

## COMMITTEE REPORT

**Date:** 16 August 2018      **Ward:** Guildhall  
**Team:** Major and      **Parish:** Guildhall Planning Panel  
Commercial Team

**Reference:** 18/01102/FUL  
**Application at:** Spark York Piccadilly York YO1 9PB  
**For:** Variation of conditions 1 and 3 of permitted application 17/00274/FUL to amend approved plans to omit timber cladding from containers and for external artwork and vinyl lettering  
**By:** Spark York  
**Application Type:** Full Application  
**Target Date:** 26 July 2018  
**Recommendation:** Approve

### 1.0 PROPOSAL

#### APPLICATION SITE / BACKGROUND

1.1 The application relates to the Spark York development which was first considered by Main Planning Committee in May 2017.

1.2 The scheme presented to Committee was given planning permission to operate until July 2020, as a meanwhile use in advance of an anticipated permanent re-development of the Council owned site.

1.3 The scheme with planning permission proposed timber cladding wrapped around the containers at ground floor level and extending to provide 1.1 m high balustrading at first floor level. Consequently only the upper portion of the 1<sup>st</sup> floor containers would have been apparent in views from Piccadilly.

1.4 The timber cladding was the applicant's intent at submission stage (there were no revised plans), and was detailed in the submitted design and access statement. The statement proposed various options for the setting out and finish to the cladding and consequently condition 3 of the planning permission required the large scale details and finish of the cladding to be approved.

1.5 The May 2017 officer's report for the original planning application acknowledged that given the proposed use and its temporary nature it would be appropriate for a development that stood out rather than blended in with its surrounds. The structure was though deemed to cause 'less than substantial harm' to heritage assets, which was outweighed as a consequence of the public benefits brought about as a consequence of the proposed use.

1.6 The site is within an area where regeneration is promoted in the 2018 Publication Draft Local Plan - Policy SS5: Castle Gateway. The regeneration is currently subject to consultation and master-planning being undertaken through the My Castlegateway project.

1.7 The application is brought to Committee for determination at the discretion of the Assistant Director for Planning and Public Protection. The original application was considered and determined by the main Planning Committee. The development is on Council owned land and has been the subject of both letters of objection and letters of support. As such it is also brought to committee for determination.

## PROPOSALS

1.8 This is an application under Section 73 of the Town and Country Planning Act 1990 to vary the approved plans; to allow the site to retain its current appearance, without the timber cladding around the containers at ground floor level and partially at 1<sup>st</sup> floor level. The containers have been coated in varying colours and 4 on the Piccadilly elevation are decorated with artwork whilst another displays the Cuckoo Brewery logo.

1.9 Additionally to screen the recently constructed row of houses at Nelson's Yard a timber screen has been erected in the relevant corner of the site; this is higher than the approved timber enclosure in this area and has been erected by the neighbouring landowner. The ramped access to the upper floor has been replaced by a staircase. The latest plans show a lift to the upper floor also but this is yet to be installed.

## 2.0 POLICY CONTEXT

See Section 4 of this report for more details.

### 2.1 Development Plan Allocation:

Areas of Archaeological Interest: City Centre Area

Conservation Area: Central Historic Core

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

### 2.2 Relevant Policies of the Publication Draft City of York Local Plan 2018 ('2018 Draft Plan'):

SS5 Castle Gateway

D1 Placemaking

D2 Landscape and Setting

D3 Cultural Provision

D4 Conservation Areas

D5 Listed Buildings

## 3.0 CONSULTATIONS

### DESIGN & CONSERVATION

3.1 The painted containers, metal balustrade and artwork are undoubtedly more visually striking than the permitted design would have been. Their striking nature has some relevance to the spirit of the evolution of Piccadilly.

3.2 The relationship of the development within the conservation area is not completely at odds with it considering the evolution of Piccadilly and the industrial and commercial uses the street accommodated through the 20th century, as explained in the conservation area appraisal.

