



An  
Bord  
Pleanála

## Inspector's Report PL12.248556

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<b>Development</b>	Change of use of ground-floor to takeaway with associated signage, demolition works, single and two-storey rear extension and two-bedroom apartment at first-floor level
<b>Location</b>	Main Street, Carrick-on-Shannon, County Leitrim
<b>Planning Authority</b>	Leitrim County Council
<b>Planning Authority Reg. Ref.</b>	17/36
<b>Applicant(s)</b>	Talwinder Singh
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Split
<b>Type of Appeal</b>	First-Party
<b>Appellant(s)</b>	Talwinder Singh
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22 <sup>nd</sup> August 2017
<b>Inspector</b>	Colm McLoughlin

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## 1.0 Site Location and Description

- 1.1. The appeal site is a corner site, located centrally within the town of Carrick-on-Shannon, at the junction of Main Street and Priest's Lane.
- 1.2. It contains a two-storey end-of-terrace building with primary frontage onto Main Street, single and two-storey rear projection and single-storey mono-pitched outbuilding backing onto a rear service access lane. The building was most recently used as a retail shop, which partially occupied the ground floor area, and as a residential unit at ground and first-floor level. The external finishes to the subject building include rendered walls, decorative-tile shop frontage and roof finished with slates. A pedestrian access is provided from Priest's Lane into a rear yard space.
- 1.3. The surrounding area is generally characterised by two to three-storey terraced premises occupied at ground-floor level by commercial and retail businesses and upper levels containing a mix of residential and commercial uses. Ground levels in the immediate vicinity are relatively flat and there is no on-street parking available directly to the front or side of the site.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the following:
  - Demolition of part-single, part-two storey rear projection and removal of roof to rear outbuilding;
  - Provision of part-single, part-two storey rear extension to building;
  - Change of use of ground floor from retail and residential use to takeaway (closed 01:00 hours to 08:00 hours Monday to Thursday and opening Friday 08:00 hours until 04:00 hours Saturday, Saturday 08:00 hours until 04:00 hours Sunday, Sunday 08:00 hours until 02:00 hours Monday and Bank Holidays 08:00 hours until 04:00 hours subsequent day);
  - Creation of two-bedroom apartment at first-floor level with ancillary storage space at roof level and access off Priest's Lane;
  - Installation of new shop frontage to Main Street including associated signage.

- 2.2. The application was accompanied by an Appropriate Assessment Screening Report prepared by the applicant's agent.

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. The Planning Authority decided to issue a split decision as follows:

- **Grant** permission for demolition, extension and other works to the premises, subject to nine conditions, including:

**C.9** commercial accommodation on site shall be associated with the existing (retail) use, or an alternative use subject to further planning permission.

- **Refuse** permission for change of use of the ground-floor area from retail and residential use to takeaway, for two reasons:

**R.1** Impact on neighbouring residential amenities (noise and disturbance);

**R.2** Traffic hazard consequent to context at a busy junction along with narrow footpaths and lack of internal space for customers.

#### 3.2. Planning Authority Reports

3.2.1. Planning Report

The report of the Planning Officer reflects the decision of the Planning Authority.

The Planning Officer noted the following:

- Redevelopment and reconstruction of the shopfront and the rear and first-floor of the building to provide for residential development is acceptable;
- The proposed use at this location would have undesirable effects, conflicting with the general objectives of the zone to protect and promote the commercial vitality and viability of the area;
- Surrounding properties accommodate residential uses at upper levels;

- Based on suggested opening hours a key element of the takeaway custom would be based on the pub and nightclub trade;
- Takeaway element would have undue impact on neighbouring residential amenities as a result of noise and disturbance from congregating crowds;
- Takeaway element of the proposals would result in traffic hazard and safety concerns as a result of the context opposite a nightclub on Main Street, narrow footpaths fronting the site and the lack of internal space for patrons. This concern and amenity issues could not be addressed by restriction of opening hours;
- Excessive concentration of takeaway facilities in the town and in the immediate area;
- Section 48 Development Contributions are required for the commercial element.

