Refusal of permission was recommended.

3.2.2. Other Technical Reports

Area Engineer Report (14/02/22) – No objections raised.

Conservation Officer Report (04/02/22) – It was noted that the site is located within an Architectural Conservation Area. No objection was raised.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

None.

4.0 Planning History

None.

5.0 Policy Context

5.1. National Policy

- 5.1.1. **‘Housing For All – a New Housing Plan for Ireland’** – seeks to address the issues arising from homelessness and to provide access to housing across all tenures as well as increased efficiency in the use of housing stock. Four ‘pathways’ to achieve these aims have been identified. Pathway 4 is to Address Vacancy and Efficient Use of the Housing Stock, which includes the establishment of new controls on short-term lettings and a Town Centre First approach.
- 5.1.2. **Residential Tenancies Legislation** – The Government introduced **‘Rent Pressure Zones’** in 2016, one of the implications of which is that planning permission is now required for short-term letting (less than 14 days of a non-principal residence) in such zones. A Rent Pressure Zone was designated for the Bandon Kinsale Electoral Area on 16th July 2020 for three years. All Rent Pressure Zones have recently been extended until December 2024.
- 5.1.3. **Circular PL4/2019 – Government Short-Term Letting Policy (July 2019)** – this Circular provides advice on the new legislative arrangements under the Residential Tenancies Acts and Exempted Development arrangements under the P & D Act. The new arrangements are intended to address pressures in the private housing rental market, particularly in respect of large numbers of properties being withdrawn from the long-term rental market for use as short-term lettings.
- 5.1.4. **Guidance Note for Local Authorities in Regulating Short-Term Letting** – This Government Guidance Note seeks to bring back houses and apartments in RPZs which are currently being used for short-term letting purposes to the traditional long-term rental market. It is stated that a balance must be achieved between competing

demands of residential and tourism accommodation, particularly in areas where there is a shortage of traditional tourist accommodation.

5.2. Development Plan

Cork County Development Plan 2022

Introduction: - The application was considered and determined by the planning authority under the previous development plan for the area, namely the Cork County Development Plan 2014. However, a new Development Plan was adopted on the 25th of April 2022 and came into effect on the 6th of June 2022. Since the last Plan period, Kinsale Town Council has been dissolved and the Kinsale town Development Plan (2009) is no longer operative. The County Development Plan sets out a single planning strategy for the town and its environs.

Chapter 4 (Vol 1) Housing – sets out how current and future housing needs will be accommodated. Reference is made to the Joint Housing Strategy and to the HNDA tool which projects a need for 6,500 private rental homes nationally p.a. (Fig. 4.2). At 4.3.6 it is stated that the ‘Town Centre first’ approach will support the regeneration, repopulation and development of rural towns and villages.

Appendix E Joint Housing Strategy and Housing Need Demand Assessment – provides an evidence-based strategy for sustainable and affordable housing in Cork City and County over the plan period and sets out policies and objectives to enable both local authorities to deliver new housing. Policy Objectives PO7 provides for the delivery of new housing in the form of compact sustainable growth, including that at least 30% of new homes be provided within the built-up footprint of urban areas. Objective PO9 seeks to maximise the efficient use of existing housing stock.

Chapter 9 – Town Centres and Retail – includes vision to make town centres more people-centred and liveable, which includes making them more attractive with a better quality of life (9.4). Objective 9-2(d) seeks to promote the use of upper floors of existing buildings for residential and office use.

Kinsale is a Main Settlement in the West Cork Volume 5 of the Cork County Development Plan. It is located within the Bandon-Kinsale Municipal District (Chapter 1). One of the main strategic aims for Kinsale is to provide for additional residential and employment development which reinforces the town’s compact form.

Another key objective is to protect and enhance the natural and built heritage assets and to facilitate the development of Kinsale as one of the County's principal tourist attractions. The development strategy for Kinsale is to focus new development within the existing built footprint, to maximise walking and cycling opportunities and to reinforce its compact urban form. There is a strong focus on better utilisation of the existing building stock.

The site is located in an area zoned as **Town Centre/Neighbourhood Centre**.

5.3. Natural Heritage Designations

There are no European Sites in close proximity to the development site.