3.3 Officer comment on the original scheme was that it was 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”. The as-built scheme has a greater visual intrusion on the character of the conservation area and so the level of harm has increased. This is not to downplay the value of the artwork, but the assessment relates to its impact on the conservation area.

3.4 Officers recommend the removal of any lettering or branding that directly relates to a business within, because the general form of the development is so striking already that there is no justification for drawing attention to a particular business through direct advertising.

3.5 Officers’ advice is that the value of the reduced impact (less harm) that reinstatement of the approved scheme (or any other substituted more discrete proposal) could be judged against a balance of public benefits that could directly arise out of retention of the scheme as built. The applicant's case in the application refers to economic viability, although there are no detailed costs. In addition there could be further benefits such as provision of community uses and local start up business (apart from food and drink uses which currently dominate the development).

### GUILDHALL PLANNING PANEL

3.6 In general support the development of the site, but are disappointed that the result is not as sympathetic to residents and the area as in the approved plans and is more edgy than originally proposed.

### PUBLICITY

3.7 There have been 9 comments in support of the application and 9 in objection. All those who commented on the original application (approx 580 contributors) were consulted on this application.

## Support

- No objection to the appearance of the development which has brought life to this part of Piccadilly. It looks wonderful; post industrial style perfectly suited to its urban 'brownfield' site.
- Spark is one of the best and most innovative developments in the city centre for years. It's been established on a shoe string budget and given so many people (mostly young start-ups) a chance for a future in their own businesses.
- The proposers of Spark are not experienced commercial developers and hence it is most likely that the management failures that lead to this change requirement will have been borne of inexperience. As such it is undeserving of the hostility that it has met from some parties which is completely out of proportion to the actual planning issues at stake.

## Objections

3.8 The objections are over the appearance of the development and there have also been comments about the impact on neighbours due to customers overlooking adjacent sites and due to noise.

## Visual Impact

- The unlawful artwork and lettering on the containers is completely unacceptable in this conservation area. It is alien and a gross intrusion on the street scene. It is graffiti. One of the reasons why it was first permitted was due to the proposed timber cladding was specifically intended to ameliorate the inappropriate visual impact of old shipping containers. Would Members have approved the scheme initially if it were presented in its current iteration?
- The scheme should not have been permitted in the first case. It was contrary to policy as there was not public benefit to justify the harm to the conservation area.
- The Council is the landowner, supposedly receiving income from this dubious enterprise. As such it has a conflict of interest. It should not really be determining this application for its own preferred tenant on council land. The lease granted to Spark obliges it to comply with planning requirements. The Council should be using its powers and authority as freehold owner of the site to compel Spark to meet their lawful obligations. There should be no need to consider a retrospective application. One which can be taken to appeal so the whole issue is dragged out for months or even years.
- If the containers are to remain exposed then they should be painted in muted colours and not decorated as they are currently.

## Residential amenity

- Overlooking over Mawson's Court
- Noise does sometimes exceed background noise levels, in conflict with the relevant condition of the planning permission.

## 4.0 APPRAISAL

### POLICY BACKGROUND

#### Local Plan

4.1 The City of York Draft Local Plan Incorporating the Fourth Set of Changes was approved for Development Management purposes in April 2005 (DCLP). Whilst the DCLP does not form part of the statutory development plan, its policies are considered to be capable of being material considerations in the determination of planning applications where policies relevant to the application are consistent with those in the NPPF as revised in July 2018, although the weight that can be afforded to them is very limited.

4.2 The Publication Draft City of York Local Plan 2018 ('2018 Draft Plan') was submitted for examination on 25 May 2018. In accordance with paragraph 48 of the NPPF as revised in July 2018, the relevant 2018 Draft Plan policies can be afforded weight according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the previous NPPF published in March 2012. (NB: Under transitional arrangements plans submitted for examination before 24 January 2019 will be assessed against the 2012 NPPF).

4.3 The evidence base underpinning the 2018 Draft Plan is capable of being a material consideration in the determination of planning applications.

