
Appeal Decision

Site visit made on 12 June 2023

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2023

Appeal Ref: APP/M2515/W/22/3311043

291 High Street, Lincoln LN2 1AL

- 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 Mr Ian Miller, Luxury Leisure against the decision of Lincoln City Council.
 - The application Ref 2022/0359/FUL, dated 6 May 2022, was refused by notice dated 25 August 2022.
 - The development proposed is the change of use from retail (Class E) to Adult Gaming Centre (AGC) (Sui Generis).
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Decision

1. The appeal is allowed and permission is granted for the change of use from retail (Class E) to Adult Gaming Centre (AGC) (Sui Generis) at 291 High Street, Lincoln LN2 1AL, in accordance with the terms of the application, Ref 2022/0359/FUL, dated 6 May 2022, subject to the following condition:
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.

Application for Costs

2. An application for costs was made by Mr Ian Miller, Luxury Leisure against Lincoln City Council. This application is the subject of a separate Decision.

Preliminary Matter

3. Since the determination of the application, the new Central Lincolnshire Local Plan 2023 (the CLP) has been adopted, superseding the previous 2017 version. The appeal must therefore be determined against the latest policy framework.

Main Issue

4. The main issue is the effect of the proposal on the vitality and viability of the city centre, including wider pedestrian circulation.

Reasons

5. The proposal is for the change of use of the ground floor of No 291, a modern commercial property on the eastern side of the High Street, from retail to adult gaming centre (AGC) use. The property lies on the upper section of the High Street between Mint St/Silver St and Corporation St/Clasketgate, towards the northern end of the Primary Shopping Area within Lincoln City Centre as designated by the CLP. Within this area Policy S36 applies, which allows an

AGC use in principle under category (o) - theatres, cinemas, museums or other similar leisure uses or visitor attractions (sui generis). However, within the Primary Shopping Area, proposals for uses outside Class E on ground floors will be considered on their merits against a series of criteria (b) to (h). These seek, inter alia, to avoid an over concentration of non-retail uses, large gaps between town centre uses and 'dead frontages' that would undermine the retail function of the city centre or its vitality and viability.

6. The proposal was considered and refused under Policy LP33 of the predecessor CLP. In addition to City Centre and Primary Shopping Area designations, this defined Primary Shopping Frontages which included this section of the High Street. As such, Policy LP33 allowed non-retail uses 'which pedestrians may be expected to visit in the course of a shopping, leisure or tourist trip' but only if 'a minimum of 80% of the frontage remains in (the then retail) use class A1'. The Council accepted the AGC proposal met the first of these criteria but not the second, due to the number of non-retail uses that have occupied premises along this section of the street. These currently include numerous food and drink premises and a crazy golf venue, although some retail uses also remain, namely CEx, The Works, House of Fraser, Blacks and Poundland.
7. However, all but one of these uses, a sui-generis Fish and Chip shop, fall within Use Class E which was introduced in September 2020 to allow greater flexibility between a diverse range of uses which primarily serve visiting members of the public and are suitable for town centre locations. The AGC proposal would be only the second sui generis, non-Class E use in this section of the High Street. CLP Policy S36 has been prepared in the light of the introduction of Class E and the Council now accept¹ that 'if a new application for the proposed use were to be submitted and considered under S36, it is likely that it would be granted'. No case is now put forward that the proposal fails to meet criteria (b) to (h) in the new policy and thus there is no valid reason to withhold permission.

Conclusion

8. This section of the Upper High Street forms an important part of the Primary Shopping Area of the city centre, linking the busy retail/commercial area south of the Stonebow with the slightly quieter section up to St Martins Lane where the pedestrian route along The Straight and Steep Hill up to the Cathedral and Bailgate begins. Whilst the area now includes numerous cafes, restaurants and bars these add to the vitality and viability of city centre as a whole and the AGC use would complement them. The proposal would thus make a positive contribution to the city centre in compliance with CLP Policy S36 and paragraph 86 of the National Planning Policy Framework which encourages a positive approach to its growth, management and adaptation.
9. Having regard to the above the appeal should be allowed.

David Reed

INSPECTOR

¹ Letter dated 5 June 2023