

## COMMITTEE REPORT

**Date:** 11 May 2017                      **Ward:** Guildhall  
**Team:** Major and                      **Parish:** Guildhall Planning Panel  
                    Commercial Team

**Reference:** 17/00274/FUL  
**Application at:** Site Of 17 To 21 Piccadilly York  
**For:** Erection of two storey multi unit mixed use development containing retail units and food kiosks (Class A1), cafes/restaurants (Class A3), drinking establishments (Class A4), studio/workspace (Class B1), meeting/exhibition space (Class D1) and ancillary facilities including outdoor seating areas  
**By:** Leach, McKenzie, Gardham  
**Application Type:** Full Application  
**Target Date:** 8 May 2017  
**Recommendation:** Approve for temporary period only

### 1.0 PROPOSAL

#### APPLICATION SITE

1.1 The application site is on Piccadilly, between Merchantgate and Dennis Street. The Grade II listed Red Lion public house is next to the site on Merchantgate. Otherwise the site is primarily adjacent housing built in the rear of plots along Walmgate. To the South East of the site a row of houses are currently under construction along Dennis Street.

1.2 The site is currently cleared. It previously accommodated the former Trolley Bus Depot which was constructed in the 1930's and was associated with early aircraft manufacture by Airspeed and the author Neville Shute. The building was identified as being one of merit in the Central Historic Core Conservation Area Appraisal. However permission was given for its demolition in September 2015 and the site is now cleared.

1.3 The site is in the Central Historic Core conservation area; and in flood zone 3 where flood risk is high. The site is also in the City Centre Area of Archaeological Importance and within the city centre as designated in the 2005 and emerging versions of the Local Plan.

#### PROPOSALS

1.4 Planning permission is sought for a mixed use development on site. The proposed uses would be accommodated in shipping containers, a mix of single and

two storey and there would be outside space accommodating seating for customers at both levels. A boundary fence would enclose the development. The composition of uses would include retail, food and drink kiosks, restaurants and drinking establishments, office and meeting/exhibition spaces. The facility would be open until 23.00.

1.5 In response to concerns raised over noise disturbance and residential amenity the applicants now propose to close part of the site on the evenings, as defined on the revised plans. The revised plans also clarify bin storage would be at the South East end of the site and infill the gap, where previously there would have been views onto the upper floor seating area from 11a Walmgate. An updated noise assessment has been provided which increased the estimated capacity of the site to 117 and predicts the noise impact and an updated Flood Risk Assessment issued.

1.6 The application comes to committee at the discretion of the Assistant Director, due to the Council involvement of the site, as landowner and due to the public interest in the scheme; there have been approximately 580 representations made by the public.

## **2.0 POLICY CONTEXT**

### 2.1 Development Plan Allocation:

Areas of Archaeological Interest GMS Constraints: City Centre Area

Conservation Area GMS Constraints: Central Historic Core

Flood zone 2

Flood zone 3

Listed Buildings: Grade 2; Red Lion Hotel Merchantgate York YO1 2TU

### 2.2 Relevant policies of the 2005 Draft Local Plan:

CYGP1 Design

CYGP15 Protection from flooding

CYHE2 Development in historic locations

CYHE3 Conservation Areas

CYS6 Control of food and drink (A3) uses

CYS7 Evening entertainment including A3/D2

### 2.3 Relevant policies of the Emerging Plan 2014 draft

SS4 York City Centre

R1 Retail Hierarchy and Sequential Approach

D2 Placemaking

D4 Conservation Areas

ENV4 Flood Risk

## 3.0 CONSULTATIONS

### Internal

#### Design, Conservation & Sustainable Development

3.1 No objections on the basis that the proposals are for a temporary use only. It is considered that harm at the bottom end of “Less than Substantial” is caused to the conservation area.

3.2 The proposals cause a number of design benefits (on the assumption that no permanent use is forthcoming). These include

- It is, in itself, a desirable thing to happen.
- It encourages footfall and engagement with the street and neighbourhood, making for better places.
- Without the proposed temporary use the site would visually remain in an undesirable state.

3.3 The architectural language of robust and varied materials simply-constructed and derived from a generally light-industrial aesthetic is appropriate for a temporary use that is likely to need to be robust, affordable and visually distinctive to draw footfall. This is in the absence of a normally more expensive and complexly constructed permanent design solution that would be needed in similar circumstances.

3.4 The design and access statement demonstrates that this approach does not lead to a crude design: explaining a consideration of texture, colour and composition in the design. The relationship of the above forms within conservation area is not completely at odds with it considering the evolution of Piccadilly. As quoted from the conservation area appraisal: “Piccadilly was named after its grand London counterpart but never lived up to the reputation of its forebear, in terms ambience or of the quality of its buildings. The area has always seemed isolated. Its position on the River Foss meant it did not attract the boutique retailers and department stores of Coney Street. Instead it proved a convenient location for uses more often found at the edges of cities. At the start of the 20th century, timber, builders’ and coal merchants could be found there, along with a sawmill and brewery. In the interwar period, businesses that established themselves included car show rooms, garages and a small airplane workshop”

3.5 It is only the lack of permanency in its design that causes a degree of harm to the conservation area at the bottom end of Less than Substantial.

3.6 These generally low level massing development forms are not considered to impact on the setting of adjacent listed buildings.