4.4 The revised National Planning Policy Framework was published on 24 July 2018 (NPPF) and its planning policies are material to the determination of planning applications. It is against the NPPF (as revised) [*if a GB case*: and the saved RSS policies relating to the general extent of the York Green Belt] that this proposal should principally be assessed.

## KEY ISSUES

4.5 This is an application under Section 73 of the Town and Country Planning Act 1990 to vary the approved plans, and make the following changes to the approved scheme –

- There is no timber cladding which was proposed to enclose the site from ground level to the height of the 1<sup>st</sup> floor balustrades/handrails. Instead the containers are exposed and have been colour coated or decorated with artwork.
- To screen the recently constructed row of houses at Nelson's Yard a timber screen has been erected (by the neighbouring landowner) in the relevant corner of the site.
- The ramped access to the upper floor has been replaced by a staircase. Plans show a lift to the upper floor also but this is yet to be installed.

4.6 Where an application under Section 73 is granted, the effect is the issue of a new grant of permission sitting alongside the original permission, which remains intact and un-amended. If, as in this case, the original application has been implemented the applicant may go ahead and complete the original approved scheme if they wish.

4.7 Given that an application under Section 73 seeks to amend an approved scheme, the development itself has already been judged to be acceptable in principle. In accordance with Government guidance, consideration of the current application therefore is not a complete re-consideration of the application as the local planning authority must only consider any significant changes to policy or other material considerations since the original grant of permission as well as the proposed amendments themselves, but not the principle of the development as a whole.

4.8. The matters of the principle of development, flood risk and highway safety were assessed as part of the original application. The proposed amendments compared to the original application have no implications with regard to flood risk or highway safety. In respect of these issues NPPF policy has been updated and relevant policies are now contained in sections 9 and 14, relevant 2018 Draft Plan policies are T1: Sustainable Access and ENV4: Flood Risk. It is noted that policy T1 asks for proposals to demonstrate suitable access, permeability and circulation for a range of transport modes whilst giving priority to pedestrians (particularly those with impaired mobility), cyclists and public transport services. Inclusive access was considered in the original application. By way of an update we have been advised by the applicants that the lift (to provide access to the upper floor) is due to be installed by October this year.

## ASSESSMENT

### Impact on Designated Heritage Assets

#### Relevant policy & legislation

4.9 The site is within the Central Historic Core Conservation Area. Nearby listed buildings are the Red Lion Public House on Merchantgate and St Deny's Church Walmgate.

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

4.11 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.

4.12 Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development, unless specific policies in the NPPF indicate development should be restricted.

4.13 The NPPF advises that local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) and take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. NPPF paragraph 192 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.

4.14 NPPF paragraphs 193 and 194 state that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given the asset's conservation. The more important the asset, the greater the weight should be. Any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraph 196

advises that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including where appropriate securing its optimum viable use.

4.15 National Planning Guidance (NPPG) gives further clarification on public benefits and what is regarded to be less than substantial and substantial harm. It states as follows -

- In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest.
- Public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in the National Planning Policy Framework

#### Central Historic Core Conservation Area Appraisal

4.16 The conservation area appraisal for the Piccadilly area states that “Piccadilly was developed much later than the rest of the medieval city centre and has larger scale building plots, reflecting its industrial past. The lack of high quality retailers and historic buildings means it is not a destination for visitors, and locals mainly use it for car parking ... A number of buildings are in poor condition suggesting neglect and lack of investment over many years ... The lack of retailers means there are few pedestrians during the day and the area is deserted at night. Many of Piccadilly’s older buildings appear shabby and decayed, adding to the sense that the area has been forgotten and neglected.”

#### Publication Draft City of York Local Plan 2018 (‘2018 Draft Plan’)

4.17 The 2018 Draft Plan was submitted for examination on 25 May 2018. The 2018 Draft Plan policies can be afforded weight at this stage of preparation in accordance with paragraph 48 of the NPPF according to their degree of consistency with the NPPF (the closer the policies to the NPPF, the greater the weight that may be given), and extent of objections received as part of the plan consultation. The evidence base underpinning the emerging Local Plan is capable of being a material consideration in the determination of planning applications.

