DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No:	**H16-0789-21**	**Applicant:**	**Merkur Slots (UK) Ltd.**
Proposal:	Change of use from former E use class to Adult Gaming Centre (Sui Generis)		
Location:	32-33 Hall Place Spalding		
Terminal Date:	16th September 2021		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019	
01	Spatial Strategy
02	Development Management
03	Design of New Development
07	Improving South East Lincolnshire's Employment Land Portfolio
24	The Retail Hierarchy
25	Supporting the Vitality and Viability of Boston and Spalding Town Centres
26	Primary Shopping Frontages
29	The Historic Environment
32	Community, Health and Well-being
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2021

National Planning Policy Framework 2021 (NPPF)

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	1	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SPALDING & DISTRICT CIVIC SOCIETY	0	0	0	1
SHDC INTERNAL	3	0	0	1

OTHER STATUTORY BODIES	1	0	0	0
OTHER STATUTORY BODIES	1	0	0	1
RESIDENTS	66	0	0	2

CASE OFFICER ASSESSMENT

PROPOSAL

Change of use from former E use class to Adult Gaming Centre (Sui Generis use). A supporting letter was submitted with the application clarifying, inter alia:

- This application seeks the change of use of the ground and first floors of 32-33 Hall Place from E Use Class to Adult Gaming Centre (Sui Generis)
- First floor would be for staff only and provide a staff room and toilet facilities
- The use would be an operation open from 7am to midnight (Changed from 24 hours use subsequent to the submission of the application)
- The use would provide employment for 6 full time and 6 part time employees.

This use would be considered to be a leisure and tourist-related use, that sits outside the use classes, being a sui generis use.

The application has been revised since submission to clarify the plans, and the agent states that the amended plans confirm that no vinyl will be placed on the glazing, the intended use of the first floor rooms and the proposed works to the shopfront. These revisions were not requested by SHDC officers.

in addition and Operational Management Plan has been submitted setting out the change of proposed hours of opening and noise matters .

SITE DESCRIPTION

The building is a terraced building, reading as two storey with dormer rooms/windows in the roof, within the Spalding Conservation Area, the Primary Shopping Area and the Primary Shopping Frontage.

The property has a double fronted shop front at the ground floor with large display windows and low stall risers.

RELEVANT PLANNING HISTORY

H16-0790-21. ADVERTISEMENT. Proposed Signage. Under consideration.

CONSULTATION RESPONSES

SHDC Ward Member Cllr GJ Taylor

Objection.

"I wish to object to this application, as I believe this is an unsuitable use for this building in a conservation area of an historic market town. I also do not wish to see an increased uptake of gambling, particularly in an establishment which plans to open for 24 hours a day. I am concerned about increased crime, disorder, noise and anti social behaviour. This would have a negative impact

on this part of town and could potentially see the increase of vulnerable people being drawn into gambling. Please read this as an objection to this application on behalf of myself and many local residents."

SHDC Member Cllr Angela Newton

"I have been contacted by several residents in my Ward who have voiced their concern about this proposal. They feel the location is totally inappropriate for such activities. Hall Place is a prime shopping area of Spalding and if we want to encourage more retail businesses into our town centres we do not need this sort of outlet. Residents voice concern about proposed 24 hours gambling, sometimes by people who are addicted and can least afford to be in this type of establishment. I do not think allowing this would give out a signal that South Holland DC are doing all they can to encourage more retailers and more investment into the largest town in our District. I cannot see anything in the proposal which leads me to believe the building will be enhanced and provide any benefits to the majority of residents of South Holland."

SHDC Environmental Protection

No objection. Should permission be granted, would ask for a condition that requires the applicant to detail how noise will be controlled and managed so that it does not adversely affect other businesses/residents.

SHDC Licensing Officer

The proposed business activity is subject to the requirements of the Gambling Act 2005 and an application from the business operator has been received. This application is itself subject to a consultation period (ended 12th August 2021) and will be dealt with on it's merits under the Act, which is likely to result in a Licensing Committee / Licensing Panel hearing in due course. Any representations are limited to the range of persons defined in the Act as being entitled to make representation and must relate specifically to the licensing objectives set out in the Act. No other representations can be considered as part of the licensing process. The Licensing Team itself doesn't have a separate view on the planning application and must remain impartial due to the ongoing licence application process.

SHDC - Inward Investment Manager

Object: The Economic Development Team are unable to support this application for the following reasons:

These premises are situated in the primary retail shopping area of Spalding as designated in the current South East Lincolnshire Local Plan.

The application makes no mention of bringing the rest of the building into use, or how the building's appearance would be enhanced.

