



Appeal Decisions

Site visit made on 20 June 2022

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2022

Appeal A Ref: APP/A2525/W/21/3285049

32-33 Hall Place, SPALDING PE11 1SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Merkur Slots Ltd (UK) against the decision of South Holland District Council.
 - The application Ref H16-0789-21, dated 21 July 2021, was refused by notice dated 7 September 2021.
 - The development proposed is Change of use from former E use class to Adult Gaming Centre (Sui Generis) use.
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Appeal B Ref: APP/A2525/H/21/3286069

32-33 Hall Place, SPALDING PE11 1SG

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Merkur Slots (UK) Ltd against the decision of South Holland District Council.
 - The application Ref H16-0790-21, dated 21 July 2021, was refused by notice dated 7 September 2021.
 - The advertisement proposed is for new signage.
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Decision

1. Appeal A is allowed, and planning permission is granted for the change of use from former E use class to Adult Gaming Centre (Sui Generis) use at 32-33 Hall Place, Spalding PE11 1SG in accordance with the terms of the application, Ref H16-0789-21, dated 24 August 2021, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan drawing reference 999-EXPR-03 r 02 (excluding details of proposed advertisements) and proposed ground floor layout plan 999-EXPR-01 r 02.
 - 3) The premises shall only be open for customers between the following hours: 0700 - Midnight on Mondays to Saturdays and 10:00 - Midnight on Sundays.
 - 4) Sound proofing shall be undertaken, in accordance with the Archo Consulting Noise Assessment reference PR2001_62_FINAL dated 08/09/2021, prior to the use commencing.
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- 5) The approved use shall be operated in compliance with the operational and security measures specified within the 'Operational Management Plan and Security Measures' document, dated August 2021.
2. Appeal B is dismissed.

Preliminary Matters

3. In connection with appeal A, objections include concerns with respect to issues of morality and ethics due to the effect of gambling on vulnerable groups. The National Planning Policy Framework (The Framework) addresses this matter. Paragraph 188 states that the focus of planning policies and decisions should be on whether proposed development is an acceptable use of land in land use terms, and the impacts of those uses, rather than the control processes or issues that are subject to approvals under other regimes such as licensing. Furthermore, paragraph 2 of the Framework, requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. As such, although I appreciate that there has been a high level of interest in the proposal, it is not within my remit to take the concerns so raised into account.
4. With respect to appeal B, the Council has referenced policies it considers to be relevant to this appeal and I have taken these into account as a material consideration. However, powers under the Town and Country Planning (Control of Advertisements) Regulations 2007 (The Regulations) to control advertisements may only be exercised in the interests of visual amenity and public safety, taking account of any material factors. Consequently, the Council's policies have not by themselves been decisive in my determination.

Main Issues

5. The main issues for Appeal A are:
 - The effect of the proposed use on the vitality of the Spalding Town Centre, and
 - Whether the proposed use would preserve or enhance the character or appearance of the Spalding Conservation Area (SCA).
6. Paragraph 136 of the Framework states that advertisements should be subject to control only in the interests of amenity and public safety. The Council has not raised any public safety concerns and I have no reason to disagree with this conclusion. Consequently, the main issue for Appeal B is the effect of the proposed advertisement on the amenity of the area.

Reasons

Vitality of the high street – appeal A

7. The appeal site is within a designated Primary Shopping Frontage (PSF). Policy 26 of the South East Lincolnshire Local Plan 2019 (LP) states that units within the PSF should be retained predominantly for retail use, unless it can be demonstrated that its loss would make a positive contribution to the vitality and viability of the PSF, would not result in a loss of A1 floorspace of a scale that undermines the retail frontage, and allows the first floor to be effectively used. The policy does not explain what proportion of retail activity should be

retained before a proposal would adversely and demonstrably erode the retail function of the frontage to jeopardise its predominance.

8. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (The Regulations) came into effect on 1 September 2020. The appeal site would now fall within Class E of Part A, Schedule 2. As such, reference to Class A1 within the LP has been subsumed by the above change and results in a small inconsistency in policy language.
9. Nevertheless, this policy objective is echoed by the Framework that seeks to ensure the vitality of town centres. This seeks, at paragraph 86, to promote the long-term viability of town centres, allowing them to grow and diversify in a manner that responds to rapid changes in the retail and leisure industries, allows for a suitable mix of uses and respects their distinctive characters. As a consequence, despite the identified inconsistency, the policy has substantial weight in the consideration of the merits of this appeal.
10. An Adult Gaming Centre (AGC) is a sui generis use. This is not therefore within the 'E Use Class' and could raise impacts that differ from those that are within it. However, such a use is not inherently incompatible with a high street location.
11. The unit is currently vacant and stands within a long frontage that includes a range of retail and non-retail uses. It was previously in use as a clothing shop. This shop included a shop-front display area that was screened from the main unit. The proposed use would maintain a similar shopfront display and screening to separate the display area from the main room. I am therefore unconvinced that the proposed use would be substantially different to the manner in which the previous retail use operated and would not result in a visually blank frontage. It would also result in the reoccupation of a vacant unit. This would assist in addressing the relatively high vacancy rate of 16% within the PSF and 9% within the town centre as a whole.
12. The site is close to a number of non-retail uses including several banks and an employment agency. The surrounding retail character of the area therefore includes a broad range of high street uses. A footfall survey, submitted by the appellant, recorded visits of customers to three other AGCs and showed these in comparison to neighbouring commercial units. These illustrates that in those locations visitor numbers were comparable or greater than the number of customers using many traditional high street premises. This also demonstrates that the use would accommodate a reasonably large number of daily visitors and that customers would also potentially undertake linked journeys, making use of other services provided locally. Therefore, it is unconvincing that the proposed use would form a 'dead frontage' that would have a negative knock-on effect on footfall or expenditure within the centre.
13. The Council identifies that an over proliferation of non-retail uses, such as hot food takeaways and betting shops, within the PSF, can impact activity within the centre and will be resisted. However, during my visit I only identified one other AGC within the relatively large town centre of around 300 units. In combination with the existing unit these together would represent an extremely small proportion of the total number of units within the centre. As a result, the proposal would not result in an over proliferation of similar uses.

14. The proposed use would complement the locally diverse character of activities. It would ensure that the retail function of the PSF would remain predominant and would support its retail function, maintaining and supporting its vitality and viability. It would also employ around 12 staff and reoccupy a vacant unit, delivering minor economic and environmental benefits to the area. The proposal would therefore accord with Policies 1 and 26 of the LP. These seek, among other matters, to direct development toward Spalding town centre.

Character and appearance – appeal A

15. Hall Place is a commercial road within Spalding Town Centre. The street consists of buildings with a variety of styles, many including shopfronts that include traditional stall risers and pilasters conveying various historic styles. The appeal site is a relatively wide retail unit within a traditional two-storey brick building. It has two large windows either side of its central and recessed double width doorway, with a low stall riser and decorative pilasters. The unit also includes a display area, behind the shopfront glazing, that separates views of the shop itself from the street. The unit is vacant but retains a fascia sign and projecting signage that served the former occupier. Due to its traditional appearance and design, the appeal site makes a positive contribution to the character and appearance of the surrounding commercial area.
16. The SCA is a large area of land that follows the river through the centre of the town. It includes the town centre and the historic core of the town. My statutory duty¹, requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Furthermore, paragraph 199 of the Framework requires great weight to be given to an asset's conservation when considering the impact of the proposal on its significance. The Council's SCA Appraisal identifies that the appeal site is within the Historic Commercial Centre, including several commercial streets. Whilst recognising that Hall Place has suffered the loss of many historic buildings the appraisal notes that many replacement buildings have been built with care and consideration to emulate the lost buildings, maintaining the character of the Market Place.
17. The Town Centre consists of a variety of traditional commercial buildings, interspersed with some more contemporary additions, maintaining building lines and scale with a traditional character. This results in a pleasant, arrangement of built form. The significance of the SCA therefore seems to derive from the largely coherent form of its buildings, their inter-relationship and their traditional commercial setting within its public realm.
18. The proposal does not include changes to the exterior of the building, other than the proposed advertisements, and would therefore have a limited effect on the character of the area. The scheme proposes a day-time activity that would attract commercial activity. This would complement the existing retail and leisure functions evident within the centre. As a result, the proposal would preserve the character and appearance of the conservation area.
19. Consequently, the proposed use would accord with LP policies 24, 25 and 29. These seek, inter alia, to support initiatives that ensures changes that have regard to the significance of heritage assets and for development to conserve and enhance the character and appearance of the conservation area.