## Highway Network Management

3.7 No objections to the scheme. Officers recommend a condition secure making good to the footpath on the corner of Dennis Street and Piccadilly.

3.8 The site is located sustainably with good access by foot/cycle and public transport. Cycle parking facilities are being provided as part of the development proposals.

3.9 The existing vehicular site entrance is located on the junction of Piccadilly/Dennis Street. This entrance will hinder safe pedestrian access to the site and as such the access will be stopped up and kerb/footway made good. These works will be conditioned accordingly and carried out to the cost of the applicants.

3.10 The scale of development, in terms of pure traffic generation terms is insignificant. No car parking is proposed nor would be expected given the nature and location of the proposed development. Traffic generated by the proposals would therefore be limited to servicing traffic and could be accommodated on the highway network. The proposed units are small in nature, predominantly serving street food and small retail units. Experience around the city of such uses is that they tend to be serviced by smaller (transit style) vehicles. Parking bays exist on Piccadilly which would enable servicing vehicles to stop and unload. Adjacent areas of highway are covered by various waiting restrictions which will manage indiscriminate parking.

## Public Protection

3.11 Officers initially had significant concerns about noise from people attending the site and the impact this would have on residents, in particular in the evening. The nearest residential property is approximately 2 metres from the rear of the development site boundary at Mawson's Court, with properties also nearby at Bakers Yard, 15c Walmgate and the new residential properties currently under construction off Dennis Street.

3.12 Officers have advised that based on the revised plans (which reduce the capacity of the site after 21.00) they do not object to the scheme. They also note that the site will operate under premises licences under the Licensing Act 2003 where issues such a public nuisance will be considered and additional measures to control noise could be provided. Furthermore in the event of any statutory noise nuisance occurring then additional powers do exist under the Environmental Protection Act 1990 to control noise too.

3.13 The submitted noise assessment showed that as early evening progressed, background noise levels reduced and so resulted in the potential for greater impact. Comparison of the existing background levels with the predicted people noise arising from peak use of the site shows that noise levels would be likely to increase

by 4dB after 21:00, with increases of between 0.6dB and 3.5dB before this time.

3.14 Officers initially had concerns over how the predicted increase in noise level would compare with the background levels (the level of noise exceeded for 90% of the time).

3.15 Currently differences of between 4 and 14 dB are already found to occur, believed to be primarily as a result vehicle movements along Piccadilly. The proposed changes would be likely to result in a difference of between 6 and 17 dB at the nearest receptors. This change equates to a potential increase of up 3 or 4 dB in this difference. In addition there would be likely increases in the number of events occurring and Lmax levels associated with this.

3.16 Following discussions with the applicant's agent a proposal to restrict use of the ground floor and first floor external seating areas has been proposed, with hours be limited to 21:00.

3.17 In terms of the impact of the proposals on properties to the north of the site the layout of the development site is such that in the northern part of the site would be two storey high containers and so noise breakout is likely to be less due to the increased noise barrier effect.

3.18 In officer's view the mitigation provided by design and the proposed reduced capacity would be beneficial and help reduce the potential adverse impact that the development could have on nearby residents. There is still likely to be an impact, due to a new noise source being located on the site, but in officers view the submitted noise report with the proposed restrictions would indicate that the noise would not be likely to result in a significant adverse effect.

3.19 Officers are content that noise from plant & equipment and cooking smells / odour could be attenuated to acceptable levels. Officers do not have concerns over land contamination as the site is covered by hard-standing and no groundworks are needed for building construction.

## External

### Conservation Areas Advisory Panel

3.20 The Panel considered the proposal at Pre-App stage having received a presentation from the applicants and had been supportive of the principle acknowledging that the site needed to be used whilst a more permanent use was found and in the interim needed to be enlivened. It was also noted that a three year life was anticipated.

3.21 The Panel was disappointed that the proposed usage appeared to have changed from the Pre-app stage with a much larger preponderance of catering units and bars. It was also noted that the entire area had been clad in timber boarding. The Panel felt that the containers should be exposed to illustrate their true nature and the transient nature of the proposal.

#### Environment Agency

3.22 The agency provided comments on 18 April. The agency have no objection based on the submission of a revised Flood Risk Assessment (FRA), and the associated topographic survey. Provided that the proposed development is built in accordance with the submitted revised FRA and topographic survey then the agency have no objections. Surface water drainage arrangements should be agreed with the City of York Council drainage engineer.

#### Historic England

3.23 HE has no objection to the application on heritage grounds. However HE were advised at pre-application stage this was intended as a meantime use and have asked how this can be controlled in the application. They have also raised issue with the lack of active frontage proposed onto Piccadilly.

3.24 Piccadilly lies between the historic area of York Castle and the Eye of York and the medieval street of Walmgate (the principal access into the city from the East). This means the development sites lies within a very significant part of the city. However, the site faces on to an area which is less sensitive being characterised by a number of 20th Century buildings.

3.25 It is essential in considering these proposals that special attention is paid to the setting of the Red Lion pub and the Church of St Denys. Both are important buildings in the Conservation Area and are buildings listed at Grade II and Grade I respectively. Both contribute strongly to the streetscape and are prominent features in the Conservation Area. HE is satisfied that the development does not diminish their prominence or seeks to challenge them.

