

BOSTON BOROUGH COUNCIL

Planning Committee – 26 July 2022

Reference No: B/22/0240

Expiry Date: 02-Aug-2022

Extension of Time:

Application Type: Full Planning Permission

Proposal: Change of use from a former payday loan shop (Sui Generis) to an Adult Gaming Centre (AGC) (Sui Generis)

Site: 9 High Street, Boston PE21 8SH

Applicant: Chongie Entertainment Ltd

Agent: Julian Sutton, JMS Planning & Development Ltd

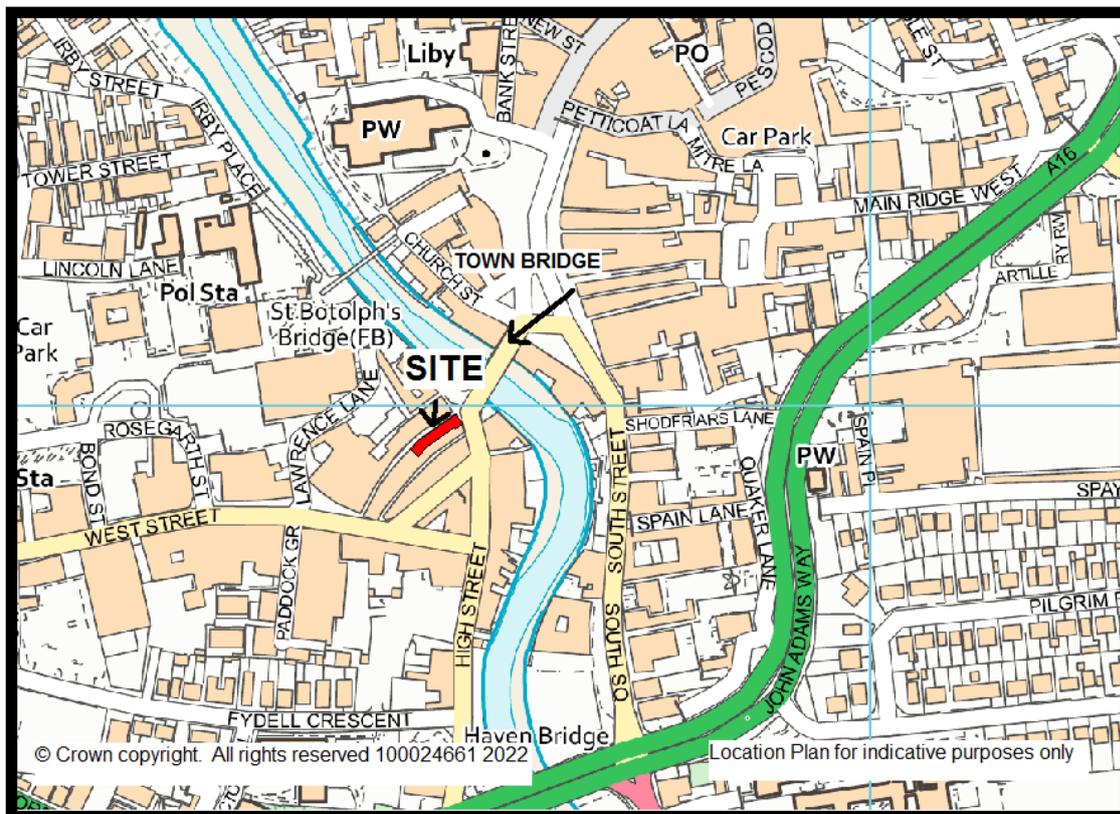
Ward: Station

Parish: Boston Town Area Committee

Case Officer: Lewis Humphreys

Third Party Reps: 40

Recommendation: Approve subject to Conditions



1.0 Reason for Report

- 1.1 The application has been referred to committee due to the level of public comment received and due to the similar nature of the proposal (B/22/0222), also before Members which raise similar considerations.

