DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H16-0841-25**	**Applicant:**	**Merkur Slots (UK) Ltd**
Proposal:	Change of use from former E use class to Adult Gaming Centre (Sui Generis) - approved under H16-0789-21 (allowed on appeal). Removal of Condition 3 relating to opening hours and modification of Condition 5 relating to Operational Management Plan.		
Location:	Merkur Slots 32 - 33 Hall Place Spalding		
Terminal Date:	31st October 2025		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019	
02	Development Management
28	The Natural Environment
29	The Historic Environment

National Guidance

National Planning Policy Framework December 2024

Section 7: Ensuring the Vitality of Town Centres
Section 12: Achieving Well-designed Places
Section 15: Conserving and Enhancing the Natural Environment
Section 16: Conserving and Enhancing the Historic Environment.

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SHDC INTERNAL	0	0	0	2
OTHER STATUTORY BODIES	0	0	0	1
RESIDENTS	1	0	0	1

CASE OFFICER ASSESSMENT

Proposal

Planning permission was granted at appeal in June 2022 to change the use of the retail premises to an Adult Gaming Centre. In granting consent Condition 03 and 05 were attached, the former restricted the opening times until midnight each day, the latter required the use to operate in accordance with the submitted Operational Management Plan and Security Measures.

This current application seeks to remove condition 03 and vary condition 05 of permitted permission. Consent is sought to remove condition 03 to allow the use to operate 24hours each day, and an updated Operational Management Plan has been submitted necessitating the requirement to modify condition 05.

The agent advises the removal of condition is sought to allow the Adult Gaming Centre (AGC) to operate 24-hour daily to cater for customers who work outside the normal working hours and whose opportunity for leisure activities occurs between the hours of 01:00-9:00 in particular.

Site Description

The application relates to a traditional two storey brick building located within the Primary Shopping Area of Spalding town centre and within the Conservation Area.

History

H16-0789-21: Change of use from former E use class to Adult Gaming Centre (Sui Generis). Refused 7th September 2021. Appeal allowed 20th June 2022.
H16-0683-23: Change of use from former E use class to Adult Gaming Centre (Sui Generis). Withdrawn 29th August 2023.

Consultation Responses

Responses Received (between 12th September 2025 and 3rd October 2025)

Environmental Protection

The premises have no history of noise complaints during the current operation. The Arch Noise assessment does not indicate any additional potential noise nuisance relating to the proposed 24hr operation therefore this Department does not have any grounds to object to this proposal.

Highway and Lead Local Flood Authority

No objection.

Designing Out Crime Officer

Lincolnshire Policy do not have any objections to this application.

Conservation Officer

No objections to this proposal on built heritage conservation grounds. However, paragraph 29 of the appeal decision which covered the expansion of opening hours highlighted that at the time there was insufficient evidence to suggest that Spalding currently possesses a late-hight culture.

Public Representation

The application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance one letter of objection has been received, the main issues referred to are:

-Anyone living neat the town centre knows that being open twenty-four hours isn't about decibels, it's about what happens outside the noise survey.

-The proposed removal of the open hours condition would harm residential amenity through increased late-night activity, litter, anti-social behaviour and loss of local character.

Planning Considerations

Evaluation Section 73

The proposal relates to the removal of Condition 03 and variation of 05 of Appeal A of appeal reference APP/A525/W/21/3285049, through seeking permission under Section 73 of the Act. The purpose of an application made under Section 73 of the Town and Country Planning Act 1990 is to vary or remove conditions associated with an existing planning permission. These applications are used to allow for amendments to an approved scheme and can be made both retrospectively and prior to a permission being implemented, as long as the permission is extant.

The Act is very clear that: "On such an application the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted." As such, the Local Planning Authority are not able to revisit the principle of development and only matters relevant to the specific conditions can be considered. The effect of granting permission would be to issue a new permission with Conditions 03 and 05 amended, together with any other relevant conditions from the original permission, or subsequent relevant revisions since this permission. Planning practice guidance highlights that where less substantial changes are proposed, amending a proposal can occur through 'Amending the conditions attached to the planning permission, including seeking to make minor material amendments'.