4.18 Policy SS5: Castle Gateway is relevant to the application. SS5 states that the ‘Castle Gateway’ has been identified as a major regeneration area of the city centre. The purpose of the regeneration (relevant to this application) is to -

- Improve the economic, environmental and social sustainability of the area.
- Integrate the area with the broader city centre.



4.19 With regards the Piccadilly sub area, the policy states re-development will be delivered in accordance with the following principles -

- Reduce the size of the vehicular carriageway on Piccadilly and improve the size and quality of the pedestrian foot streets, including tree planting.
- Ensure active ground floor frontages to new developments fronting Piccadilly.
- Provide active river frontages to any new development on sites adjoining the River Foss.
- Seek developer contributions in the form of land and/or funding to contribute to delivering the masterplan and highways improvements.

#### My Castle Gateway project

4.20 Castle Gateway is a Council lead project to regenerate a significant area of the city centre which includes Piccadilly. The project provides an opportunity to identify new future uses, buildings and public space with the overall aim to create a part of York that is valued, well-used and loved.

4.21 The project currently has 2 options for the future of the application site which are explained as follows -

- Long term extension of Spark York  
Spark York is a unique venue, offering flexible space to local businesses and the community. Temporary planning permission expires in 2020, but could be extended.
- New workspaces and apartments  
Alternatively, a more permanent solution for future use of the site could be a live/work development, containing small workshop spaces as well as living accommodation. It could also provide space for independent shops and cafes.

#### Significance of nearby Listed Buildings and the relevant part of the Central Historic Core Conservation Area

4.22 The Red Lion public house is grade II listed and to the west of the main entrance to the application site. The building is the only listed building in the Piccadilly character area. The two developments are viewed together from Merchantgate and Piccadilly.

4.23 The Red Lion is a relatively complete timber framed building of several phases, with the rear wing rebuilt in brick. The description in *York, Volume V, The Central Area (RCHME)* indicates that the north east wing was built in the 15th century, with the south east part rebuilt in the 16th or 17 century. The south west wing built in two stages in the 17th century. The special interest of the building is derived from it being a relatively complete timber framed building, of several phases which include some rebuilding in brick.

4.24 St Deny's church is within the Walmgate/Fossgate character area. It is listed at grade I and identified as a landmark in the area appraisal. The impact on its setting was assessed in the original application due to the prominence of the church spire.

4.25 The conservation area appraisal for Piccadilly has been undertaken in accordance with Historic England guidance, taking into account current and past uses, social and economic factors, density, types and forms of buildings, and spaces. The appraisal explains that the area predominantly was first developed in the early 20<sup>th</sup> century and was industrial in character. It acknowledges the neglected condition of the area now and how rundown early C20 industrial and commercial buildings remain evident and notes the lack of activity in this area compared to other areas of the city centre.

4.26 Within the appraisal and policy SS5 of the Local Plan are policies and guidance to inform future regeneration of Piccadilly. In addition implementation is taking shape through the My Castlegateway project. Mixed-use regeneration of the area is a Council aspiration, as established in policy SS5, which seeks to improve the economic, environmental and social sustainability of the area.

#### Assessment of impact on heritage assets

4.27 The appearance of the development as previously proposed with the timber cladding gave a coherent appearance. Its omission has led to a far more utilitarian development which expresses the structure and appears somewhat cluttered.

4.28 The site in its current form causes less than substantial harm to the character and appearance of the Conservation Area and the setting of the Grade II Listed Red Lion Public house. This is not due to the containers being exposed as such but due to the site's makeshift appearance overall, including its detailing, external landscaping, how it relates to the street and deals with variations in ground levels and also the lack of an active frontage onto Piccadilly. The lack of an active frontage does not comply with the aspirations for redevelopment of the area as described in policy SS5 of the 2018 Draft Plan.