2.0 Application Site and Proposal

- 2.1 The application site is 9 High Street, a large ground floor unit that fronts onto High Street but with a frontage display running the length of the shop along the pedestrianised Emery Lane. The site is in the town centre and Boston Conservation Area as defined on Map 1 of the Local Plan. The site is also in Flood Zone 3.
- 2.2 The building is currently vacant and was last in use in August 2021 as a pay day loan shop and existing signage identifies the unit was last occupied by Cash Converters.
- 2.3 The proposal seeks to change the use to a different sui generis use to provide an Adult Gaming Centre. This would have a 'shop floor' on the ground floor with upper floors used for back of house and storage purposes.
- 2.4 An adult gaming centre is a licensed premises for those aged 18 and over that contains fruit machines and other similar style gaming machines. The licensing requirement limit the total number of category B machines in any one premises to up to 20% of the total number of machines. These machines have a maximum stake of £2 and a max pay out of £500. The remaining machines must be category C (with a maximum stake of £1 and maximum £100 pay out) or D (typically low stake fruit machine style, coin pushers, or crane grabs)

3.0 Relevant History

- 3.1 There are a few historic permissions that predate the existing use, as identified in the applicants supporting statement. Given the age of those permissions it is not considered they are relevant considerations in the determination of this application.

4.0 Relevant Policy

South East Lincolnshire Local Plan

- Policy 1 – Spatial Strategy
- Policy 2 – Development Management
- Policy 4 – Approach to Flood Risk
- Policy 24 – Retail Hierarchy
- Policy 25 – Supporting the Vitality and Viability of Boston and Spalding Town Centres
- Policy 29 – The Historic Environment
- Policy 32 – Community, Health and Wellbeing

National Planning Policy Framework

- Section 2 – Achieving sustainable development
- Section 4 – Decision-making
- Section 6 – Building a strong, competitive economy
- Section 7 – Ensuring the vitality of town centres

- Section 8 – Promoting healthy and safe communities
- Section 12 – Achieving well-designed places
- Section 14 – Meeting the challenge of climate change, flooding and coastal change
- Section 16 – Conserving and enhancing the historic environment
- Annex 2: Glossary

5.0 Representations

5.1 As a result of publicity 38 representations have been received from addresses across the Borough and surrounding parishes.

5.2 The objections and comments are summarised below, please note not all comments received may be material planning considerations:

Suitability of use

- Not suitable for centre of town
- This is a main shopping area and will not attract people into town
- Need to bring people in not turn people away to other towns like Spalding
- Premises should be used for something positive
- Enough gambling premises in town without adding more
- Should be retail, Boston needs good quality shops
- This is a natural thoroughfare through the town and should add to it not detract
- It will add to towns decay and Boston is being run into the ground by short sighted town planning
- Uses like this will keep businesses and shoppers away and will not portray the right image for the town that will attract professional skilled people
- Other small towns are vibrant and have character, Boston is dirty and depressing
- Empty premises should be converted to residential, which would provide a better use than gambling and help rejuvenate the area
- Site is Class E use (former A1 use) not a sui-generis pay day loan shop
- A different use might encourage people onto West Street and support the businesses there. This will only entice people to gamble
- Undermines towns funds projects to make town more attractive
- These games machines are also allowed in Bookmakers and Bingo Halls and if taken cumulatively there are already large numbers of slots machines in the area (4 AGCs, 9 Bookmakers, 1 Bingo Hall)

Health and Well-being

- Gambling uses cause misery, crime and suicide
- Easy enough to get drawn into gambling online without physical presence
- Enough issues in town without 24 hour gambling
- Don't need more traps for vulnerable people
- Duty of care to not to exploit vulnerable
- There is a cost of living crisis at the moment
- Crime rate is higher in Boston than elsewhere in the county and there is insufficient police
- Anti-social behaviour is a big issue in town and this will add to that
- Any positive revenue does not outweigh risks and associations
- Use is entirely profit driven and will not want customers to walk away and addicts cannot walk away by themselves

