

Development Management Delegated Decision Report

B/20/0257



SUMMARY OF APPLICATION				
Application Reference	B/20/0257			
Application Type	Full Planning Permission			
Proposal	Change of use from cafe/bar (Class A3) use to adult gaming centre (AGC) (Class Sui Generis)			
Location	45, West Street, Boston, PE21 8RE			
Applicant	Cashino Gaming Ltd			
Agent	Mr Sam Deegan, Planning Potential Ltd.			
Received Date:	16-Jul-2020	Consultation Expiry Date:	15-Sep-2020	
Valid Date:	31-Jul-2020	Statutory Expiry Date:	25-Sep-2020	
Date of Site Visit:	18-Aug-2020	Extension of Time Date:		
Objections received?	Yes			
5 day notification record:				
	Councillors notified	Date	Response received – date	Ok to continue
	Cllr Paul Goodale	16/09/20	16/09/20	No objections
Recommendation	GRANT Full Planning Permission			
Report by:	Grant Fixter			
Date:	16/09/2020			



OFFICER REPORT

SITE AND SURROUNDINGS:

The application site comprises one of three ground floor commercial units of a two storey property on West Street, directly opposite the Municipal Buildings. The unit is now vacant and was formerly occupied by the night café/ bar Delight Pub. Along West Street, there are a large number of frontage commercial units with varying uses.

DETAILS OF PROPOSAL:

The proposal seeks full planning permission for the change of use from cafe/bar (Class A3) use to an adult gaming centre (AGC) (Class Sui Generis).

The applicant has also submitted two further planning applications related to this property which are currently being considered by the Council. These applications will all be judged separately on their own merits:

- B/20/0255 – Replacement shopfront
- B/20/0256 – Advertisement consent for one internally illuminated fascia sign

RELEVANT HISTORY:

- In 2001, the change of use from Retail (Class A1) to a Café/Bar was granted planning permission (B/01/0093).
- In 2011, the variation of condition 3 attached to the above permission was granted to allow the premises to operate between the hours of 08:00am to Midnight 00:00 Sunday to Thursday and 08:00am to 02:00am on Friday and Saturday (B/11/0160).
- In 2014, the variation of condition 1 of the above permission was granted to allow the premises to be open between 8am - 3am the following morning on Fridays and Saturdays instead of 8am - 2am on Fridays and Saturdays.

RELEVANT DEVELOPMENT PLAN POLICIES AND DOCUMENTS:

South East Lincolnshire Local Plan (2011-2036)

The following policies contained within the South East Lincolnshire Local Plan (2011-2036) (i.e. SELLP) are relevant to this application:

- Policy 1: Spatial Strategy;
- Policy 2: Development Management;
- Policy 7: Improving South East Lincolnshire's Employment Land Portfolio;
- Policy 24: The Retail Hierarchy;
- Policy 25: Supporting the Vitality and Viability of Boston and Spalding Town Centres.

OTHER RELEVANT DOCUMENTS / LEGISLATION / GUIDANCE:

National Planning Policy Framework (2019)

At the heart of the 2019 Framework is a presumption in favour of sustainable development. The following sections are relevant to this scheme:

- Section 4: Decision-making;
- Section 6: Building a strong, competitive economy;
- Section 7: Ensuring the vitality of town centres;
- Section 11: Making effective use of land.

CONSULTATION RESPONSES:

The Environment Agency stated they have no comments to make on the application as there is no change in Flood Risk Vulnerability Classification.

Environmental Health have no objections to the proposal.

Licensing and Land Charges stated that there is a default condition attached to the approved gambling license requiring bingo to cease at midnight, but this does not restrict the hours the premises can be open for using gaming machines and, therefore, have no objections to the proposal.

THIRD PARTY REPRESENTATIONS RECEIVED:

One letter of representation has been received from RR Planning Ltd on behalf of their clients who trade on a nearby premises who are opposed to this proposal. The identity of the clients has not been disclosed. The objection has been based on the following grounds:

- Non-compliance with Paragraph 85 of the NPPF;
- Non-compliance with Local Plan Policy 24 because:
 - Not one of the outlined permitted use classes in the policy for Boston Town Centre (A1-A5, B1, D1, D2 and residential development);
 - Omission of Sui Generis from the policy indicates they are not seen as a positive addition;
 - New Use Class Order on 1st September still classes the proposal as Sui Generis;
 - Reasoned justification of Policy 24 states “poorly-placed non-retail uses and an over-proliferation of similar uses such as hot-food takeaways and betting shops, particularly within the Primary Shopping Area, can negatively impact on the local amenity and activity within a centre and, therefore, will be resisted”;
 - Already a large number of licensed gaming establishments in the town centre;
 - Three betting shops within the immediate vicinity of the application site.
- This proposal may block the permitted use of this site to a variety of other uses not previously permitted;
- Alternative Class E uses would be better suited;
- Proposal may detrimentally harm the long term character and function of the town centre.

