



An
Bord
Pleanála

Inspector's Report PL 12.246945

Appeal Reference No:	PL 12.246945
Development:	Change of use of part of ground floor of existing building from residential to Men's Shed and carry out all associated site development works. Attifinlay, Carrick-on-Shannon, Co. Leitrim.
Planning Application	
Planning Authority:	Leitrim Co. Co.
Planning Authority Reg. Ref.:	15/170
Applicant:	Men's Shed Carrick-on-Shannon
Planning Authority Decision:	Refuse Permission
Planning Appeal	
Appellant(s):	Men's Shed Carrick-on-Shannon
Type of Appeal:	First Party – V - Refusal
Date of Site Inspection:	19 th September 2016
Inspector:	Tom Rabbette

1.0 SITE LOCATION AND DESCRIPTION

The application site is located within the development boundary of Carrick-on-Shannon in Co. Leitrim. It is located along the national primary route, the N4 (the Dublin Road) in the townland of Attifinlay on the eastern approach to the town. There is a detached two-storey unoccupied dwelling on the site. There are single and two storey extensions to the side and rear of this dwelling. There is a vehicular entrance off the N4 on the western side of the dwelling. There is a row of evergreen trees located to the west of this entrance just inside the roadside boundary wall, these trees are not located within the redline boundary on the application submission but are located within the blue line boundary.

2.0 PROPOSED DEVELOPMENT

The applicant is seeking permission to change the use of part of the ground floor area of the extensions to the rear and side of the two-storey dwelling on the site. The proposed change of use relates to an area of 95 sq.m., it is confined to the extensions at ground floor level only. The area subject of the change of use will accommodate a bathroom, kitchen, sitting area and a workshop area. The site layout indicates 9 car parking spaces on site and also a bike stand. The applicant is 'Men's Shed', their stated primary objective is to combat suicide, loneliness and isolation in men of all ages. It provides a location where the men can meet and involve themselves in various projects if they so wish.

3.0 PLANNING HISTORY

99/15165: Voluntary Housing Association sought permission to demolish the existing dwelling on the site and construct 12 two-bedroom apartments, a group home and associated road and site works. The p.a. sought FI in relation to the application but received no response. (2000)

P7663: Retention granted for mobile home on site. (1983)

P4297 (PL 12/5/40586): The Board upheld a decision to refuse permission for a petrol filling station and shop on the site. The board refused for one reason relating to traffic hazard in an area where the maximum speed limit applies. (1978)

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and technical reports

Planner's Report dated 18/11/15:

- FI recommended in relation to 11 items.

Report dated 20/05/16:

- New public notices required.
- Response to FI request incomplete.

Report dated 07/06/16:

- Planning Authority cannot agree to extend the time period for submission of FI response.

Report dated 24/06/16:

- Refusal recommended for 3 reasons.

Senior Environmental Health Officer (HSE) Report dated 29/10/15:

- No objection subject to compliance with the building standards.

Senior Assistant Chief Fire Officer Report dated 09/11/15:

- A Fire Safety Cert is required for the development.

Report dated 13/06/16:

- A Fire Safety Cert is required for the development.

Executive Technical & Enforcement Officer Report dated 11/11/15:

- No objection, Disability Access Certificate will be required.

Report dated 17/06/16:

- The building is dangerous and a hazard to occupants.
- Any grant of permission would be premature until such time as the building is rendered safe.
- It is permissible and prudent to utilise the national building standards in assessing whether a building would constitute a risk to the safety and wellbeing of its occupants and users.
- The material change of use would impose a requirement that the building comply with Parts A1, A2, B, C4, F, G, H, L and M of the Building Regulations.
- The building is not fit for use in respect of the intended use, refusal is recommended on the grounds that the development, if permitted, would endanger the health and safety of persons occupying or employed in the structure.

Senior Executive Engineer, Road Design, Report dated 17/11/15:

- The applicant should be requested to submit a Traffic & Transport Assessment in line with the NRA's Traffic & Transport Assessment Guidelines.