### 3.2.2. Other Technical Reports

- District Engineer - no submissions/objections;
- Fire Officer - no objection subject to conditions;
- Water Services Department - no objection subject to conditions.

### 3.3. Prescribed Bodies

- HSE (Environmental Health Officer) - no objection subject to conditions.

### 3.4. Third-Party Submissions

3.4.1. One submission was received during consideration of the application from a proprietor of a takeaway in Carrick-on-Shannon who raised the following:

- Excessive proliferation of takeaways in the town, with limited capacity to absorb an additional takeaway;
- Local 'ambassador service' operates in the town to clean up streets following weekend activities and the additional takeaway would place increased pressure on this service.

## 4.0 Planning History

### 4.1. Subject Site

4.1.1. None.

### 4.2. Surrounding Sites

4.2.1. Planning applications approved for other takeaway facilities in Carrick-on-Shannon include the following:

- Every Day Chinese Takeaway, Main Street (20m east of appeal site) –  
Ref. 09/28 – Permission granted (July 2009) for change of use from dwellinghouse to takeaway restaurant at ground-floor and ancillary areas at first-floor level incorporating a two-storey rear extension and new shopfront;  
Ref. 13/71 – Permission granted (June 2013) for retention of amendments to planning reg. ref. 09/28 providing for change of use from dwellinghouse to takeaway restaurant;
- Giovanni's Takeaway, Bridge Street  
Ref. 10/110 – Permission granted (June 2010) for change of use of butcher's as an expansion of fast food takeaway granted under Ref. 05/731.

## 5.0 Policy Context

### 5.1. Carrick-on-Shannon Local Area Plan

5.1.1. The appeal site has a zoning objective 'Mixed-Use' within the Carrick-on-Shannon Local Area Plan 2010-2019 with a stated objective (2.3a) to develop 'for commercial, cultural, residential, retail and related uses'. Takeaways are 'open for consideration' in 'Mixed-Use' lands, in circumstances where the proposed use would not conflict with the general objectives for the zone and with respect to the impact on neighbouring properties.

5.1.2. Other relevant sections within the Local Area Plan include:

- Section 3.01.13 - The Council will seek to ensure that new development does not cause an unacceptable increase in the noise levels affecting surrounding properties;
- Section 3.03.04 - Hot food takeaways will only be permitted where they do not interfere with the amenity of other businesses and neighbouring residences. In this regard potential odour, late-night noise and litter will be taken into consideration. Planning permissions for takeaways may have a condition attached obliging them to close by 01:00 hours, or otherwise if deemed appropriate.

## **5.2. Leitrim County Development Plan**

5.2.1. The County Retail Strategy was adopted as part of the Leitrim County Development Plan 2015-2021 with the following sections of relevance:

- Section 5.3.2 notes that there has been a marked replacement of retail floorspace with alternative commercial uses including betting shops, restaurants and takeaways, no more so than in Carrick-on-Shannon;
- Section 6.1.1 - In relation to Carrick-on-Shannon it is noted that there are a number of vacant or rundown premises within the retail core, and the amenity of the area would be improved if these were redeveloped or renovated for retail purposes.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. The principal grounds of appeal of the applicant can be summarised as follows:

Compliance with Zoning Objectives

- Proposals meet the zoning objective requirements of the Local Area Plan;
- Proposals provide for a viable commercial use on site and given the limited provision of public space within the unit, very limited environmental impacts would arise;

- The surrounding town centre location contains a mix of commercial and residential uses and the Planning Authority is placing disproportionate emphasis on residential uses in the area;

#### Principle of the Proposed Development

- Principle of restaurants within town centres is acknowledged and supported in the Retail Planning Guidelines, where they are considered to contribute significantly to the vibrancy and vitality of such centres;
- There is only one takeaway located in the area immediate to the appeal site, while there are four takeaways located on the western side of the town centre. An overconcentration of takeaways would not arise and demand exists for the proposed takeaway, which would complement neighbouring uses;