5.4. Grounds of Appeal

This is a first-party appeal against the decision to refuse permission. The main points raised may be summarised as follows:

1. Unsuitable for long-term letting

- The Guidance Note for Local Authorities on Short-Term Letting states that other potential factors to be considered include balancing the competing demands of tourism and residential accommodation and the unsuitability of the property for long-term lets.
- Previously, this apartment was advertised for long-term letting but the previous owners couldn't successfully find a suitable tenant due to the existing layout. The reasons that it is deemed unsuitable are:
 1. No private amenity space. It is a requirement of the Sustainable Urban Housing Design Standards for New Apartments that private amenity space be provided in the form of gardens or patios/terraces.
 2. The front door leads up 2 flights of stairs which is impractical for everyday living. There is no rear door, and the main door exits out onto a busy street.

3. The property is close to bars and restaurants which are very busy especially at weekends. The commercial area is very noisy at nighttime and is not suitable for a family.
4. It is located over a busy surgery. The noise from the apartment may be a nuisance to the users of the surgery.

2. Complies with policies in Development Plan

- The use of the apartment for short-term letting is in accordance with the Kinsale Town Development Plan policy to promote the town centre as an attractive commercial and retail location and to develop the town's tourism and leisure potential (GEE8 and GEE11).
- The proposal complies with policy RR2 which seeks to promote the re-use of upper floors in the town centre for residential and other uses that enhance the vitality of the town centre.

3. Need for short-term accommodation in Kinsale

- **Adequate long-term accommodation in Kinsale** - Recent planning permissions granted for approx. 476 new residential units means that there is more than adequate long-term accommodation available. The permitted dwellings at Kinsale Manor, Winter's Hill, Rathbeg and Ballynacubby will be designed to a high standard which would be more suited to long-term accommodation. The applicant's property fails to provide much of the facilities required for new builds and as such, is more suited to short-term letting.
- **Short-term letting essential for tourism** – Kinsale thrives on tourism and this type of accommodation is essential for the economy and livelihoods of local businesses.

4. Precedent and previous use of property

- **Long-standing short-term letting of property** - It is claimed that the previous owner had been letting the property on a short-term basis and that the appellants have been doing so since 2018, when they bought the apartment. They use it on certain weekends during the year and plan to retire to Kinsale in the future.

- **Majority not permitted** - The appellant believes that the majority of short-term lets in Kinsale do not have planning permission.
- **Precedent** - Recently planning permission has been granted for several short-term lets in Kinsale. Examples given as follows:

20/04251 – Change of use of 1 no. 3-storey residential unit to short-term holiday letting at No. 2 The Wharf, 1 Lower O’Connell Street, Dromderrig, Kinsale – granted 25/03/20.

20/04106 – Change of use of the former Customs House (formerly in residential use) to 5 no. apartments for short-term holiday letting. The proposed works include lower ground floor and ground floor extensions to the rear and internal alterations, conservation repair works to the existing facades, and all associated site works at The Customs House, Lower O’Connell Street, Dromderrig, Kinsale – granted 03/06/20.

5.5. Planning Authority Response to grounds of appeal (04/04/22)

The P.A. responded to the grounds of appeal on the 4th of April 2022. It has confirmed its decision and has made the following comments: -

- The P.A. considers the property to be suitable for long-term letting where there is an exceptionally high demand for long-term letting and low supply of apartment property in the town centre for long-term lets.
- The 2-bed apartment of 88.30m² exceeds the minimum floor area standards in the Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities.
- The change of use planning examples cited by the appellant (20/4251 and 20/4106) were granted prior to the designation of Kinsale as a Rent Pressure Zone on 16th July 2020.
- The decision of the P.A. is entirely consistent with the latest Government policy on delivering more homes of all types for people with different housing needs and maximising the best possible use of the existing housing stock in ‘Housing for All – a New housing Plan for Ireland’, such as new regulation of short-term lettings.