- Area is low income with deprivation and this will encourage people to spend money that cannot afford to
- It's a matter of public welfare and while not a planning consideration local authority have a duty to protect living standards and vulnerable people

Historic Environment

- This will keep people away from a beautifully restored and historic part of the town around town bridge
- There is a duty of care to protect our heritage
- Would harm the old Midland Bank building and spoil another area of Boston
- Would undermine Boston's culture and history
- Harmful impact on building next door

Transport

- Not a practical development, no progress has been made on reducing pollution it has increase and will continue to do so. A health threat to residents on A16, A52 and Liquorpond Street/Queens Road

Other

- Brand name Little Vegas not in keeping with image of town centre and historical image

6.0 Consultations

6.1 Lincolnshire County Council Highways and SuDS – Does not wish to restrict the grant of permission

6.2 Witham Fourth IDB – No comments

6.3 Environmental Health – No objections

6.4 Environment Agency - The former use as a payday loan shop and proposed use as an adult gaming centre can both be classified as less vulnerable from a flood risk perceptive and as there is no increase in flood risk to and from the development we have no comments to make on the application.

6.5 Heritage Lincolnshire – No concerns with the proposed use, may be impacts associated with signage at a later date

7.0 Planning Issues and Discussions

7.1 The key planning issues in the determination of this application are:

- Whether the use is acceptable in the town centre
- The impact on the historic environment
- The impact on the health and well-being of the community
- Other matters

Whether the use is acceptable in the town centre.

7.2 The site is situated on High Street, close to Town Bridge and is within the town centre as defined on Map 1 of the South East Lincolnshire Local Plan (2011-2036). Policy 24 of the Local Plan identifies Boston town centre as a sub-regional centre

and the locational focus of development of town centre uses. It is not within the primary shopping frontage or primary shopping area.

- 7.3 The policy goes on to define a number of uses and use classes that would be supported. Since the adoption of the Local Plan the Use Classes Order has been amended and a number of these classes no longer exist and have been amalgamated into the more flexible Class E – Members will note that this was a decision by Government in a deliberate effort to provide more flexibility for businesses and to encourage enterprise and diversity within town centres and reduce the reliance on retail. The proposed adult gaming centre use is a sui-generis use, it does not fall within any existing use class as defined in the order. Notwithstanding that, Policy 24 does identify leisure and tourist related uses as acceptable within the town centre.
- 7.4 The supporting text (at paragraph 6.2.6) identifies that non-retail uses can add to the vitality of town centres but acknowledges that poorly placed non-retail uses and an over-proliferation of similar uses such as betting shops can negatively impact on the local amenity and activity within a centre and, therefore, will be resisted. However, it should be noted that the same supporting text (at paragraph 6.1.3) also acknowledges that ‘town centres will have to take on new roles to continue to respond to the needs of local people, while being resilient to economic change’.
- 7.5 This approach is consistent with the National Planning Policy Framework (2021) (NPPF), paragraph 86 states policies should take a positive approach to the growth, management and adaption of town centres and should:
- (a) *define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters;*
 - (b) *define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre;*
- 7.6 This is supported by a definition of main town centres uses in the glossary that defines these uses as:
- “Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment and more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).”*
- 7.7 No specific reference to adult gaming centres (AGCs) is made within the Local Plan or the NPPF. Both are therefore ‘silent’ on them.
- 7.8 It is noted that the Local Plan and several comments make reference to betting shops, however, AGCs differ from betting shops and are distinct uses requiring planning permission to change between the two. As such it is important that these uses are not conflated. An AGC provides only low stakes games machines and is subject to a licence by the gambling commission under the Gambling Act 2005.