EVALUATION:

The key considerations in regards to this application are:

- Principle of development;
- The appropriateness of the use and location;
- Amenity and planning history.

Principle of development

Local Plan Policy 1 identifies Boston as a Sub-Regional Centre, where development will be permitted within the settlement boundaries that supports their roles as Sub-Regional Centres.

The proposal is located within the settlement boundary of Boston and will occupy a currently vacant building, meaning a new form of development is introduced that will help contribute to the local economy.

The principle of development is, therefore, acceptable subject to the objectives of the relevant policies in the SELLP as identified above being met.

The appropriateness of the use and location

The proposal is for an adult gaming centre which falls under a sui generis use. The objection to this application was heavily focused on Local Plan Policy 24, using text from the policy itself and the reasoned justification.

The response to the points raised in the objection are covered in this section in two parts. The first will focus on the part which uses text directly from the policy, with the second part addressing text in the reasoned justification of the policy. Each time the points raised by the objector will be highlighted, which will then be followed by the Council's appraisal.

Local Plan Policy 24 - Text

The objector rightfully highlights that Part A of Policy 24 is applicable to this proposal.

Part A states permission will be granted in Boston town centre for retail, food and drink outlets, financial and professional services, leisure and tourist-related uses (Classes A1-A5, B1, D1 and D2) and residential development. The objection then goes on to suggest by virtue of the policy not including sui generis use in the text, these uses are not seen as a positive addition.

It is deemed that contrary to the view of the objector, the proposal does comply with Policy 24 and the argument for this is set out below.

When assessing a proposal, it is important to ensure all appropriate aspects of a relevant policy are considered. The key point is the objection fails to consider the entirety of Policy 24, as the policy goes on to state:

“The provision of markets and other appropriate initiatives that would enhance the vitality and viability of Boston and Spalding town centres will be supported.”

Sui Generis is a term given to the uses of buildings or land that do not fall into any of the use classes identified by the Use Class Order. It is, therefore, understandable the policy would not outright state this use as it covers such a variety of different developments, for example, filling stations and car showrooms are classed as being a Sui-Generis use.

The policy is clearly worded in such a way that it will not simply restrict development solely to those which fall under the highlighted uses and that other proposals will equally be supported should they help enhance the vitality and viability of Boston. This proposal will bring a new form of development to the area which are becoming more and more popular across the country. Furthermore, the building is currently vacant, so this use can be classed as an ‘appropriate initiative’ and will help enhance the vitality and viability of Boston town centre.

Local Plan Policy 24 – Reasoned Justification

The objection then highlights the following text from paragraph 6.2.6 in the reasoned justification for Policy 24:

“poorly-placed non-retail uses and an over-proliferation of similar uses such as hot-food takeaways and betting shops, particularly within the Primary Shopping Area, can negatively impact on the local amenity and activity within a centre and, therefore, will be resisted.”

Contrary to the objector, it is deemed the proposal does not contradict the reasoned justification for Local Plan Policy 24 and the argument for this is set out below.

‘Inset Map 1 – Boston’ for the Local Plan shows both the Primary Shopping Areas and Primary Shopping Frontage for the settlement. The application site is located outside of both, so the additional weight applied to sites within the Primary Shopping Area is not relevant and cannot be applied, however, the text can still be considered and is appropriate to this application.

It is noted that there are an array of uses including other betting shops along West Street, however, there are several other uses along West Street which serve a range of sectors and provide a vibrancy during daytime and evening hours. Furthermore, whilst this form of development does require a gambling license which has been approved, the adult gaming centres are often placed in the same bracket as betting shops, when there are actually distinct differences between the two.

Unlike betting shops, the adult gaming centre will not have Fixed Odds Betting Terminals. Instead, the machines offer low ranging stakes from 10p-£2. Games of Bingo also take place at these venues. There are clear differences between betting shops and the proposed use and, therefore, there will be no negative impact on the local amenity and activity within the town centre.

It is important to highlight the site has been vacant for some time now, providing ample time for planning applications for uses outlined in Policy 24 to be submitted yet that has not been the case.

Furthermore, similar to the response given to the first part of the objection, it is important that the entirety of the policy and reasoned justification is considered.