Senior Engineer, Roads Dept. Report dated 23/06/16:

- FI response noted.
- Road Safety Audit not completed by a safety auditor from the TII list of approved auditors.
- Concerns raised about right turning traffic exiting the site.
- Proposal at present not acceptable.

South Leitrim Area Office Report dated 18/11/15:

- Sight distance to right limited by trees.
- Setback area/entrance splay should be considered.
- Concerns raised about possible use of gates at entrance.

TII Report dated 09/11/15

- Development at variance with official policy in relation to control of development on/affecting national roads as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012).
- A Road Safety Audit should be carried out.

Report dated 14/06/16:

- TII will rely on the p.a. to abide by official policy in relation to development on/affecting national roads.

PL57/2793 Pre-application consultation - Issues raised include: service connections existing; car parking on site; house used as sheltered accommodation in the 90s; p.a. would welcome use/reuse of building; vehicular access; reopening of existing vehicular access; application to be referred to the NRA, and finish of building.

4.2 Planning Authority Decision

By Order dated 27/06/16 the planning authority decided to refuse permission for three reasons.

5.0 GROUNDS OF APPEAL

The contents of the first party's grounds of appeal can be summarised as follows:

- The Carrick-on-Shannon branch of the Men's Shed was formed in February 2015 and affiliated to the National Branch shortly afterwards.
- Its primary objective is to combat suicide, loneliness and isolation in men of all ages.
- It provides a location where they can meet, have a cuppa and a chat and involve themselves in various projects if they so wish.
- They have the total support of all groups and organisations in the Carrick-on-Shannon area who are also anxious to see us permanently located at their present address.
- They play a very important role in the whole issue of men's mental health.
- The applicant is willing to make whatever changes deemed necessary to the property.

6.0 RESPONSE TO GROUNDS OF APPEAL

6.1 Planning Authority response

The contents of the planning authority's response to the grounds of appeal can be summarised as follows:

- The p.a. is fully supportive of the Men's Shed concept and the wonderful work undertaken by this movement.
- The decision taken by the p.a. was a difficult one but was based on an objective assessment of the proper planning and sustainable development of the area and of the safety and welfare of the occupants of the facility and of users of the adjoining National Primary Road.
- The concerns of the p.a. were outlined to the applicant at pre-planning stage.
- The quality of the applicant's response to the FI request in particular was considered sub-standard, lacking in both detail and clarity.
- The drawings submitted were drawn by hand and the annotations on the Site Layout Plan in particular were difficult to decipher.
- The Road Safety Audit was not completed by an approved Safety Auditor from the TII list of approved auditors.
- The Senior Engineer considered that on the basis of the information submitted that the proposal was not acceptable.
- However, there was sufficient information provided in the response to determine that the building in its current condition is not fit for its intended purpose and that the proposed development constitutes a traffic hazard.
- The p.a. would question the legal entitlement of the Men's Shed to 'make whatever changes are deemed necessary to the property' on the basis of their short term lease to the property.
- The p.a. is satisfied that the detailed planning report prepared by the assigned case planner outlines the basis for each of the reasons for refusal included in their decision.
- The p.a. would also point out that it has not instigated enforcement proceedings to date with regard to the unauthorised change of use of the existing shed for use by the Men's Shed.
- This decision was taken having regard to the temporary nature of the lease extended to the applicant by the HSE and to the fact that the applicant is systematically undertaking works to the building and curtilage as outlined in the Derelict Site Notice which issued (Derelict Sites Register ref. no. DS 134).
- The shed was being used for refuge and storage of materials/tools during the carrying out of these works.
- The Board is requested to uphold the p.a. decision and refuse permission.