3.26 HE consider there are many opportunities to enhance the area and to draw out the many stories associated with the former garage site such as the connection to Airspeed aeroplane manufacturers and the development of the site as a trolley bus depot. Providing a community space to tell these stories and consider future long-term uses for the site and area as a whole may provide a beneficial outcome and a lasting legacy for the site. However, HE are concerned in part by the inward looking nature of the development proposal and in particular the palisades type wall that runs along the Piccadilly elevation of the site. HE would prefer a solution that was more open to present a more active feel to the street frontage.

## Police Architectural Liaison Officer

3.27 The police discussed the scheme at pre-application stage and measures were agreed to minimise potential crime and disorder.

3.28 It is noted that in the application an additional bar has been added on the ground floor and the outside dining area attached to the restaurant at first floor level has been extended considerably. In respect of this, the applicants would be advised to contact the Police Licensing Department as the extended outside dining area could result in unacceptable noise and there are also concerns about the consumption of alcohol within the public circulation area at ground floor level as a result of the additional bar.

3.29 None of the intended uses will extend beyond the hours of 2300hrs. Should any of the proposed units wish to sell alcohol, a Premises Licence would be required. The Licensing Unit would deal with any such application as and when submitted.

3.30 Licensing issues aside, in respect of security proposals for the site, officers have no issues or concerns at this time.

## Guildhall Planning Panel

3.31 Support the application.

3.32 The Guildhall Ward Planning Panel has been extensively consulted in the preparation of the Spark:York plans and has been reassured of the appropriateness of the proposed development despite some initial concerns about the possibility of a negative impact due to a potential for excessive food and drink use.

3.33 In light of the discussions, the view of the panel is that Spark:York's vision for the revitalisation of Piccadilly and their considerate, inclusive approach to the development is a breath of fresh air.

## York Civic Trust

3.34 The Trust notes the design scheme is heavily weighted towards catering outlets with very little provision for 'start ups' and non-catering enterprise. This outcome differs from what was outlined in the consultation process, which placed a greater emphasis on opportunities for (young) professionals through the provision of short-term and adaptable 'start up' space.

3.35 The proposal is for a temporary structure for a finite duration. Due to precedence set by other examples of temporary structures in the UK that have since gained greater permanency, most noticeably the 'London Eye', the Trust would

stress that temporary means temporary. The City of York Council and applicants would be advised to pre-determine a strategy to help assess the on-going viability and suitability of the proposed use of the site. We believe this will help formulate an 'end date' to the temporary use of the 17-21 Piccadilly.

## Publicity

3.36 Some 580 comments have been received as a consequence of publicity. 524 have been in support. Of major land owners in the 'Southern Gateway' (along Piccadilly), Northminster have objected to the application whilst a letter of support has been received on behalf of LaSalle UK (owners of 36-44 Piccadilly & Ryedale House). There have been objections from neighbours adjacent the site at 11a and Mawson's Court and by businesses involved with the dwellings under construction on Dennis Street.

3.37 People in favour consider this to be a vibrant use that the city lacks. Facilities for local, independent, and start up business which is much needed should be embraced. It would also provide social enterprise and a safe family and community atmosphere which is welcome. The alternative options for use of the site put forward by objectors; generic stores or hotels offering low paid jobs or a car park are not what the city needs.

## Objections

3.38 Those who object generally welcome the principle of the development, but consider this to be the wrong design and the wrong location. The key grounds of objection are as follows -

### **Principle of the proposed use**

- Throughout the supporting documents, a great deal is made of how the proposal will support start-up businesses and is about creating new jobs through new businesses. However, not even 10 per cent of the floorspace will provide for new workspace. Instead, the majority of the space will be for food and drink. The supporting information is therefore misleading as the development is actually about creating a new space for evening entertainment and socialising, and eating and drinking.
- Decision making - The Council has an interest in this scheme as landowner. It has been suggested an independent planning inspector appointed by the Secretary of State should be the decision maker in such a case.
- Make it York have raised concerns about potential detrimental impact on the market. Make It York has just invested a significant amount of money in the Shambles market area, creating a street food hub. They are working on making

the Shambles market a vibrant area where small and new businesses can take their first steps. Figures suggest that nearly 80% of the space at Spark York is going to be for food and retail and this seems at odds with it being a space for 'start up' businesses. It is a shame that the ethos of Spark York couldn't have somehow been integrated to what Make it York are trying to do in the Market area.

### **Harm to the conservation area and detrimental to regeneration of the wider area**

- The Local Planning Authority has a duty to not only protect and enhance the significance of the heritage asset, but also to sustain its significance. The proposed structure is of a temporary nature and in such a time prevents delivery of appropriate re-development of the site and wider area.
- The development would present a blank facade to Piccadilly of low quality material consequently harming the appearance of the street; turning its back on it not providing an active frontage. An active frontage would be much more appropriate, especially given the intention is to attract people into the area and along Piccadilly.
- Due to the developments low height it would be out of character with its surroundings, generally buildings are far taller. Materials – timber and shipping containers (of unknown condition) are low quality and inappropriate.
- The scheme fails to meet the requirements on design in the NPPF, in particular that developments add to the overall quality of an area, are visually attractive, respond to local character and history and reflect the identity of visual surroundings and materials. Shipping containers, however dressed up, fail to meet these requirements. They bear no relation to local character, local history, site identity or local materials. They are a completely alien form that should have no place in this conservation area. Furthermore due to the temporary nature of the proposals there is no ability to add meaningful landscaping to assist in improving the appearance.
- If allowed there should be stipulations that the appearance of the area is maintained and that structures are removed when the use ceases.
- Piccadilly is in the process of regeneration and much of the area is residential. The proposed use would be out of character.
- Long term planning aims for the wider 'Castle Gateway' area will be undermined by this development and delay permanent development of this part of the City. There is strong demand for development of the site, including as offices as a consequence of a lack of office space in the city. This development would delay

regeneration and likely result in business going elsewhere. It could also deter development elsewhere in Piccadilly by virtue of being a bad neighbour due to its noise and disturbance.