¹ section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990

Amenity considerations – appeal B

20. The appeal site is within a commercial setting. Nearby shopfronts include a range of advertisement styles. However, these predominantly consist of externally illuminated signage, discrete lettering and projecting signs that align with fascia signs. The site is relatively prominent within the conservation area, affording wide views of the local streets, due to the widening of Hall Place to the northwest of the site.
21. The proposed fascia sign would be internally illuminated. This would be located in between the existing pilasters and would cover a wide double-fronted shopfront with an uninterrupted single banner. The fascia sign would be wide with a poor relationship with the form of the shopfront. Also, the proposed text includes a relatively large font which, when combined with the company logo, would be substantially larger than lettering of many local signs, drawing undue attention to the text. Furthermore, the text and logo would be set within a dark background. This contrast would further emphasise the strident nature of the lettering creating an effect that would be obtrusive and harmful. Accordingly, the proposed fascia signage, and its form of illumination, draws abrupt attention in an overt manner.
22. The proposed internally illuminated projecting sign would be displayed alongside a first-floor window above the height of the fascia sign. This would be higher than most local examples. Its heightened position, in combination with the proposed form of illumination would contrast with the predominant style of projecting signs evident locally. Although several local projecting signs are displayed at first floor level, these are a variety of styles that do not set a clear or compelling precedent to support the proposed signage.
23. The appellant has drawn my attention to approved signage for the same business in Worcester Conservation Area. That site is within a context that is not before me. However, the approved signage appears to include a disaggregated fascia sign, following the regular pattern of the window bays below and includes a non-illuminated hanging sign that is aligned with the fascia. This is therefore a sensitive design solution within a historic setting and is substantially different to the signage proposed in this case.
24. Consequently, the proposed advertisement would harm the amenity of the local area and would fail to preserve or enhance the character or appearance of the conservation area. As such, the proposal would conflict with paragraphs 130 and 136 of the Framework. This requires proposals to consider the effect of advertisements on amenity and to be sympathetic to the character of the local area. In accordance with the Regulations, I have also considered the development plan so far as it is material. The proposal would conflict with LP policies 2, 3 and 29. These seek development that would have an acceptable impact on amenity, to avoid visual intrusion by advertising and to conserve and enhance the character and appearance of the conservation area.

Other Matters with respect to appeal A

25. Concerns have been raised by interested parties that the proposed use would result in increased crime and anti-social behaviour. However, I have not been provided with robust evidence to demonstrate a clear link between the proposal and anti-social activity. Furthermore, the appellant's 'Company Brochure' illustrates that no alcohol would be sold on site, that customers tend to attend

on their own or as couples only and the business largely attracts shift workers in the late evening. These points are reinforced by the appellant's Operational Management Plan. This Plan could be required to be fully complied with by the imposition of a planning condition to maintain the described business practices.

26. The Council's Economic Development Team raise concerns that the proposal may discourage other retailers from taking space in the town. However, due to an absence of clear evidence of a negative effect, it is unconvincing that the use would discourage future investment. In contrast, the proposal would be likely to enhance the town's viability by encouraging greater customer footfall.
27. Residential flats appear to be over several commercial units local to the site. The appellant's Noise Assessment identifies that sound insulation would prevent internal noise from affecting the living conditions of occupiers of nearby flats and would cause minimal noise breakout. These conclusions are reasonable. I am therefore satisfied that the proposal would not result in noise disturbance to existing residents on these terms.

Conditions – appeal A

28. I have considered the use of conditions in line with the guidance set out in the Government's Planning Practice Guidance (PPG). I have imposed the standard conditions with respect to timeframes and approved plans as advised by the PPG for clarity and certainty. It has also been necessary to impose conditions to seek compliance with the Noise Assessment recommendations and the Operation and Management Plan in the interests of the protection of neighbour's living conditions.
29. 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.

Conclusion on appeals A and B

30. With respect to the proposed change of use associated with appeal A, the proposal would accord with the development plan as a whole. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. Therefore, the proposal is allowed, and planning permission granted subject to the attached conditions.
31. In contrast, the proposed advertisements associated with Appeal B, would harm the character and appearance of the area. Therefore, for the reasons given, I conclude that the second appeal should not succeed.

B Plenty

INSPECTOR