The PPG clarifies that "Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted". There is no statutory definition of a 'minor material amendment'; but this is likely to include any amendments where its scale and/or nature results "in a development which is not substantially different from the one which has been approved".

In this instance, the subsequent amendments, submitted under this Section 73 application, have not varied the description of development.

In the case of R (Vue Entertainment Limited) v City of York Council, it was concluded that the decision gives clear support for use of s.73 in respect of changes to condition which go beyond 'minor' amendments. It places a clear emphasis on preserving the precise terms of the grant. If an amendment to a condition can be made which keeps the description of the development intact it may well be appropriate to make such an application under a s.73, even if the affect of the change will be significant".

Whether the Conditions are Necessary in their Present Form to Protect the Living Conditions of any Nearby Residents

In considering the proposed hours of operation in relation to Appeal A reference APP/A525/W/21/3285049, the Inspector, at paragraph 49 of their decision letter stated:

The Noise Assessment includes studies of three AGC sites elsewhere that operate on a 24-hour basis. It concluded that the noise effects of people leaving after midnight were audible, but their voices were masked by the sound of road traffic noise. However, as the appeal site is within what appears to be a quiet street at night, that is unlikely to accommodate late night traffic, background noise levels would be expected to be low. As a result, 24-hour use could harm the living conditions of existing residents. There is insufficient evidence to demonstrate that the town has a late-night culture. As such, despite the appellant's requested hours of use I have imposed the Council's requirement for the use to cease trading at midnight.

In response to the Inspector's comments, Archo Consulting Ltd, on behalf of the applicant's, have undertaken additional baseline noise surveys and a night-time contextual assessment outside of the application site.

The closest noise sensitive receptors are the residential units which are above the commercial units on the opposite side of the street approximately 20metres away. In respect of internal noise impacts the Noise Assessment (NA) states that as commercial premises adjoin the site and are not

considered noise sensitive, the building envelope will sufficiently attenuate any noise generated. As such, the potential impacts from internal noise transmission were scoped out of the assessment and not considered further. The conclusions of the report in respect of internal noise impacts are not disputed.

Regarding external noise impacts the NA states an additional night-time noise survey and assessment of contextual factors affecting the ambient soundscape was undertaken between 02:00 and 03:00 on 8th August 2025. The NA states

"*the measured baseline noise levels in the area indicate that noise levels are relatively high. The predominant ambient soundscape consisted of traffic on the local road network, with max levels occurring from passing people who were observed sporadically walking and talking on the street and birds. Most people passing by alone or in a small group with some generating noise from talking but not excessively. Some people briefly congregated on the street in a small group but soon moved on.*

The NA does not identify the source of 'traffic on the local road network', it is not clear whether this refers to Hall Place (which is pedestrianised from 10am until 4pm) or vehicles using Sheep Market and New Road. If the road source refers to Hall Place then customers could arrive and leave in vehicles, the shutting of car doors and associated engine noises of cars starting and pulling away has not been considered as part of the NA. Conversely, if the traffic on the local road network is vehicles using Sheep Market and New Road, then to hear these vehicles from outside the application premises would indicate background noise levels are very low.

The NA undertook a series of case studies of patron behaviour from six different Merkur sites with 24-hour consent to assess if noise impacts can occur. The NA states the studies concluded that patrons are nearly always alone or in pairs.

An assessment of potential breakout to the closest residential units (NSR1) was undertaken, this assessment showed that the front facade will attenuate noise levels to comply with BS criteria and that when the door is periodically open, predicted levels at NSR1 are below the criteria prescribed in BS8233.

To provide a worse case scenario approach to assessing noise impacts, an assessment of potential noise from patrons who chose to smoke talking loudly outside the front of the site was undertaken. To assess a worse case scenario it was assumed that 3 patrons were outside and all talking at the same time and same level. The NA predicted noise levels at the closest sensitive receptor NSR1 are below NR20 and BS8233:2014 criteria for internal habitable rooms during the night-time. The NA concludes that based on the assessment the site is suitable for 24-hour use.