- The making good and landscaping of the site which was a condition of demolition of the former garage was never implemented.

### **Concern over the amenity of neighbours**

- Despite the proposed use as explained by the applicants there are multiple bars and restaurants shown in the scheme. Customers would use a substantially sized outdoor area. This would be a party venue, with capacity for over 150 people. There would be noise disturbance (from customers, amplified noise and people going home afterward) throughout the day until the proposed 23.00 closing time. There would be a significant adverse effect. Specific concern has been raised by neighbours about noise in the later evening and night-time and due to the size of the central outside area. Neighbours have re-iterated concerns over noise disturbance in particular as much of the upper floor would still operate after 21.00.
- Reports detailing proposed costs include PA systems and opening parties. These show a lack of respect for neighbours and that there will be noise disturbance.
- Restaurants and street food uses are proposed for the site. There are concerns over how odour will be suitably dealt with and litter.
- Piccadilly area is increasingly residential in character and there is concern crime, noise and anti-social behaviour will increase as a consequence of introducing this facility.
- Adverse effect of amenity due to proximity of storage and toilets to neighbours.
- Light pollution
- Development would lead to over-looking and would be over-dominant over Nelson's Yard (housing currently under construction on Dennis Street). It is reported potential future residents of the houses have been discouraged as a consequence of this proposed use. The original plans incorrectly identified Nelson's Yard on plan and there was no topographical survey. As such the impact could not be adequately assessed.

## **Access**

- The proposal does not provide adequate provision for access for disabled persons, the ramp shown on the drawing (to the upper level) is not suitable for wheelchair users and does not comply with building regulations; a lift is required.
- No explanation of how deliveries would be managed
- Concern about customers car parked illegally and blocking neighbouring streets.

## **Flood Risk Assessment and Drainage**

- The FRA falls short of the requirements in the NPPF and NPPG, especially as it does not set out how it will not cause flood risk to become worse elsewhere. This is particularly important given there are adjoining residential properties, which are vulnerable to flood risk.
- There is no adequate sequential test (considering adequate alternative sites such as the market) and no detail of drainage.
- Guidance within the York SFRA requires that the finished floor level is set 0.6m above the 1 in 100 year flood level, or 0.6m above ground level, whichever is greatest. Standard requirements set by national planning guidance and enforced by the Environment Agency are that finished floor level should be set 0.6m above the 1 in 100 year flood level, with the addition of an appropriate climate change allowance. The provision of an inadequate ground floor level will pose danger to staff and patrons of the site in addition to the potential for damage to the property and businesses of multiple entrepreneurs.
- Closed shipping containers may become buoyant and pose a significant floating hazard to people and property; there is no commentary on this point within the applicant's FRA.
- Under design flood conditions the site provides an important fluvial flood water storage role. New development will displace flood water which would otherwise be stored on the site and as a result increase flood risk elsewhere.

## **4.0 APPRAISAL**

### **4.1 Key Issues**

- Principle of the proposed use
- Impact on heritage assets (setting of listed buildings and the character and appearance of the conservation area)
- Amenity

- Flood Risk
- Highway safety

#### Principle of the proposed use

4.2 The site is not in the Castle Piccadilly regeneration area (as identified in the emerging Local Plan. The action area includes the south side of Piccadilly only. The site was allocated for housing in 2005 Local Plan; it has no allocation in the emerging Local Plan 2014 draft. The site is within the defined city centre, but outside the primary shopping area in both plans.

4.3 The proposed uses for the site are bars and restaurants, food stalls, retail units, exhibition and office spaces. The site is within the defined city centre where according to national policy within the NPPF the proposed uses should be encouraged and directed. The scheme is compliant with NPPF policy for town centres; that planning should be positive, promote competitive town centres, support their viability and vitality and provide customer choice and a diverse retail offer which reflect the individuality of town centres.

4.4 The proposals are consistent with the aspirations for the city centre in the emerging plan policy SS4 which advises that *"York City Centre is the economic, social and cultural heart of York. It is vital to the character and future economic success of the wider city. Its special qualities and distinctiveness will be conserved and enhanced whilst helping to achieve economic and social aspirations of the Plan"*.

4.5 However the NPPF also acknowledges that housing also plays an important role in ensuring the vitality of centres and local policies should set out policies to encourage residential development on appropriate sites. There is housing which neighbours the site and to secure a good standard of amenity for these residents is a core principle within the NPPF.

#### Impact on heritage assets (setting of listed buildings and the character and appearance of the conservation area)

4.6 The site is within the Central Historic Core Conservation Area and development of the site has the potential to impact the setting of nearby listed buildings, in particular the Red Lion, St Deny's Church and buildings along Walmgate.

