Expiry Date - 20/11/2024

Development Control – Delegated Officer Report

Application Number: AWDM/1230/24 Recommendation – APPROVE

Site: Casino 3 Ann Street Worthing West Sussex

Proposal: Application for a Lawful Development Certificate for a Proposed Change of use from former casino (redundant use) to licensed tea room and gift shop (Use Class E)

Date of site visit: 29.10.24

Neighbours checked: n/a

Additional neighbour notifications: n/a

Site and Surroundings

The application site comprises a vacant property in Ann Street, a road with primarily commercial units on ground floor with commercial/residential above on the south side and the multi-storey car park to the northern side.

The surrounding area is the town centre, immediately off from the principal shopping streets in Worthing. The site is within the secondary shopping frontage.

Proposal

The application is for a lawful development certificate for a Proposed Change of use from former casino (redundant use) to licensed tea room and gift shop (Use Class E)

Relevant Planning History:

09/1086/FULL- Change of use from class A1 (hairdressers) to an adult gaming centre.

Planning Assessment

The uses

The determination of applications for Certificates of Lawfulness is restricted to consideration of the lawfulness of the proposal. Effectively, the issue for consideration is whether the proposal needs planning permission by means of an application, or, alternatively may be carried out without any such need because it is not development or is permitted development or is *de minimis* or is not a material change of use or is immune from enforcement and so has

achieved lawfulness. The, otherwise, planning merits or de-merits of a proposal are outside of the scope of the determination.

The relevant test for such an application is whether, on the balance of probabilities, the applicant has proven the proposed use is lawful. The onus is upon the applicant to demonstrate proof.

The applicant has submitted the following information:

The property is within the South Street Conservation Area, but is not Listed. The Council's website shows an application from 2009 (09/1086/FULL) for the conversion of the property from a hairdressing salon (then Use Class A1) to a casino, Use Class "sui generis". This planning consent had a condition imposing a time limit on the change of use, with that change of use expiring in 2012. After that date the property would have reverted to Use Class A1, which is now Use Class E. There are no further planning consents showing for the property which would have resulted in a different Use Class.

The proposed change of use is to a licensed tea room and gift shop, both Use Class E. The sale of alcohol will only be with food, for consumption on the premises, so the building is not primarily a drinking establishment and therefore not "sui generis". The licensed cafe is in effect a restaurant use, which is Class E. There will not be any off sales of alcohol.

An email from the planning administration team to the applicant on 11th September 2024 maintained that the property was still Use Class "sui generis", despite the previous change of use being time limited.

If the property has reverted to Use Class E then no change of use application is required for the proposed new business use on the site. The proposed new use is therefore lawful development.

If the property has retained its "sui generis" Use Class then the proposed change of use to Use Class E is Permitted Development by virtue of the proposed change of use from a casino, betting office, or pay day loan shop to Use Class E. The proposed new use is therefore lawful development.

The site had a 2 year temporary permission under 09/1086/FULL, there is no planning history that this was extended.

Google street view shows that in 2009 the property was a hairdressers. In 2012 the property was a a casino and this is shown on subsequent google screen shots for 2014, 2015, 2018 and 2020. It is likely that the use was established by the number of years the property was used as a casino but this is not being applied for.

Casinos are sui generis however class A of the Town Country Planning Act 1990 (General Permitted Development) (England) Order 2015.(as amended) states in Schedule 2, part 3 Changes of Use:

Permitted development

A. Development consisting of a change of use of a building from a use falling within one of the following provisions of the Use Classes Order—

(a)article 3(6)(m) (casino);

(b)article 3(6)(n) (betting office);

(c)article 3(6)(o) (pay day loan shop); or

(d)article 3(6)(r) (hot food takeaway),

to a use falling within Class E (commercial, business and service) of Schedule 2 to that Order.

Conditions

A.1. Development under Class A is permitted subject to the condition that, before beginning the development, the developer provides written notification to the local planning authority of the date on which the use of the building will change.]

The sui generis use class within the General Permitted Development Order allows a permitted change to use class E.

The application seeks a change to a café/gift shop both of which are within class E of the GPDO, even if the casino had not been established as indicated by the applicant above. The former use of the property as a hairdresser would establish it within use class E.

There are no internal or external changes.

Conclusion

The onus of proof rests on the Applicant to provide evidence that demonstrates (on the balance of probabilities) that the use is permitted. On the balance of probability in view of the historical uses of the ground floor of the building, the supporting material, legislation the change of use would be permitted development subject to the condition that, before beginning the development, the developer provides written notification to the local planning authority of the date on which the use of the building will change.

RECOMMENDATION:

Issue a Certificate of Lawfulness for the proposed development, the submission of a planning application for the change of use is not required.

Reasons for Recommendation

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The proposal constitutes 'development' as defined by Section 55 of the Town and Country Planning Act 1990, but is permitted by Schedule 2 part 3, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.

The applicant is advised that before beginning the development, written notification to the local planning authority of the date on which the use of the building will change shall be submitted.

Is recommendation contrary to letter(s) of representation? N/A

Case Officer: Jackie Fox Date: 06.11.24

Authorised by: Louise Prew Date: 11/11/2024