However, the findings in the NA are on the assumption that there would be no more than 3 patrons entering and leaving the premises at any one time. Larger groups of four people or more would create more noise, on which the NA is silent. Indeed, of the six venues on which the case studies were based, Table 2 (Patron Survey Assessment Results) show several occasions where more than 3 patrons were entering or leaving the premises. Moreover, individuals smoking or vaping outside may also watch media or mobile devices, the NA has not considered these matters.

It is acknowledged that the site is within Spalding town centre and the Framework, at paragraph 90, advises that planning decisions should support the role that town centres play at the heart of the local communities by taking a positive approach to their growth and management and adaption. However, the Framework, at paragraph 90(f) further recognises that residential development often plays an important role in ensuring the vitality of town centres.

The planning system therefore needs to balance the interests of commercial concerns with residential occupiers, and in this regard it is necessary to be satisfied that the noise impacts would be acceptable particularly as the proposed development would operate throughout the night close to noise sensitive users, and in a town centre where the majority of commercial premises are closed during these hours and the impact of noise is more likely to be experienced.

An updated Operational Management Plan has been submitted as part of the proposal, although the content of this is acknowledged, as outlined above, the NA does not fully demonstrate how the proposal would not cause unacceptable noise impacts to the living conditions of neighbouring occupants outside the permitted operating times in the early hours of the morning. As such, the proposal would be contrary to Policy 2 of the South East Lincolnshire Local Plan, 2019 which

requires development to consider the impact upon neighbouring land users by reason of noise and disturbance, along with advice in paragraph 135 of the Framework which requires development creates places with a high standard of amenity for existing and future users and paragraph 198 which states that planning decisions should ensure that new development mitigates and reduces to a minimum potential adverse impacts resulting from development.

Other Matters

Whether the proposal would preserve or enhance the character or appearance of the Spalding Conservation Area

No external alterations are proposed to the building and in this regard the proposal will safeguard the existing character and appearance of the Conservation Area.

Biodiversity Net Gain

Biodiversity Net Gain (BNG) is required under a statutory framework introduced under Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) and requires developers to deliver a minimum of 10% Biodiversity Net Gain using standardized biodiversity units measured by statutory biodiversity metrics. This is often referred to as the mandatory requirements for Biodiversity Net Gain.

The effect of Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission is deemed to have been granted subject to the "biodiversity gain condition". The effect of this "biodiversity gain condition" is that development granted by this notice must not begin unless:

(a) a Biodiversity Gain Plan has been submitted to the planning authority, and
(b) the planning authority has approved the plan, or
(c) the development is exempt from the biodiversity gain condition.

For applications that are submitted prior to the introduction of this requirement, the development would exempt from the mandatory 10% requirement and as such, the Biodiversity Gain Condition would not apply. The enabling permission approved under Appeal A reference APP/A525/W/21/3285049 was permitted prior to the introduction of the 10% mandatory requirement and as such the proposal is exempt.

Planning Balance

As detailed above, Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The site relates to existing business premises and it is advised that the extended hours of use will generate employment, to which moderate weight is attached. However, this must be balanced against the effect of noise on residential occupiers, and it has not been demonstrated that the noise impact of the proposed development would be acceptable beyond the permitted hours, the benefit of the proposal would therefore not outweigh the harm.

Although a licence has been granted for the extended hours the planning application has to be considered on its individual planning merits and whilst the lack of objection from the Environmental Protection Officer is acknowledged this does not mean there would be no planning harm arising from the proposal.

The proposal is contrary to the South East Lincolnshire Local Plan, 2019 and the provisions of the National Planning Policy Framework (December 2024) when viewed as a whole. In this instance there are no material considerations that weigh in favour of the proposal and as such the planning balance is against the development.

Conclusion

Taking the above considerations into account, the proposal is considered to be contrary to policy 2 of the South East Lincolnshire Local Plan (2019), along with the identified sections contained within the National Planning Policy Framework(December 2024). The are no significant factors in this case

that indicate in favour of the proposal and outweigh the consideration against the proposal and the policies referred to above.

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

Base on the assessment detailed above, it is recommended that the proposal should be refused under delegated powers.