7.0 POLICY CONTEXT

The Carrick-on-Shannon LAP 2010-2016 was extended in 2016 and is now the Carrick-on-Shannon LAP 2010-2019. The site is located in an area where the land use zoning objective is 'Commercial Town Expansion' as indicated on Map 1a of the LAP. Car parking standards are outlined in section 3.01.04 of the LAP. The Variation No. 1 of 2011 amended the land use zoning matrix. Copies of the relevant extracts are in the appendix attached to this report.

8.0 ASSESSMENT

8.1 Having regard to the nature of the application and the issues arising, I am of the opinion that the main issues to be addressed in this assessment relate to the planning authority's Reasons for Refusal. Those Reasons are as follows:

- 1. Having regard to the nature of the change of use sought, to the structural condition of the building to which the change of use relates and with cognisance of the content of the structural report submitted as part of the planning application, it is considered that the building, in its current condition, is structurally unsound and therefore the development, if permitted, would endanger the health and safety of persons occupying or employed in the structure. The proposed development is therefore considered contrary to the proper planning and sustainable development of the area.*
- 2. Having regard to the structure condition of the building to which the change of use relates and with cognisance of the content of the structural report submitted, it is considered that the building in its current condition will not satisfy the requirements of the Building Regulations, including Parts A1, A2 and B, which relate to structural integrity and fire safety. The building, in its current condition is considered seriously defective and therefore the development, if permitted would constitute a hazard to the occupants and users. The proposed development is therefore considered contrary to the proper planning and sustainable development of the area.*
- 3. On the basis of the information submitted as part of the planning application, the Planning Authority is not satisfied that the proposed development would not interfere with the safety and free flow of traffic, cyclists and pedestrians along this section of the National Primary Road. It is considered that the proposed development, as presented, would endanger public safety by reason of traffic hazard.*

Refusal Reasons Nos. 1 and 2

8.2 The applicant sought planning permission, the p.a. and the Board is restricted to considering the proper planning and sustainable development of the area having regard to specific issues as laid out in s.34(2)(a)(i)-(vi) of the Planning & Development Act 2000 (as amended). I have concerns that Reasons Nos. 1 and 2 of the p.a. decision do not relate solely to planning and sustainable development matters but more appropriately refer to other codes e.g. the Building Regulations. In that regard, I have concerns that the p.a. in Reasons 1 and 2 may have acted *ultra vires* their powers pursuant to the Planning & Development Act 2000 (as amended). Even if permission is granted, the developer/property owner/operator have responsibilities under other separate legal codes, such as compliance with the Building Regulations and Safety, Health & Welfare at Work legislation etc. Indeed, the Local Authority has powers under other codes to take action if they have concerns regarding, for example, the condition of a structure, or compliance with aspects of the Building Regulations (in that regard, I note the planning authority's reference in their response to the grounds of appeal, to the issuing of a Derelict Sites Notice in relation to the site and the acknowledged response of the applicant to that notice). The development, if granted, for example, will also require a Fire Safety Certificate (ref: Senior Assistant Chief Fire Officer Report dated 09/11/15). A grant of permission in itself does not of course exempt compliance with those other codes, a grant of permission does not in itself permit a person to carry out any development, the Board will be aware of the provisions of s.34(13) of the Planning & Development Act 2000 (as amended) that states: "A person shall not be entitled solely by reason of a permission under this section to carry out any development." I would therefore caution the Board against a refusal of permission on the grounds similar to those cited by the p.a. in its Reasons Nos. 1 and 2. I note here also that in its response to the FI request the applicant did submit a structural report. That report confirms that the original two-storey house is unsound, it should be noted that the application does not relate to the two-storey house but rather the extensions at ground level to the rear and side. That structural report does identify that the ceilings in the single storey extension on the western side are in various stages of collapse, that area is subject of this application. The structural report describes the building as 'dangerous' and goes on to state that it is proposed to permanently seal the old house "to protect occupants of the Shed from unwittingly entering a dangerous area". The applicant needs to be satisfied that the occupants are not being endangered. If a building is unsafe, if its condition constitutes a risk to the safety and wellbeing of its occupants and users, it clearly should not be used, irrespective of whether it has planning permission or not.