6.0 Assessment

6.1. It is considered that the main issues arising from the appeal are as follows: -

- Principle of development – compliance with policy
- Suitability of property for long-term letting
- Precedent

6.2. Principle of Development

Compliance with National Policy

6.2.1. The site is located in a Rent Pressure Zone, (Bandon Kinsale Electoral Area), which was designated on the 16th of July 2020. A 'Rent Pressure Zone' is described in the Government Guidance (see 5.1 above) as the areas of highest housing demand and where the most significant rent pressures apply. Initially the RPZ was designated for three years, but in December 2021, the RPZ designations across the country were extended to 31st December 2024. Government guidance and policy is very clear regarding short-term letting in Rent Pressure Zones. One of the main reasons stated for designating a RPZ is to reverse the trend of private rental properties exiting the long-term market, in favour of short-term letting, and thereby exacerbating the housing and homelessness crisis in the country. In Circular PL4/2019 it is stated

“The Strategy for the rental sector published in December 2016 recognised the increasing phenomenon of large numbers of properties being withdrawn from the long-term rental market for use in short-term lettings, particularly in the larger urban centres, and the negative impact this was having on the supply and availability of long-term rental accommodation in the private rental sector in driving up rents.

Against this background, the primary object of the new reforms is to influence the bringing back of houses and apartments in designated “rent pressure zones” which are currently being used for short-term letting purposes to the traditional long-term rental market, thereby helping to ease the accommodation shortage pressures currently being experienced.”

6.2.2. As part of the policy reform, new legislation was introduced in 2019 which specified that the letting of a non-principal private residence on a short-term basis, where the

property is located within a designated Rent Pressure Zone, constitutes a material change of use and will require planning permission. Guidance on determining such applications is provided in the 'Note for Local Authorities for Regulating Short-Term Tenancies' (2019), Section 7. Other legislative requirements, including certain exemptions, apply to principal private residences within an RPZ.

- 6.2.3.** I would refer the Board to Section 7.1 of the Guidance Note (attached), which sets out the matters to be considered by a planning authority. It is considered that the planning authority had regard to the Development Plan in force at the time and to the relevant Government policies, including the policy to retain/return residential properties to the long-term housing market. It is also clear from the planning reports that the housing need and demand in the area was assessed, including the adequacy of supply of rental properties available to meet local need and the prevalence of short-term lets.
- 6.2.4.** The Area Planner concluded that at the time of consideration, there were only three 2-bed apartments available as long-term lets at monthly rents of between €1,650 - €2150, whereas there were 19 short-term equivalent lets in the town centre. The RTB: Rent Index Q3 (2021) average standardised national rent was €1,024 for a 2-bed apartment outside Dublin. At the time of writing this report, I note from Daft.ie that there is currently only one 2-bed apartment and one 3-bed house available as a long-term let in Kinsale, at monthly rents of €2,500 and €2,200 respectively, with 6 no. short-term lets. The latest Residential Tenancies Board: Rent Index Q3 2022 states that the average standardised national rent for 2 bed apartments (outside the GDA) is €1,121 per calendar month. It is clear, therefore, that there is an inadequate supply of long-term lets and that there is evidence of rent inflation in the town.
- 6.2.5.** It is considered that the national policy framework seeks to return or retain residential properties such as this to long-term lets in order combat the shortage of supply and associated rising rents, which are contributing to homelessness and the housing crisis. Having regard to the designation of the area as a Rent Pressure Zone together with the local evidence of high housing demand and an inadequate supply of long-term lets, it is considered that a change of use to a short-term let would be inconsistent with overarching national housing policy.

Compliance with local policy

- 6.2.6.** The policy framework for the local area has changed since the planning application was determined by the P.A., as a new County Development Plan has come into effect, (6th June 2022), which has also replaced the Kinsale Town Development Plan (2009). However, the policy regarding the provision of residential accommodation in town centres while simultaneously promoting the tourism function of the town has not changed in any material way.
- 6.2.7.** The new CDP incorporates a new Joint Housing Strategy (Appendix E) which is more up-to-date and is based on a HDNA, which provides key evidence to inform the housing policy for Cork City and County. There is also a much greater emphasis on the need to achieve compact and sustainable growth, which focuses attention on delivery of residential development in and around town centres. The policy approach for town centres is to make them more attractive and ‘liveable’ places. The policy objective 9.9.12 recognises that residential use in town centres is an essential ingredient in supporting town centre shops and services, achieving passive supervision, activity beyond business hours and maintaining vibrancy.
- 6.2.8.** The policies for Kinsale seek to provide for additional residential and employment development whilst simultaneously protecting and enhancing the town’s heritage assets in order to promote its tourism function. The focus of development is on retaining and enhancing its compact form while maximising walking and cycling opportunities, with a strong focus on better utilisation of the existing building stock. It is considered that the appeal site is ideally located to provide for compact, sustainable development and to contribute to the enhancement of the town centre as a liveable place. It is further considered that as no evidence has been presented of a shortage of traditional tourism accommodation in Kinsale, the long-term rental as opposed to a short-term letting of the property is unlikely to hinder the tourism function of the town.
- 6.2.9.** It is considered, therefore, that the use of the property as a long-term let providing permanent residential accommodation would be entirely consistent with the policies and objectives for Kinsale and with the wider policy framework for the area, including those contained in the County Development Plan Core Strategy and in the Joint Housing Policy for Cork City and County.