4.7 The Council has a statutory duty (under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990) to consider the desirability of preserving or enhancing the character and appearance of designated conservation areas.

4.8 Section 66 of the Act requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall pay special regard to the desirability of preserving the building or its setting or exercise of any features of special architectural or historic interest which it possesses.

4.9 The NPPF states that in determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the desirability of new development making a positive contribution to local character and distinctiveness.

4.10 The NPPF states that pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life. This includes replacing poor design with better design.

4.11 National Planning Guidance (the NPPG) advises as follows on design. It requires consideration be given to crime prevention, security, inclusive access and the creation of cohesive and vibrant neighbourhoods. It advises well designed new or changing places should:

- be functional;
- support mixed uses and tenures;
- include successful public spaces;
- be adaptable and resilient;
- have a distinctive character;
- be attractive; and
- encourage ease of movement.

4.12 The conservation area appraisal for the Piccadilly area notes the barren streetscape and recommends it be made more attractive and advises that the corner of Piccadilly and Merchant Gate (next to the site) should be enhanced. At present, concrete bollards, an over-wide roadway and informal pavement parking detract from the setting of the Red Lion public house. Re-development of the site, which would give a cohesive, attractive and active frontage onto Piccadilly, is desirable.

4.13 Piccadilly is a street of early C20 origin which was created to improve access into the city centre. Due to changes in levels over the River Foss the road is in part built up and a number of historic buildings, such as the Red Lion Pub, now lie below the level of the pavement giving the street a somewhat disjointed presence.

4.14 The proposed development is relatively low in scale, of lesser mass than the building that previously occupied the site. Consequently rear elevations and means

of enclosure to later infill development at the rear of Walmgate would continue to be apparent in views from Piccadilly.

4.15 The proposed development would have a timber clad perimeter enclosure which would extend the height of a single container and provide a balustrade at first floor level. The finish of the timber cladding and the containers would be approved through condition. The drawings and the design and access statement propose a hit and miss louvred screen laid with a vertical emphasis and some colour to give vibrancy. There would be containers at first floor level, the top 1.3m of which would be apparent above the enclosing fence at both the northern and southern ends of the site and two on the Piccadilly side. Floor plans advise the containers would have green roofs and there would be planters within the site.

4.16 The building that previously occupied the site was primarily functional in its appearance. Piccadilly has a mixed character; it retains buildings of with an industrial appearance, in particular of note the Castle Mills car park which presents a dead frontage to the road with numerous timber infills. There are mid C20 offices at its mid point and later C20, early C21 commercial development at the south end. The conservation area appraisal identifies the Castle Mills car park site, Ryedale House and United House as buildings which detract from the character and appearance of the conservation area.

4.17 The proposed development would be a venue and a standalone development, intended to be in-situ for a temporary period only (3 years). It would be reasonable to expect that such a development would appear to make a statement and not blend in with the streetscape of Walmgate (which it sits behind) where buildings are of domestic scale and located on former burgage plots.

4.18 The proposed development considering its scale and palette of materials (bearing in mind the containers themselves would not be prominent in public views) would have a distinctive character and compared to the site both historically and as it is now would have a low level of harm on the character and appearance of the conservation area considering that the exposed containers are out of character and would not visually enhance the appearance of the street. The scale of the development means there would not be harm to the setting of listed buildings.

4.19 The development has an inward focus. It presents a solid and blank facade to the street and would not deliver meaningful public realm improvements. NPPG advice on town centre design advocates active frontages, to provide vibrant neighbourhoods, encourage pedestrian movement and give natural surveillance to the street to improve safety. Public realm improvements are needed in this area and are promoted in the conservation area appraisal. Because of these issues the scheme is of unacceptable design to be a permanent solution for re-developing the site. However given the current contribution the site makes to the character and appearance of the conservation area; there is no interest or activity at what is

currently a fenced off empty site, to give a temporary permission until a permanent solution for the site is decided would have a beneficial impact on the character of the conservation area.

4.20 The aforementioned design issues lead to a low adverse impact on the character and appearance of the conservation area. The harm carries considerable weight in assessment of the scheme and requires justification in the form of public benefits, as explained in paragraph 134 of the NPPF. There are public benefits in the vibrancy, needed community and business facilities the scheme would provide in an accessible area which it has been an aspiration to enhance and regenerate for sometime. These benefits combined with the proposed short lifetime of the development, being a meantime use for 3 years, are considered to outweigh the less than substantial harm to the character and appearance of the conservation area, even when attributing considerable weight and importance to the desirability of avoiding that harm in accordance with the statutory duty.

4.21 Inclusive access is a material consideration and is discussed in NPPG advice on design. At present there is only a ramp up to the upper floor level. Adequate access for all would be expected if this were a permanent development, however officers are minded of the viability of the scheme given its intent to be in situ for a temporary period only.

#### Amenity

4.22 The National Planning Policy Framework requires that developments always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.

4.23 The NPPF states decisions should avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development.

4.24 The proposed drawings demonstrate how this development is of a lesser scale than the building which previously occupied the site. The backland development to the rear of buildings on Walmgate were designed bearing in mind they would not expect outlook over the application site. As such the development would not be over-bearing or over-dominant over neighbours and nor would it cause an undue loss of light.

4.25 The development is a mix of single and two storey; containers have green roofs and the landscaping scheme has been progressed (with involvement of Edible York) since submission. The intent in this respect is that neighbours have a reasonable outlook.