#### Impact on Residential Amenity

- Under Planning Reg. Ref. 09/28 the Planning Officer considered the proposed takeaway unit, 20m east of the appeal site, to be in a suitable location, as it would serve to consolidate those leaving pubs and late night bars and it would be more preferable than having larger crowds gathering around the other takeaways on the west side of the town centre;
- Measures to control noise, odour, waste and litter are suggested and can be employed;
- Revised hours of operation are proposed requiring the takeaway to be closed between the hours of 01:00 hours and 08:00 hours;

#### Traffic Hazard

- Revised hours of operation proposed would address concerns regarding congregation of patrons outside the takeaway following closure of the neighbouring nightclub;
- Junction of Priest's Lane and Main Street is not heavily trafficked in the early morning and the District Engineer has not objected to the proposals;
- Issue of a split decision by the Planning Authority prevents the sale and redevelopment of the property.



## 6.2. Planning Authority Response

6.2.1. The Planning Authority responded to the grounds of appeal raising the following:

### Compliance with Zoning Objectives

- Planning Authority is conscious of creeping vacancy along the Main Street and supports redevelopment of the site;
- Given the proposed layout, scale and nature of the takeaway use, patrons would inevitably spill out onto the public street outside the takeaway, particularly late at night;
- Revised opening hours were considered, but road safety concerns arise, which cannot be addressed via revised opening hours due to difficulties experienced in enforcing same;
- Planning Authority received no other inquiries regarding the redevelopment of the site;

### Principle of the Proposed Development

- Refusal of the takeaway element on this development would not restrict the development of other sites in the town centre for takeaway purposes;
- Applicant's reference from the Retail Planning Guidelines is not directly relevant, as it relates to 'restaurants' and not takeaways;
- Proposals differ from the permitted neighbouring (Every Day) Chinese takeaway, as the appeal site occupies a corner site and as it would lead to intensification of takeaways in this location;
- To avoid dereliction, the redevelopment demolition and extension works of the proposals were permitted and a condition was attached to allow for an alternative commercial use at ground floor, subject to further planning permission or for the ground floor to be used for retail purposes;

### Impact on Residential Amenity

- The Council is aware that numerous properties in the vicinity are occupied for residential purposes and proposals need to be cognisant of this;

- Council acknowledges that measures to control noise, odour, waste and litter can be employed, but that this would not obviate their concerns;
- Revised hours of operation with a closing time of 01:00 hours would not address concerns regarding noise and disturbance, as opening hours are difficult to enforce and as the Council already receives complaints regarding noise pollution from late night bars;

#### Traffic Hazard

- Commercial decision to establish a takeaway on site is dependent on the trade from crowds attending the public houses and nightclubs on the opposite side of the road and this presents an actual risk to traffic and pedestrian safety.

### 6.3. Observations

- None

## 7.0 Assessment

### 7.1. Introduction

7.1.1. The following assessment addresses matters raised in the appeal submissions, and also encapsulates my *de novo* consideration of the application. I note that the Planning Authority was satisfied that the demolition and extensions to the rear of the appeal site would not seriously injure the amenities of the area. Considering the scale, nature, orientation and context of the demolition and extension works relative to neighbouring properties and the existing projections to the subject premises, I am satisfied that this aspect of the proposals would not have a significant impact on neighbouring amenities and would be in accordance with the proper planning and sustainable development of the area. Consequently, this assessment focusses on the change of use of the ground floor of the premises to a takeaway, with the following matters arising:

- Principle of the Development;
- Impact on Amenities;

- Traffic & Pedestrian Safety.