6.3. Suitability of property for long-term residential accommodation

- 6.3.1.** The Guidance Note regarding short-Term Lets also requires consideration of other matters such as the nature and character of an area, the suitability of the property for long-term rental and the need to balance competing demands of residential and tourism.
- 6.3.2.** The property is situated in the heart of the town and the character of the area is mixed with a predominance of commercial uses. However, the presence of residential accommodation in the upper floors over many of the commercial uses is noted. In addition, there are residential developments in the vicinity of the site, such as the terrace of houses to the rear on Market Lane. Although there are a few bars and restaurants in the vicinity, the majority of the commercial units are shops which are open during the day and would not be unduly noisy at night.
- 6.3.3.** The apartment forms part of a purpose-built apartment building and has a floor area of 88.3sq.m. The accommodation is located over two floors with windows to the front and rear. Although there is no rear access to the apartment, there is a vehicular access to a side and rear passageway at the western end of the apartment building. The absence of a private amenity area does not in my view render the property unsuitable as long-term residential accommodation, as it is located in the heart of an attractive town with many amenities. As such, it is considered that the property is appropriate for long-term residential accommodation.
- 6.3.4.** As stated previously, it is considered that the competing demands of tourism and residential accommodation are adequately addressed in the planning authority reports. I am not aware of any shortage of traditional tourism accommodation in the town. Nor has any evidence been presented to demonstrate that that property has been advertised for long-term rental at a reasonable rental level for a significant period of time, without success resulting in vacancy. The appellants have stated that the short-term letting of the property had been commenced by the previous owner and that they have continued the practice as they like to use it on some weekends during the year.
- 6.3.5.** In conclusion, it is considered that the proposed development would result in the loss of a viable and valuable long-term rental unit in a town centre location which is easily

accessible to a wide range of facilities and amenities, which would be inappropriate in the rent pressure zone.

6.4. Precedent issues

- 6.4.1.** The first party has submitted that the planning authority has granted permission for two short-term lets in the town. However, the P.A. in response has pointed out that these permissions were granted prior to the designation of the area as a Rent Pressure Zone. I would therefore concur with the planning authority that these do not constitute a precedent. No evidence of any other precedents has been presented.

6.5. Environmental Impact Assessment

- 6.5.1.** Having regard to the nature and scale of the development, 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.

6.6. Appropriate Assessment

- 6.6.1.** The site is located within 15km of two Natura 2000 sites. The Sovereign Islands SPA (Site code 004124) and the Old Head of Kinsale SPA (Site code 004021) are located c.7km to the south-east and c.10km to the south-west, respectively. Given the distances involved, that the established residential use of the site, which is located in an established urban area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

7.0 Recommendation

- 7.1.** It is recommended that planning permission be refused for the reasons and considerations set out below.

8.0 Reasons and Considerations

The site is located in a designated Rent Pressure Zone which is characterised by a high demand for housing, high rent inflation and a limited supply of long-term accommodation available. Having regard to the central and accessible location of the site, to the character and nature and of the mixed-use area and to the nature and extent of the accommodation within the apartment, which is considered suitable for

long-term letting, it is considered that the proposal for a change of use to short-term letting would result in the loss of a residential unit in an area of high demand for such units, which would exacerbate the existing shortage of availability of long-term rented accommodation within Kinsale and the Bandon Kinsale Electoral Area Rent Pressure Zone. The proposed development would, therefore, contravene the overarching Government National Housing Policy to regulate short-term letting and to return properties to the long-term housing market and would be inconsistent with the Government's Housing For All Policy and the Joint Housing Strategy in the Cork County Development Plan 2022-2028, which seeks to provide for a diverse range of housing needs to suit varying income levels and social circumstances. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Mary Kennelly
Senior Planning Inspector

20th April 2023