## Noise

4.26 A Noise Assessment was carried out in January 2017 to inform an estimate of the impact of the proposed use. It is reasonable to consider noise levels could be higher at other times of the year, when there would be more activity in the area, and bearing in mind the public house on Merchantgate (Red Lion) has a beer garden. This is substantiated by a noise report undertaken at Ryedale House in August 2016 which reported higher average noise levels.

4.27 The assessment considered a worse case scenario of the proposed use being fully occupied and with people using raised voices. The outcome was that based on guidance the use in such circumstances would have the lowest observed adverse effect. According to the NPPG this is the level of noise exposure above which adverse effects on health and quality of life can be detected. Officers had concerns over noise because of how predicted noise levels would exceed noise levels observed for the majority (90%) of the time.

4.28 When discussing the lowest adverse effect the NPPG describes such situations as follows -

*“Noise can be heard and causes small changes in behaviour and/or attitude, eg turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a perceived change in the quality of life”.*

4.29 In such cases the NPPG recommends mitigation. The predicted time when noise levels would be most affected was after 19.00. This caused concern as the evening would be a time when neighbours are more likely to be at home, trying to rest and put children to bed etc.

4.30 Reasonable mitigation has been agreed with the applicants. At 21.00 it is proposed that much of the exposed space will be closed to customers. Relevant areas are identified on revised plans. Customers will be confined to areas which are predominantly enclosed by the containers. As such the capacity will be significantly reduced, the use will be far less apparent visually to neighbours and people would be in areas where noise pollution would be reduced by virtue of being enclosed. A condition would prevent amplified music causing disturbance. Neighbours have advised they still have concerns, in particular because it is proposed part of the upper floor will still be open. The area of concern is associated with restaurants, contains around 30 covers and is close to the outside area at the Red Lion pub. Officers consider that subject to appropriate management (action could be taken under the Licensing Act in this respect if necessary) the noise impact would not be undue for a city centre location.

4.31 The arrangement would be secured through planning condition. This approach would be consistent with NPPG guidance which warns that noise can cause greater effect at night-time when people are trying to sleep and that commercial developments, including fast food restaurants, night clubs and public houses can have particular impacts, not least because activities are often at their peak in the evening and late at night.

4.32 Noise from plant/machinery can be adequately mitigated, with mitigation secured by condition, to ensure that when operational, noise levels from equipment would typically not exceed existing noise levels.

#### Smells/odour

4.33 The applicant's strategy is that cooking odour is dealt with by equipment incorporated within the containers, with extraction flues at roof level by the emergency exit on Piccadilly. The flues would be at least 15m from nearest receptors.

4.34 The level of odour control which would be required is determined based on the DEFRA guidance which takes into account factors such as level of discharge, proximity to receptors and the amount and type (amount of odour/grease) of food produced. A planning condition would secure adequate odour control.

#### Flood Risk

4.35 The site is within flood zone 3 where flood risk is high. As such based on NPPF policy the sequential test needs to be passed, then the exception test (the latter as drinking establishments are proposed which are classed as a more vulnerable use) and a site specific FRA is required which demonstrates that for its lifetime the development will be safe from flooding and there will be no increased flood risk elsewhere.

#### Sequential test

4.36 Officers are content that the sequential test has been passed in this case on the following grounds -

- National planning guidance (NPPG) advises that the sequential test can be passed in cases where local plan policies identify the need for regeneration. For example, where there are large areas in Flood Zones 2 and 3 (medium to high probability of flooding) and development is needed in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives. The application site was identified for re-development in the 2005 Local Plan and now that the former building has been demolished it is not desirable for the setting or considering wider regeneration of Castle Piccadilly (as

proposed in both 2005 and 2014 Draft Local Plans) to leave this site undeveloped.

- Due to the nature of the scheme a city centre location is needed with low operating costs, at least 900 sq m in area. This is the preferred site due to its location, size and operating costs. The applicant's FRA is correct in that of the other local plan designated sites in the city centre (Hungate, Castle Piccadilly, York Central) these are either in Flood Zone 3 or in the case of York Central not available at this time. There are not other suitable city centre sites available that are sequentially preferable.
- As required by the NPPF (paragraph 103) less vulnerable uses (offices) have been positioned at the South East end of the site, which is of higher flood risk.

### Exception Test

4.37 For the Exception Test to be passed: it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk and a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users.

4.38 As referred to in appliance of the sequential test, regeneration of this site is desirable. The proposed use will have economic and social benefits, the latter by contributing to supporting strong, vibrant and healthy communities, by providing services that reflect the community's needs and support its health, social and cultural well-being as advocated in the NPPF. The applicants are a social enterprise who would use their profits and assets for the public good. This is expanded upon in the consideration of the exception test in the applicants FRA.

4.39 The NPPG states that if a site is part of a regeneration strategy it is very likely that it will provide the wider sustainability benefits to pass the first part of the Exception Test.

4.40 In consideration of whether a site would be reasonably safe from flooding the NPPG requires consideration be given to

- the design of any flood defence infrastructure;
- access and egress;
- operation and maintenance;
- design of development to manage and reduce flood risk wherever possible;
- resident awareness;
- flood warning and evacuation procedures

4.41 The proposed floor levels will be set above the 1 in 100 year flood level (so there would be NPPG compliant access/egress) and there would be on site

management signed up to the Environment Agency flood warning service, so the site could be evacuated if needed. The containers on site will be designed to be flood resilient, as detailed in the applicants FRA. These measures, given the 3 year temporary proposed period for the development, are adequate in terms of making sure the development would be reasonably safe for its lifetime.