- 7.9 It is considered that an AGC is a leisure use and is, in principle, acceptable within a town centre in accordance with Policy 24 and the definitions provided in the NPPF. This is subject to the proliferation of the use and the considerations of Policy 25 below.
- 7.10 Policy 25 of the Local Plan identifies that Boston town centre will continue to be the primary destination for entertainment and that the council will support and extend the offer of town centres as destinations through the redevelopment of land within the town centre boundary that can provide for retail and other town centre uses. As such the application is broadly consistent with this approach.
- 7.11 Policy 24 does not identify what is considered to be an over-proliferation of use or at what extent that proliferation may become harmful to the town centre. These are matters for the decision maker to determine within the context of each application. The test of vitality and viability is not required in this case as the site is not part of the primary shopping frontage. Instead it is simply a test as to whether the cumulative level of use in the town centre is acceptable and accords with Policy 24 and 25.
- 7.12 There are currently 4 AGC's in operation within the town centre. Two on the primary shopping frontage on Market Place and Wide Bargate. A further use is proposed in this area on Strait Bargate and is also before Members for determination. There are additional AGCs at 18 High Street and 45 West Street within the town centre boundary.
- 7.13 The site is in a prominent location, with a long frontage along Emery Lane and is in a prominent position on High Street, at the end of Town Bridge on a main thoroughfare and cycle route through the town.
- 7.14 The existing use has been raised in objections that have been received. The site has history as an A1 use, with historic refusals for conversion in 1991 and 1993 to an A2 or an A3 use respectively. These uses predate the current Local Plan and NPPF and are of very limited weight in decision making. The last occupants were Cash Converters and they occupied the property at the time the Town and Country Planning (Use Classes)(Amendment)(England) Regulations 2020 came into force. Their occupation is described by the applicant as a sui-generis pay day loan shop while an objector has raised that as they did not always do pay day loans and were primarily for the buying and selling of goods a retail use within Class E is a more appropriate description.
- 7.15 It is not for this application to determine the lawful use of the previous occupation, and such a determination cannot be made in the absence of details as to how and when they operated as part of an application for a lawful development certificate. As the local plan does not seek to secure a specific percentage of retail or class E use in the town centre as a whole the current use is of less relevance than whether the proposed use is acceptable in the town centre, which is the primary focus of this determination.
- 7.16 On balance, it is not considered the additional unit would result in over-proliferation within the context of the town centre as a whole and thus it is not considered that the change to an AGC would cause any harm to the town centre. As such the use is considered to be acceptable.

The impact on the historic environment

- 7.17 The site is considered to be a non-designated heritage asset and lies within the Boston Conservation Area and is within the setting of several nearby listed buildings including, but not limited to:
- Grade II Listed 13/15 High Street
 - Grade II Listed Midlands Bank
- 7.18 Section 66 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 gives a statutory duty to “have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”. Section 72 gives a duty for “special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area” when determining planning applications that affect a conservation area. Section 16 of the NPPF and Policy 29 of the Plan give great weight to a heritage assets conservation.
- 7.19 Advice provided by Heritage Lincolnshire does not identify any harm to the heritage assets deriving from the use and as the use is considered appropriate within the town centre, as set out above, the use is considered to be compatible with the non-designated heritage asset and the significance of Boston Conservation Area and the nearby listed buildings.

The impact on amenity and the health and well-being of the community

- 7.20 Significant objection has arisen around the impact of the use on the health and well-being of the community. This primarily arises from an anticipated rise in anti-social behaviour, crime and the fear of crime, as well as the impacts an additional unit would have on levels of gambling addiction within the town, particularly in vulnerable communities.
- 7.21 Policy 32 of the Local Plan indicates development should contribute to the creation of socially-cohesive and inclusive communities, reduced health inequalities, and improved health and well-being of the community. It requires that, where possible and appropriate, development should create environments which discourage crime and disorder and do not create the fear of crime.
- 7.22 It should firstly be noted that an AGC is a licensed use. A licence from the gambling commission under the Gambling Act is required and a subsequent premises licence is required from the Local Authority. The licensing regime prevents entry to under 18s and prevents the consumption of alcohol on the premises. These licensing requirements are distinct from the planning function, and planning should not seek to deal with matters controlled by separate legislation.
- 7.23 All licence applications must comply with the 3 licensing objectives: preventing gambling from being a source of crime and disorder, being associated with crime and disorder or being used to support crime, ensuring gambling is conducted in a fair and open way, and protecting children and other vulnerable people from being harmed or exploited by gambling. Many of the objections raised in connection with the use relate to the licensing objectives above and therefore should not be considered as part of this application.