We do not consider the persona of this type of use to be conducive with the ethos of the work we are doing to enhance and revitalise the town centre in order to encourage and support independent retail and family friendly hospitality businesses.

There is already a similar business in very close proximity so another one would not increase or enhance the diversity of the town centre offer.

There is also a risk that allowing this proposal may discourage other retailers from taking space in the town centre, undermining further inward investment.

Spalding & District Civic Society

Comments:

As the site is in the primary shopping area and the conservation area and is designated as a primary shopping front by Policy 26 of the South East Lincolnshire Local Plan would like more detail as to how the applicant intends to make use of the shop display windows as the application is silent on this.

The justification for Policy 26 highlights the risks of clustering of non A1 frontages can create dead frontages thereby having an effect on footfall. This particular part of Hall Place already has a number of non A1 frontages in the form of a bank, an employment agency and is also opposite a building society and another bank.

Policy 26 also requires the upper floors to be effectively used. Cannot see that the proposal makes the fullest use of the 1st floor (in particular the front room which the application is silent on) and the top attic floor.

Also refer to Policy 29 on conservation areas. This requires that proposals within, affecting the setting of, or affecting views into or out of, a Conservation Area should preserve (and enhance or reinforce, as appropriate) features that contribute positively to the area's character, appearance and setting.

Policy 29 requires proposals to assess and mitigate against, any negative impact the proposal might have on the townscape. The applicant has not made that assessment and therefore would like to the applicant to make that assessment and demonstrate how the proposal will enhance the entire building, in particular the exterior that is in need of some restorative works, particularly to the windows, lintels and leadwork.

Rt Hon Sir John Hayes CBE MP

Objection raising the following matters:

24 hour opening is unwelcome and unnecessary.
24 hour opening would lead to increased anti-social behaviour and extra pressure on the police.
Could lead to problem gambling.
There are a number of betting shops with gaming machines and New Horizon Gaming Centre in the town centre, so this area of entertainment is already well catered for.
Site is in a prominent position; SHDC needs to do more to offer incentives to small independent traders who would enhance the town's retail offer. This proposal would discourage other retailers.

Public

67 objections have been received, raising the following matters:

Contrary to Policies 26: Primary Shopping Frontages; Policy 29: Historic Environment; Policy 32: Community Health & Wellbeing
Impact a business of this nature may have upon the local area
Not a use would want to see on the High Street, as it will put off potential retailers investing in market town
It will not attract subsequent new businesses that we need to enrich and benefit Spalding
Cannot see the relevance and benefits of location opposite national retailers as set out in the application
"Dead shopfronts" in Spalding
Site is in a prominent position
Proposal would have a negative effect upon the town of Spalding and how it appears to the surrounding towns
This location is in the conservation area of our historic town centre and will do nothing the enhance our high street
The people who go in will not be shopping or spending their money elsewhere - unless it would be another shop that sells cheap alcohol or fast food
The proliferation of cheap shops, charity shops, fast food outlets and low aspirational shops discourage quality business from opening in the town centre.
Studies show that the poorer the area the more betting/gambling shops there are
Research also has proved that people living in these areas are more likely to be problem gamblers and there is a rise in violent crime
When looking at new proposals for the town it should be to the benefit of the whole community
Spalding is not a city or seaside resort, it is a market town
Spalding isn't Mayfair or Belgravia
Question the need for a 24 hour "adult gaming venue" within Spalding
Being open 24 hours would attract disturbance which will bring along with it noise concerns
Anti-social behaviour with more noise and disturbance for the nearby residents
Criminal and low life activities

Already have a gaming shop as well as numerous betting shops, along with online gaming
Moral duty to consider impacts
Gambling can be an addiction which ruins lives and we already have enough drug and alcohol addiction
Could not some of the new shops opening at Springfields be enticed to come to the town centre instead
The building could be put to other uses of more benefit to the town
Other assets in the town are underused
Limited police presence in the town would be over stretched
Likely to create noise pollution and litter problem
Will deter people, especially the elderly or people with young children from visiting Spalding
Spalding needs to attract real business that attracts families not a gaming establishment that will detract other business looking to open in the town

One representation of comment:

A bit late for objections of anti-social behaviour and units in Market Place are more appropriate to retail outlets, given that there are already at least one gaming centre and three bookmakers' outlets on the same street and another in the vicinity.
Late-night opening won't be as much of a problem as the fairly constant anti-social behaviour which emanates from public houses and bars in the area at anti-social hours goes on into the early hours nothing can be done about it. If anti-social behaviour emanating from Bentley's and other such sources is deemed acceptable, do not see how there can be any logical objection to the licensing of the proposed new gaming centre.
Objections may have been submitted by others due to perceived ethnicity of the clients of proposed gaming centre.