Paragraph 6.2.7 of the reasoned justification states:

“Accordingly, a balanced approach to new development in town centres will be undertaken to promote an attractive customer experience; new uses will be permitted as long as the level of new development promoted is appropriate to its location, and does not undermine that centre’s position in the hierarchy or the role of any other centre identified. Uses which attract a reasonable level of customers and therefore footfall will be supported, as these can generate passing trade for other shops and facilities in that part of a town centre thereby aiding the prosperity of the centre overall.”

The application building is currently vacant and has been for some time. The use is likely to attract customers, both those who currently commute through Boston regularly and

those who would come to Boston as a result of this proposal. This clearly creates footfall which will benefit both the proposal and surrounding shops, helping to generate trade for others whilst contributing to the prosperity of Boston overall. The proposal will not undermine the centre's position and will promote a new attractive customer experience.

The proposal is, therefore, deemed to comply with Policy 24 and is an appropriate use of the site and will not detract from the local character and activity within the area.

Amenity and planning history

Amenity is an important consideration for this proposal and the objection received highlights concerns regarding the long term local character of the area and how this may be detrimentally harmed should this application be approved.

In the above section of this report it was determined the proposed use was appropriate and in an acceptable location. Amenity relating to the external appearance of the application building was considered separate to this application, with the relevant applications highlighted earlier in the report.

It is proposed the adult gaming centre will have 24 hour operating hours, which raises questions relating to amenity. The gambling license recently granted to the applicants states that bingo must cease at midnight until 09:00, whilst the gaming machines can continue to be used. The ceasing of bingo at midnight will help protect amenity. In addition to this, amenity will be protected as:

- Complementary refreshments are available to customers, but the premises will not sell alcohol, reducing potential noise disturbance and anti-social behaviour;
- People will be denied entry if they appear intoxicated;
- The machines generate low levels of noise;
- Background music is played like most high street shops;
- They do not have tannoy systems you would typically find in seaside amusement centres.

As highlighted in the relevant planning history section of this report, the previous use had opening hours of 08:00am to Midnight 00:00 Sunday to Thursday and 8am - 3am the following morning on Fridays and Saturdays. Environmental Health and Licensing have no objections to the proposal and, therefore, the amenity of the area will not be harmed by this proposal.

CONCLUSION:

When considering this proposal, it is important to assess the planning balance, as there are aspects which raise no concerns and others which may concern some.

The first is the hours of use. A 24 hour use of the site is something which is not common in this area, however, there were no objections from Environmental Health or Licensing and Land Charges. The proposal also has to cease bingo from midnight as per their licensing agreement. As there were no objections and mitigation measures have been put in place, it is deemed the application will not have an adverse impact on the amenity of the area.

Whilst the use is not directly listed in Policy 24, the policy and reasoned justification clearly state other appropriate uses will be permitted if they do not detract from the

character of the area and will help contribute to the vitality and viability of Boston. The application building is vacant and has been for some time now, meaning at present it is not contributing to the local area or ensuring the vitality and viability of Boston is enhanced. This proposal will introduce a new form of development in the area, increasing footfall in the area which will benefit both the proposal and surrounding shops, both of which will help contribute to the local economy.

Whilst the proposed use is often associated with being the same as a betting shop, the two uses are completely different and the proposal will bring a new form of development to the area.

RECOMMENDATION:

GRANT Full Planning Permission subject to the following condition(s) and reason:-

CONDITIONS / REASONS			
Pre-commencement conditions?		Agreed with applicant/agent - Date:	
<p>The development hereby permitted shall be begun before the expiration of four years from the date of this permission.</p> <p>Reason: Required to be imposed pursuant to Section 51 of the Planning and Compulsory Purchase Act 2004.</p>			
<p>The development hereby permitted shall be carried out in strict accordance with the application received on 31/07/2020 and in accordance with the associated plans referenced:</p> <ul style="list-style-type: none"> • Noise Assessment; • Flood Risk Assessment; • 1-500 Site Plan; • WS/BOS/01 – Location Plan and Existing Ground Floor Plan; • WS/BOS/05 – Proposed Ground Floor Plan; • WS/BOS/07 – Proposed Fascia Sign Details. <p>Reason: To ensure the development is undertaken in accordance with the approved details, in accordance with Policies 2, 3 and 4 of the South East Lincolnshire Local Plan (2011-2036) and with the intentions of the National Planning Policy Framework (2019).</p>			

INFORMATIVES / NOTES

TO BE INCLUDED ON/WITH DECISION NOTICE

STATEMENT OF PROACTIVE WORKING:

In determining this application, the authority has taken account of the guidance in paragraph 38 of the National Planning Policy Framework 2019 in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the Borough.