## **7.2. Principle of the Development**

- 7.2.1. The site is located within Carrick-on-Shannon town centre and is zoned for 'Mixed-Uses' in the Carrick-on-Shannon Local Area Plan with a stated objective (2.3a) to develop 'for commercial, cultural, residential, retail and related uses'. Takeaways are 'open for consideration' on 'Mixed-Use' lands in circumstances where this use would not conflict with the general objectives for the zone. Takeaway premises are standard uses in a town centre and along with other service uses can often complement the centre's principal functions. To comply with the mixed-use zoning objectives for the site, an appropriate balance of commercial, cultural, residential, retail and related uses would need to be achieved. Consequently, I consider that an overconcentration of uses would need to be avoided and proposals should serve to maintain the vitality and viability of the town centre.
- 7.2.2. The area immediately adjacent to the appeal site in Carrick-on-Shannon town centre consists of a mix of commercial and retail uses with residential uses interspersed throughout, mainly on the upper floors. As referenced within the appeal submissions, currently there are five late night takeaways operating in Carrick-on-Shannon, one of which is 20m east of the appeal site on Main Street. I also recognise that there are extensive restaurants and cafés within the town, reflective of the town's function and context, including numerous restaurant takeaways outside the town centre.
- 7.2.3. Considering the number of town centre late-night takeaways relative to the size and function of the commercial centre, neighbouring uses, including one other late night takeaway in the immediate area, I do not consider that the proposal for an additional takeaway food premises in this location would result in a preponderance of such uses within this part of the town centre, such that it would be harmful to the vitality and viability of the town centre or contrary to the zoning objectives for the site. However, redevelopment of the site to include a takeaway use should only occur subject to relevant planning and environmental matters, as discussed below.

### **7.3. Impact on Amenities**

- 7.3.1. The Planning Authority recommended refusal of the takeaway element of the proposed development, as the resulting noise and disturbance would have a detrimental impact on the amenities of neighbouring residential.
- 7.3.2. As noted above the site is within the town centre, which is primarily characterised by a mix of retail, commercial and residential uses. Properties within the adjoining terrace include a butcher's, dwellings, Percy Whelan's pub and the aforementioned takeaway. A nightclub and late bar, Murtagh's, and the Courtyard Apartments are located on the opposite side of Main Street. Library Court comprising retail and commercial businesses at ground floor and residential uses overhead is located to the north on Priest's Lane and The Swan pub with residential use overhead is located on the opposite side of Priest's Lane. Proposals would also provide for a residential unit at first-floor within the redeveloped subject building.
- 7.3.3. The element of the proposed development relating to the takeaway is not extensive at a stated 71sq.m, with the public area amounting to approximately 16sq.m and the bulk of the floor area being provided for food preparation, staff areas and storage. Considering the scale of the proposed takeaway and the context relative to residential properties and other neighbouring night-time facilities, I consider that the proposed development would not significantly exacerbate the present situation with regards to noise, odour or litter. There are a number of public houses in the vicinity of the site and it is unlikely that the noise levels generated by the proposal would exceed the present noise levels generated by same, and this can be further addressed via control of opening hours. In this regard I note that the applicant had initially proposed a 01:00 hours closing time Monday to Thursday, extending to 02:00 hours on Sundays (i.e Monday mornings) and 04:00 hours on Saturday mornings, Sunday mornings and the mornings after Bank Holidays. If deemed necessary, the Local Area Plan recommends a closing time of 01:00 hours for takeaways and I note that the applicant is agreeable to same. A 01:00 hours closing time at the weekend has been attached to the neighbouring takeaway under Planning Reg. Ref. 13/71. Consequently, I consider that the same opening hours applied to the neighbouring takeaway permitted under Ref. 13/71 would be reasonable and should be attached to the subject development should a grant of planning permission be issued. Taking into consideration the suggested opening times and the town centre site context, I do

not consider that neighbouring residential amenities would be adversely impacted and the proposal would not give rise to any material changes in ambient noise levels. Furthermore, odour and litter control can be appropriately addressed by way of condition.

- 7.3.4. In conclusion, I consider that the proposed takeaway would not detrimentally impact on the amenities of neighbouring properties in the vicinity, primarily due to the prevalence of other existing night-time facilities in the immediate area including pubs, a nightclub and a takeaway. Therefore, I recommend that permission should not be refused on the basis of the impact of the proposals on local amenities.