- 7.24 However, it is appropriate to consider the health and well-being aspects as a function of the proposed land use.
- 7.25 There are existing AGC uses within the town centre and as such any impacts on well-being will primarily arise from an intensification of that use. It is acknowledged that there is a risk to individuals suffering from, or vulnerable to, gambling addiction arising from the proposed use. It is also acknowledged that gambling addiction is a significant issue with serious negative impacts on affected individuals.
- 7.26 Paragraph 92(c) of the NPPF states that planning policies and decisions should aim to achieve healthy, inclusive and safe places which enable and support healthy lifestyles, especially where this would address identified local health and well-being needs.
- 7.27 Policy 32 of the Plan has clear aims regarding the promotion of an inclusive and healthy community. However, there is no identified health need within that policy or the plan as whole in relation to gambling addiction and little in the way of policy or justification that identifies at what level or density the proposed use would have a negative effect on the well-being of the community.
- 7.28 In short, it is unclear whether an intensification of the use would have a more harmful impact on well-being of the community and/or whether there is a particular density or location at which that use becomes harmful.
- 7.29 The proposed use would potentially have a negative impact on the health and well-being of the community but at an unquantified level that cannot be said to be contrary to Policy 32. That harm is therefore of limited weight. On this basis, it is considered it would not be possible to evidence a concern in this regard which would be sustainable at Appeal.

Other matters

- 7.30 The site is in flood zone 3 and as such requires the submission of a Flood Risk Assessment. The existing and proposed use are less vulnerable, as set out in the planning practice guidance flood risk vulnerability classification table. It is therefore not required that the proposal undergo the sequential test, however, such a test is not required for changes of use. It is considered the proposal would be safe from flooding and no further mitigation is required.
- 7.31 The proposed use is not anticipated to generate a significant amount of noise or disturbance to other residents and businesses and Environmental Health have raised no concerns. As such no impacts on amenity arising from the use are expected.

8.0 Summary and Conclusion

- 8.1 The site is within the town centre but not the primary shopping area or primary shopping frontage. An adult gaming centre is, in principle, considered to be an acceptable leisure use within a town centre. There are a number of existing uses within the town centre but taken cumulatively, it is not considered the proposal would result in over-proliferation of that use to the detriment of the town centre. As such the use is considered to be acceptable.

- 8.2 The proposal is solely for change of use and as such no adverse impact is expected on the historic environment or the character of the area. Similarly no harm is expected to neighbour amenity and the proposal is considered to be safe from flooding.
- 8.3 The proposal has the potential to impact negatively upon the health and well-being of the local community as it is acknowledged that the districts socio-economic standing means residents are likely to be more vulnerable to these negative impacts. However, such uses are already established within the town centre and it is not clear that an additional unit would exacerbate those risks. These negative impacts are therefore given limited weight in the planning balance.
- 8.4 On balance, the proposal is considered to comply with Policies 24 and 25, and any negative impacts to the health and well-being of the community do not outweigh that policy compliance. The proposal is therefore considered to be acceptable.

9.0 Recommendation

- 9.1 It is recommended that Committee Approve the application subject to the below conditions:

Conditions

1. The development hereby permitted must be begun not later than the expiration of four years beginning with the date of this permission.

Reason: To take account of the present restrictions on implementing permissions, in order to assist the recovery and in order to comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall only be undertaken in accordance with the following approved plans;
 - Site Location Plan
 - Proposed Ground Floor Plan

Reason: For the avoidance of doubt and the interests of proper planning.