PLANNING CONSIDERATIONS

The main issues in this case are:
Principle of Development
Layout and Design
Highway safety and parking
Impact of neighbouring Residents/land users
Heritage considerations

Principle of Development

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, states that the determination must be made in accordance with the development plan unless material considerations indicate otherwise. The starting point for decision making is set out in the NPPF 2021, as follows:

So that sustainable development is pursued in a positive way, at the heart of the NPPF is a presumption in favour of sustainable development (paragraph 11).

The NPPF goes on to address the vitality of town centres in Section 7. It is considered that the South East Lincolnshire Local Plan (SELLP) policies for town centres coincide with the provisions of the NPPF, despite pre-dating the NPPF, in that the SELLP defines a hierarchy of town centres and promotes their long-term vitality and viability, defines the extent of town centres and primary shopping areas, and makes clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre.

The recent changes to the Use Classes Order (UCO)and General Permitted Development Order (GPDO) have removed the A1 (Shops/retail) category; Class A was revoked from 1 September 2020; and amalgamated various uses in to Class E, which now covers a range of uses including the display or retail sale of goods, other than hot food.

Other uses within this category are: Sale of food and drink for consumption (mostly) on the premises, Provision of Financial services, Professional services (other than health or medical services),Other appropriate services in a commercial, business or service locality, Indoor sport, recreation or fitness (not involving motorised vehicles or firearms or use as a swimming pool or skating rink,), Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner), Creche, day nursery or day centre (not including a

residential use), Uses which can be carried out in a residential area without detriment to its amenity such as Offices to carry out any operational or administrative functions, Research and development of products or processes and Industrial processes.

It is to be noted that the Adult Gaming Centre use proposed is still considered to be a sui generis use within the revised Use Classes Order, and is not included within the uses above. Officers have reviewed recent appeal decisions and planning decisions in the wider region for similar uses, and have taken these in to account when applying the current planning framework to this proposal.

Within the SELLP Spalding is identified as a Main Service Centre, and within Policy 24: The Retail Hierarchy, Spalding is considered to be a Sub-Regional Centre. **Policy 24: Retail Hierarchy** of the SELLP, is one of the spatial suite of policies, that set out:

A. Sub-Regional Centres

The town centres of Boston and Spalding (as defined by the Town Centre Boundaries) will be the locational focus for the development of town centre uses; planning permission will be granted 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 provision of markets and other appropriate initiatives that would enhance the vitality and viability of Boston and Spalding town centres will be supported.

As part of the reasoned justification for this policy stance, the SELLP sets out at para 6.2.5 that within Spalding town centre there is a defined Primary Shopping Area where retail uses will be promoted over the Local Plan period. Primary Shopping Frontages are defined within the area. (see Policy 26: Primary Shopping Frontages).

Para. 6.2.6 of the SELLP goes on to explain that while retail uses are fundamental for attracting customers, non-retail uses, such as cafes and restaurants, can add to the vitality of centres. However, 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.

This use would be considered to be a leisure and tourist-related use, however, it sits outside the use classes, being a sui generis use. The re-categorisation within the UCO, although setting a wider base of uses than the previous A1 use, still precludes betting and gambling uses from the use class and still categorises such as sui generis, accepting that betting and gambling uses can have impacts outside the Class E uses.

The recent changes to the UCO are a clear reflection of a move by the Government towards greater flexibility in the range of uses to be encouraged in town centres. A key matter to consider is whether within this part of Spalding town centre, introducing this use would have a detrimental impact upon the town centre by reason of an over proliferation of such uses, as well as the impacts upon the character and function of the town centre.

The changes to the UCO, whilst grouping uses in to wider use classifications, still serves the purpose intended by the suite of policies relating to town centres within the SELLP, and these policies are not to be considered to be outdated as the intentions are clear and still support the vitality and viability of such areas defined within the SELLP.

The applicant considers that the policy is out of date, however the intentions of the policy are still clear. Government also recognises that the proposed use is a sui generis use, and may have impacts that differ from Use Class U.

Policy 25: Supporting the Vitality and Viability of Boston and Spalding Town Centres sets out that Spalding town centre will continue to be the primary destination for retail, entertainment, markets and events in the District, and Policy **26: Primary Shopping Frontages**, via the Policies Map defines the the Primary Shopping Frontages the District.

Policy 26 is now impacted by the changes to the Use Classes Order and the General Permitted Development Order, however the intentions that ground floor retail units in the Primary Shopping Frontages should be retained for appropriate uses unless it can be demonstrated that the loss of an A1 unit, by change of use or redevelopment will:

1. make a positive contribution to the vitality and viability of the Primary Shopping Frontage;
2. not result in a loss of retail floor space or frontage of a scale that undermines the retail function of the frontage; and
3. allow upper floors to be effectively used, including the possibility of independent use, where appropriate.