#### Flood risk elsewhere

4.42 In order to reasonably prevent flood risk elsewhere the design is such that there will be no loss of flood water storage capacity on site and no increase in surface water run-off. The South East end of the site is below the 1 in 100 year flood level and in this area the development will be elevated. The area is currently all hard-standing and therefore run-off will be reduced by the introduction of planting areas and green roofs. A permanent development would be required to secure a run-off reduction of 30% to allow for climate change, however it is reasonable not to require such measures in this case as the development would only be on site for 3 years.

#### Highway safety

4.43 The National Planning Policy Framework advises that developments should:

- Provide safe and suitable access to the site for all people and minimise conflicts between traffic and cyclists or pedestrians.
- Maximise sustainable transport modes and minimise the need to travel.
- Incorporate facilities for charging plug-in and other ultra-low emission vehicles.

4.44 The scheme is compliant with the aforementioned NPPF requirements -

- The proposals include removal of the existing vehicle entrance into the site on the south side. The site has cycle storage in a convenient location. There are adequate access arrangements and the site is in a sustainable location where there is no need for any further car parking provision.
- There is adequate space to accommodate servicing and delivery vehicles on Piccadilly.

## **5.0 CONCLUSION**

5.1 The scheme is of a temporary nature and this is evident by virtue of the design and the approach to managing flood risk. A permanent solution for the site in particular would be required to present a more active facade onto Piccadilly and improve the public realm, in accordance with national design in the NPPG and the conservation appraisal of Piccadilly. It would also use appropriate materials as opposed to shipping containers. In terms of flood risk, a permanent development

needs to be reasonably safe for its lifetime; the design for this scheme is on a temporary basis only in this respect as it does not account for climate change.

5.2 The aforementioned design issues lead to a low adverse impact on the character and appearance of the conservation area. The harm carries considerable weight in assessment of the scheme and requires justification in the form of public benefits (as explained in NPPF paragraph 134). There are public benefits in the vibrancy, and the needed community and business facilities the scheme would provide in an accessible area which it has been an aspiration to enhance and regenerate for sometime. Even when attributing considerable importance and weight in the planning balance to the desirability of avoiding such harm, it is considered that the public benefits outweigh the harm. The adverse impact on the amenity of local residents can be suitably mitigated by proposed conditions.

5.3 As such officers recommend that the proposals be given a temporary permission in advance of the long-term regeneration of this site and Piccadilly in general. To allow a meantime use in this respect accords with national planning advice on when temporary planning permissions can be appropriate. Conditions are necessary to control the scheme and in particular to prevent an undue adverse effect on residential amenity.

## **COMMITTEE TO VISIT**

**6.0 RECOMMENDATION:** Approve for temporary period until 1 July 2020

1 The development hereby permitted shall be carried out in accordance with the following plans:-

Drawings 16YRK  
Site Plan GA - 100  
Floor Plans GA - 101 102, 103,  
Elevations and sections GA - 110, 111, 112, 120, 121

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

2 Temporary permission only

This use shall cease and all associated structures shall be removed from the site by 1 July 2020; unless prior to that date the consent of the Local Planning Authority has been obtained to extend the period of the permission.

Reason: In the interests of flood risk and to enable a meanwhile use of vacant land prior to its expected longer term regeneration.

### 3 Materials / large scale details

Large scale details including confirmation of proposed materials and finishes of the items listed below shall be submitted to and approved in writing by the Local Planning Authority prior to construction and the works shall be carried out in accordance with the approved details.

- Site enclosure (fencing)
- Containers (to include typical details of windows and accommodation of green roofs).
- Internal ramp/staircase and walkway
- The canopy roof structure including its means of fixing
- External signs (note that signs may also require advertisement consent)

Reason: In the interests of the character and appearance of the conservation area.

### 4 External landscaping & cycle parking

A detailed hard and soft landscaping scheme shall be approved by the Local Planning Authority prior to completion of construction. The scheme shall follow the principles detailed on the approved plans and shall include planting, provision of visitor cycle parking using Sheffield type stands or similar, and any changes/removal of street furniture to avoid clutter.

The approved scheme shall be implemented within a period of six months of the completion of the development. Any trees or plants which die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless alternatives are agreed in writing by the Local Planning Authority.

Reason: In the interests of the character and appearance of the area in accordance with paragraph 58 of the National Planning Policy Framework.

### 5 Storage areas

Details of arrangements for storage areas shall be submitted to and approved in writing by the Local Planning Authority prior to the first use of the site and the development shall be carried out in accordance with the approved details. The details shall explain how such areas will be managed without an adverse impact on neighbour's amenity.

Reason: In the interests of residential amenity.

## 6 Highway improvements

The development shall not come into use until the existing vehicular crossing at the south end of the site has been removed by reinstating the footpath and kerb to match adjacent levels (works to consist of; reinstatement of full height kerb to 6m radii, provision of tactile paving and dropped kerbs at crossing point over Dennis Street).

Reason: In the interests of good management of the highway and visual amenity and to ensure adequate and inclusive site access.