#### **7.4. Traffic & Pedestrian Safety**

- 7.4.1. The Planning Authority also recommended refusal of the takeaway element of the proposals, on the basis that it would result in a traffic hazard consequent to the site context at a busy junction with narrow footpaths and as there was insufficient internal space for customers.
- 7.4.2. Dedicated off-street parking or a servicing area specifically serving the proposed takeaway (and residential unit) would not be provided on site, as is currently the case. A double-yellow line directly fronting the site on Main Street and Priest's Lane restricts on-street parking or a service bay and this is reflective of the site location on a road intersection. Pay and display on-street parking is available on the immediate streets. I accept that the site is located on a busy intersection at Priest's Lane and Main Street and I also note that the District Engineer has not commented or objected to the subject proposals. The footpath fronting the site on Main Street is approximately 1.3m in width and the Planning Authority raise concerns that late-night trade from the takeaway would result in crowds congregating on this narrow footpath and spilling onto the public road, particularly during and after the operation of the nightclub opposite the site. The Planning Authority consider that this would be exacerbated by the fact that the public area within the takeaway would not contain any seating for customers.
- 7.4.3. While I accept that it is not uncommon for town centre takeaways operating late at night to attract large crowds, often peaking following closure of nightclubs and late bars, the takeaway closing time restriction outlined in the Local Area Plan, 01:00 hours, would appear to recognise same. The neighbouring takeaway is conditioned

under Planning Ref. 13/71 to close at 01:00 hours and the subject proposed takeaway would likely draw from the same late-night custom as this. Trade after the 01:00 hours closing time would continue to disperse to the west side of the town centre to other late night late-night takeaways. Consequently, it is difficult to envisage the proposals leading to excessive congregation of crowds on the public street fronting the site. To alleviate concerns regarding crowding outside the takeaway and to indirectly address potential littering, I consider that some seating should be provided internally and this should be addressed via attachment of a condition.

- 7.4.4. In conclusion, I consider that attachment of conditions restricting the opening time of the takeaway to 01:00 hours at the weekend and the provision of some internal seating would ensure that the operation of the takeaway would not endanger public safety. As a consequence of the proposed closing times and the provision of internal seating and given the immediate context including the existing provision of town centre takeaways, I consider that the proposed development in itself would not endanger pedestrian and traffic safety by reason of traffic hazard and by the congregation of crowds on the public road.

## 8.0 **Appropriate Assessment**

Having regard to the minor nature of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise and it is 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.

## 9.0 **Recommendation**

I recommend that planning permission should be **granted**, subject to conditions, as set out below.

## 10.0 Reasons and Considerations

Having regard to the zoning of the site for 'Mixed-Use' in the Carrick-on-Shannon Local Area Plan 2010-2019, the nature and scale of the proposed development, to the mix of uses and pattern of development in the area, including the extent of late-night facilities, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic and pedestrian safety and convenience, and would be in accordance with the provisions of the Carrick-on-Shannon Local Area Plan 2010-2019. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. The proposed development shall be amended as follows:
  - (a) internal seating shall be provided within the public area of the takeaway.Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interests of residential amenity and traffic safety.

3. The takeaway shall not be operated between 23:00 hours and 08:00 hours on any day except as follows:

Friday 08:00 hours until 01:00 hours Saturday;

Saturday 08:00 hours until 01:00 hours Sunday;

Bank/Public Holidays 08:00 hours until 01:00 hours the subsequent day.

**Reason:** In the interest of the residential amenities of property in the vicinity.

4. Water supply and drainage arrangements, including the attenuation and 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.

5. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interest of public safety and residential amenity.

6. Details of the materials, colours and textures of all the external finishes to the proposed development, including the windows, canopies and doors, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of the visual amenities of the area.

7. No advertisement or advertisement structure other than those shown on



the drawings submitted with the appeal shall be erected or displayed on the building in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

**Reason:** In the interest of the visual amenities of the area.

8. Litter in the vicinity of the premises shall be controlled in accordance with a scheme of litter control which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the provision of litter bins and refuse storage facilities.

**Reason:** In the interest of visual amenity.

9. The developer shall control odour emissions from the premises in accordance with measures including extract duct. Details in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of public health and to protect the amenities of the area.

10. A plan containing details for the management of waste/recyclable materials within the development, including the provision of facilities for the storage, separation and collection of the waste/recyclable materials including waste oil and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste/recyclable materials in the interest of protecting the environment.

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the

area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

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Colm McLoughlin  
Planning Inspector

29<sup>th</sup> August 2017