The blanking out of shop windows by externally-positioned opaque blinds or vinyl film or by other means will not be permitted.

Again, the changes to the UCO, whilst grouping uses in to wider use classifications, still serves the purpose intended by the policy and the policy is not to be considered to be outdated as the intention is clear.

Historically it has been accepted that Primary Shopping Frontages are particularly sensitive to breaks in the shopping frontage; the clustering of non-retail uses, such as banks, cafes and takeaways, particularly units of a large scale or lengthy unit frontage, can reduce the attractiveness of a Primary Shopping Area and can create 'dead frontages' having a knock-on effect on footfall and expenditure.

In order to assist with retaining vitality and flexibility in town centres the Government have reviewed Permitted Development Rights several times in recent years, and built in further changes that were permitted without the need for express planning permission, for temporary periods, and the most recent changes to the UCO and GPDO have amended this further.

The SELLP accepts that Policy 26 will need to ensure an appropriate mix of uses can be achieved over time to ensure the offer remains attractive. Appropriate non-retail uses (e.g. banks and restaurants) will be supported where it remains subsidiary to the retail offer. A loss of retail frontage of a scale that undermines the retail function of the frontage would be considered to have occurred where uses would, individually or cumulatively, change the function of that part of the frontage.

A further policy impacting uses within the town centre is **Policy 9: Promoting a Stronger Visitor Economy** that sets out that proposals for tourism and visitor development which utilise and enrich the natural and built environment and existing attractions of South East Lincolnshire to the benefit of the local economy, visitors and local communities will be supported within the boundaries of settlements identified in Policy 1.

Having considered the policies in the light of this proposal and the changes to the UCO and GPDO, officers consider that due to the compact size of Spalding Town Centre in comparison to other regional centres, this change of use would have a significant impact on the vitality of the town centre, and would detrimentally impact on the vitality of this retail frontage on a scale that undermines the retail function of the frontage.

Further, although technically this proposed use would relate to leisure and tourism, it is not considered that the use of this double fronted property would enrich the built environment of this part of the Spalding Conservation Area.

For the above reasons on balance it is considered that the proposal would be contrary to Policies 1, 24, 25, 26 and 29 of the SELLP.

Layout and Design

Further information has been sought of the applicant to set out any physical acoustic measures that have been considered to reduce the impact of this development on nearby residents. As a result an Operational Management Plan has been submitted. It is considered that matters relating to noise could be controlled via conditions.

The external changes that would be brought about relate to the Advertisement Consent application, and this is addressed in a further report.

Highway safety and parking

LCC Highways raise no objection to this proposal in terms of highway safety for vehicles or pedestrians. Parking within the town centre is considered overall to be adequate.

Impact of neighbouring Residents/land users

With regard to the impact on the amenities of nearby residents, further information has been requested of the applicant to set out any physical acoustic measures and management measures that have been considered to reduce the impact of this development on nearby residents, particularly as this is proposed to be a 24 hour use.

Heritage considerations

Policy 29: The Historic Environment, is clear that opportunities to identify a heritage asset's contribution to the economy, tourism, education and the local community will be utilised, and that proposals within, affecting the setting of, or affecting views into or out of, a Conservation Area should preserve (and enhance or reinforce, as appropriate) features that contribute positively to the area's character, appearance and setting.

It is not considered that the use of this double fronted property would enrich the built environment of this part of the Spalding Conservation Area, and for the above reasons on balance it is considered that the proposal would be contrary to Policies 1, 24, 25, 26 and 29 of the SELLP and the intentions of the NPPF 2021.

Planning Balance

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, states that the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

On balance there are factors in this case that indicate against the proposal and outweigh factors in favour of the proposal and the policies referred to above.

The change of use of the ground and first floors of this property from the last authorised use of E Use Class, to a sui generis use as an Adult Gaming Centre, would have a significant impact on the vitality of the town centre, and would detrimentally impact on the vitality of this retail frontage on a scale that undermines the retail function of the frontage.

Further, although technically this proposed use would relate to leisure and tourism, it is not considered that the use of this double fronted property would enrich the built environment of this part of the Spalding Conservation Area.

CONCLUSION

For the above reasons it is considered that the proposal would be contrary to Policies 1, 24, 25, 26 and 29 of the SELLP and the intentions of the NPPF 2021..

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:
A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a

duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

RECOMMENDATION

Delegated refusal.

The application was considered by the Chairman's Panel meeting of 3 September 2021 and it was agreed that a delegated determination was appropriate.