- 8.3 The report of the Executive Technical and Enforcement Officer, dated 17/06/16, states that the material change of use would impose a requirement that the building comply with Parts A1, A2, B, C4, F, G, H, L and M of the Building Regulations. That report goes on to raise concerns that the building will not satisfy the requirements of A1, A2, B, C4 and L of the Building Regulations, it further states that A1, A2 and B are considered of primary importance as they relate to the structural integrity and fire safety measures. The Executive Technical & Enforcement Officer goes on to state that the building as it stands is considered seriously defective and would constitute a hazard to occupants and users. I do not contest, or indeed assess, those matters here. The Board is tasked with assessing the application in the legal context of the proper planning and sustainable development of the area. Compliance with the Building Regulations is a separate legal code. Clearly the Building Control Authority and the applicant are aware of issues arising in that regard, a grant of planning permission does not mean those issues are addressed.
- 8.4 In the context of the proper planning and sustainable development of the area, I am satisfied that the use as described in the application documentation does not conflict with the statutory LAP for the area and I note the p.a. in its decision did not hold that the proposed use would be in conflict with its statutory plan. The site is located within the designated development boundary of Carrick-on-Shannon, it is zoned for 'Commercial Town Expansion', community uses are permitted on such zoned land. The p.a. concerns in its Reasons Nos 1 and 2 were focused on the condition of the structures on site, and not the proposed use. The applicant is not proposing new structures on the site, the applicant is simply proposing to change the use of existing structures from residential to use as a workshop with associated sitting area, kitchen and bathroom. The structural integrity and health and safety concerns will still have to be addressed if permission is granted.

Refusal Reason No. 3

- 8.5 The site is located between two roundabouts on the N4. The roundabout to the west is c. 220 m from the site and the roundabout to the east is c. 75 m away. Immediately in front of the site there is a footpath and a cycle lane (of combined c. 3 m width). The N4 carriageway is c. 9.5 m wide at this location, there is a ghost island in the centre of the carriageway. This ghost island extends from one roundabout to the other, it incorporates two holding areas for right turning traffic.
- 8.6 The applicant is not proposing a new vehicular entrance off the national primary road, the entrance already exists and would appear to be in use for some time. It is a domestic entrance serving the existing (now

unoccupied) house on the site. The applicant is proposing 9 car parking spaces on the site, that number, it appears, is being generated in response to the LAP parking standards (based on a community centre car parking requirement on the gross floor area) as opposed to the applicant's own projected usage of the site. In any event, I do not consider such a number excessive in the context of trip generation, particularly given the fact that this site, with its existing entrance, is within the 50 km/h urban speed limit. The limited number of car parking spaces will act to suppress the trip generation to/from the site. In a submission received by the p.a. from the applicant on the 19/05/16 in response to the FI request, the applicant states that the premises is open for use on Mondays, Wednesdays and Fridays, it operates from between 10:00 and 17:00, it is further stated that the maximum number of people on the premises on any day is 9 and usually 5 of these are pedestrians. This submission also indicates low levels of trip generation. I would also draw the Board's attention to the floor area involved. The total floor area that is subject of the change of use proposal is given as 95 sq.m., again I do not consider this particularly large in scale. Furthermore, the actual workshop floor area is c. 50 sq.m. and therefore would be limited in how many it could accommodate with obvious consequences for trip generation to/from the site. Given the nature of the services being provided by the applicant, the trip generation will have little impact on the capacity of the adjoining public road i.e. even if all spaces were to generate peak a.m./p.m. movements (which is very unlikely given the nature of the proposal), the trip generation cannot be considered excessive. There is a footpath and cycle lane outside the site connecting it to commercial, retail and residential areas to the west (the town centre) and to the east out the Dublin road.