## 7 Staff cycle parking

Details of covered and secure cycle parking for staff shall be submitted to and approved in writing by the Local Planning Authority prior to first use of the development and the development shall be carried out in accordance with the approved details.

Reason: To promote sustainable travel in accordance with section 4 of the NPPF.

## 8 Lighting

Details of the external lighting scheme shall be submitted to and approved in writing by the Local Planning Authority prior to installation and the development shall be carried out in accordance with the approved details. The scheme shall include details on times of operation, location of lighting and manufacturer's details.

Lighting levels shall not exceed those recommended for E3 Environmental Zones as detailed in table 2 of the Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Light GN01:2011 document.

Reason: In the interests of residential amenity.

## 9 Plant & Machinery

Details of all machinery, plant and equipment to be installed in or located on the premises, which would be audible outside of the site, shall be submitted to the local planning authority for approval. These details shall include average sound levels (LAeq), octave band noise levels and any proposed noise mitigation measures. The machinery, plant or equipment and any approved noise mitigation measures shall be fully implemented and operational before the proposed use first opens and shall be appropriately maintained thereafter.

Note: The combined rating level of any building service noise associated with plant or equipment at the site should not exceed 44dB(A) L90 1 hour during the hours of

07:00 to 23:00 or 35dB(A) L90 15 minutes during the hours of 23:00 to 07:00 at 1 metre from the nearest noise sensitive facades when assessed in accordance with BS4142: 2014, inclusive of any acoustic feature corrections associated with tonal, impulsive, distinctive or intermittent characteristics.

Reason: To protect the amenity of nearby properties and the environmental qualities of the area.

## 10 Cooking Odours

There shall be adequate facilities for the treatment and extraction of cooking odours. Details of the extraction plant or machinery and any filtration system required shall be submitted to the local planning authority for written approval. Once approved it shall be installed and fully operational before the relevant use first opens and shall be appropriately maintained and serviced thereafter in accordance with manufacturer guidelines for the lifetime of the development.

Note: It is recommended that the applicant refers to the DEFRA Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems (January 2005) for further advice on how to comply with this condition. The applicant shall provide information on the location and level of the proposed extraction discharge, the proximity of receptors, size of kitchen or number of covers, and the types of food proposed. A risk assessment in accordance with Annex C of the DEFRA guidance shall then be undertaken to determine the level of odour control required. Details should then be provided on the location and size/capacity of any proposed methods of odour control, such as filters, electrostatic precipitation, carbon filters, ultraviolet light/ozone treatment, or odour neutraliser, and include details on the predicted air flow rates in m<sup>3</sup>/s throughout the extraction system.

Reason: To protect the amenity of nearby properties and the environmental qualities of the area.

## 11 Flood risk management

The development shall be carried out incorporating the proposed flood resilience measures as detailed in the revised Flood Risk Assessment, in particular the following mitigation measures -

- Provision of flood water compensation storage (where existing ground levels are below 1 in 100 flood levels)
- Measures for reducing surface water run-off
- Finished floor levels set above 1 in 100 year flood levels
- Flood resilient construction
- Operators to sign up to flood warning service and on-site management present to administer evacuation when necessary

Reason: To prevent flooding elsewhere by ensuring that compensatory storage of flood water is provided and to reduce the risk of flooding to the proposed development and future occupants in accordance with the NPPF, in particular paragraph 103.

## 12 Reporting of Unexpected Contamination

In the event that unexpected contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

## 13 Hours of operation

The site shall only be open to customers between 07.00 and 23.00 each day of the week.

Reason: In the interests of residential amenity.

## 14 Reduced capacity after 21.00

Between the hours of 21.00 and 23.00 the area identified on the approved plans (16YRK-GA-101 and 16YRK-GA-102) shall not be open to customers.

Reason: In the interests of residential amenity.

## 15 Waste Management

Waste shall only be emptied into bins between the hours of 07.00 and 21.00 each day of the week.

Reason: In the interests of residential amenity.

## 16 Amplified music

There shall be no playing of amplified or recorded music that would exceed background noise levels at the site boundary.

Reason: In the interests of amenity and the character and appearance of the conservation area.

## 17 Composition of uses

There shall be no more drinking establishments on site than as shown on the approved floor plans.

Reason: In the interests of residential amenity and to prevent crime and disorder.

## **7.0 INFORMATIVES: Notes to Applicant**

**1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH**  
In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraphs 186 and 187) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome: sought revised plans and through the use of planning conditions.

### 2. Food Informative

As this application relates to a business that will sell or supply food and/or drink (including alcohol), the proprietor of the business should contact by email at [public.protection@york.gov.uk](mailto:public.protection@york.gov.uk) or by telephone on 01904 551525 at their earliest opportunity to discuss registering the business as a food premises (a legal requirement) and to obtain advice on food hygiene & standards, health & safety, odour extraction etc."

### 3. Works in the highway

You are advised that prior to starting on site consent will be required from the Highway Authority for the works being proposed, under the Highways Act 1980 (unless alternatively specified under the legislation or Regulations listed below). For further information please contact the officer named:

Works in the highway - Section 171/Vehicle Crossing - Section 184 - Stuart Partington (01904) 551361

### **Contact details:**

**Author:** Jonathan Kenyon Development Management Officer

**Tel No:** 01904 551323

Application Reference Number: 17/00274/FUL

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