- 8.7 That applicant's FI response of the 19/05/16 also contained a 'Traffic and Transport Assessment' and a 'Road Safety Audit' containing a number of recommendations. The 'Traffic and Transport Assessment' was sought by the Road Design Section (ref: report dated 17/11/15). The applicant's 'Traffic and Transport Assessment' concluded that the proposed change of use will generate the same amount of vehicular traffic as a two-car household (the existing use). In a subsequent report by the Roads Department (ref: dated 23/06/16) it does not appear to take issue with the conclusions of the 'Traffic and Transport Assessment' but rather with the 'Road Safety Audit' and right turning traffic exiting the site. The TII sought the 'Road Safety Audit' in its report of the 09/11/15. In a subsequent report dated 14/06/16 the TII did not indicate any specific concern or objection, but indicated that they will rely on the p.a. in relation to the implementation of policy in relation to development on national roads.

- 8.8 This site already accommodates a two-storey dwelling (albeit currently unoccupied) that fronts onto the national primary road. This site already has a vehicular entrance off that national primary road. The trip generation subject of the application cannot be considered excessive and it is held by the applicant's engineer that the development will generate the same amount of vehicular traffic as a two-car household, the various p.a. reports on file do not appear to take issue with that conclusion. This site is located within the urban speed limit and is well-served by a footpath and cycle lane network. This site is zoned for commercial town expansion. In the circumstances it may be considered somewhat unreasonable to refuse permission now in relation to traffic concerns. Arguably, a party with sufficient legal interests in the property *may* avail of the exempted development regulations to re-commission the residential use on the site. What is now being proposed presents an opportunity for 'planning gain' in that the existing entrance can be upgraded providing for improved sight distances, a splayed entrance, a recessed gateway, and signage requiring left turning traffic only.
- 8.9 Subject to condition I do not consider that the proposed development would pose an unacceptable risk to traffic safety. I would recommend that the Board apply a condition requiring the upgrade of the existing entrance. As per the South Leitrim Area Office Report dated 18/11/15, I would recommend an entrance splay and the setting back of the gateway to ensure vehicles entering the site do not obstruct the public carriageway, cycle lane and footpath should the gate be closed. I would also recommend a condition imposing the recommendations of the Road Safety Audit, which include the removal of the trees to the west of the entrance, subject to agreement with the p.a. The removal of the trees will provide sight distances well in excess of those referred to in s.4.4.5 of the 'Design Manual for Urban Roads and Streets'.

Appropriate Assessment

- 8.10 Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise.

9.0 CONCLUSIONS AND RECOMMENDATION

Grant permission for the change of use sought subject to conditions as indicated below.

REASONS AND CONSIDERATIONS

Having regard to the nature and limited scale of the change of use proposed, the site location within the designated development boundary of Carrick-on-Shannon, the urban speed limit applicable at this location, the existing use on the site that includes a vehicular entrance of the N4 National Primary Road, and also having regard to the land use zoning objective for the area and the pattern of development in the vicinity, it is considered that, subject to compliance with conditions below, the proposed development would be acceptable in terms of traffic safety and convenience, would not seriously injure the amenities of the area or of property in the vicinity, and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 19th day of May 2016 and 2nd day of June 2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2.
 - (i) The vehicular entrance shall be upgraded to the satisfaction of the planning authority. Prior to the commencement of development, the applicant shall submit to, and agree in writing with, the planning authority detailed design proposals for the upgrade of the vehicular entrance to the site. The upgrade works shall contain, *inter alia*, proposals for an entrance splay and the recessing of the gateway to allow for sufficient space for vehicles to pull-in off the public carriageway, cycle lane and footpath.
 - (ii) The recommendations contained in the Road Safety Audit received by the planning authority on the 19th day of May 2016 shall be implemented in full (unless otherwise agreed with the planning authority to comply with (i) above).
 - (iii) The change-of-use shall not be commissioned prior to the implementation of (i) and (ii) above to the written satisfaction of the planning authority.

Reason: In the interests of traffic safety and to avoid the obstruction of other road users.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

Tom Rabbette
Senior Planning Inspector
21st September 2016