4.29 The conservation area appraisal identifies the site is in an area with limited activity and the public art is a device which draws some attention to the site. The artwork is however only prominent when in close vicinity to the site and where the development is viewed alongside 20<sup>th</sup> and 21<sup>st</sup> century buildings. It associates with the temporary nature of the development; it would be unsuitable as a permanent solution. Due to the position of the artwork it does not affect the setting of the Grade II Listed Red Lion Public house. However, it does contribute to the harm to the Conservation Area.

4.30 The significance of the Red Lion public house is due to its age and means of construction. The adjacent part of Piccadilly was introduced in 1912 and is set at a higher level than the listed building. The application site accommodated an industrial

warehouse type building (trolleybus garage) between the 1920's and 2015 when permission was granted for its demolition. The setting of the building and how it is viewed from Piccadilly has not changed significantly, hence the low level of harm identified in the previous paragraph.

4.31 St Deny's church is within the Walmgate/Fossgate character area. It is listed at grade I and identified as a landmark in the area appraisal. The impact on its setting was assessed in the original application due to the prominence of the church spire. The church is some 45 m from the application site. Due to the scale of the Spark York development it was assessed as having no impact on the church in the original application. This does not change with the revisions contained in this application.

### Public Benefits

4.32 The NPPG explains that public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in the NPPF.

4.33 The commercial units in Spark have been occupied in accordance with the approved scheme and the social space / business hub is used by various local groups and organisations. The Spark development has distinctive character and has helped revitalise the area and enhanced its vitality and viability; this fits with the Council's aspirations, as identified in local planning policy and guidance.

4.34 Spark is a Community Interest Company (CIC). CICs are limited companies which operate to provide a benefit to the community they serve. The purpose of CIC is primarily one of community benefit rather than private profit. Whilst returns to investors are permitted, these must be balanced and reasonable, to encourage investment in the social enterprise sector whilst ensuring true community benefit is always at the heart of any CIC. The ethos of the operation and provision of facilities for small business and community uses are welcome and contributes to the distinctive character of the operation.

4.34 The development therefore brings public benefit in that it makes a positive contribution towards meeting the following social and economic objectives of the NPPF –

- To help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity
- To support strong, vibrant and healthy communities

4.35 The locally distinctive use of the site also fits with national policy objectives for building strong and competitive economies and ensuring the vitality of town centres, as set out in sections 6 and 7 of the NPPF. In particular the following advice -

- Planning decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
- Planning decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Planning should:
  - 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
  - retain and enhance existing markets and, where appropriate, re-introduce or create new ones

Whether the identified public benefits outweigh the less than substantial harm to heritage assets

4.36 Because the proposals have been identified as causing less than substantial harm to the designated heritage assets, the heritage policy test, according to national policy is whether the identified public benefits outweigh this harm.

4.37 The development only has permission until July 2020. Given the current state of this part of Piccadilly, as it awaits regeneration, the development does not look unduly out of character. This is due to its scale and as its industrial materials do not contrast significantly with other buildings along Piccadilly, and recent neighbouring residential development behind Walmgate and at Nelson’s Yard, against which the development is appreciated in views from Piccadilly.

4.38 In its current context this iteration of Spark York causes little harm to designated heritage assets. To allow this development in the short-term proposed and in its current form will allow the business to continue to evolve and establish itself further; potentially for it to be re-configured so in future it can fully meet the requirements of the brief for re-development along Piccadilly and be of suitable permanent design (considering form and function) or for the Council to find an alternative and suitable development for the site.

4.39 The NPPF states that significant weight should be placed on the need to support economic growth. Given the current state of the area and temporary life expectancy of the scheme in its current iteration officers are content that the public benefit; specifically the added vitality and viability of this part of the city centre brought about by a locally distinctive business outweighs the low level of harm identified; to the setting of the listed Red Lion public house and the character and appearance of the Piccadilly section of the Conservation Area.

## Visual and residential amenity

### Relevant planning policy and guidance

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

4.41 Minor modifications to the 2018 Draft Plan were made 25 May 2018. One of the changes was the inclusion of the following text to policy D1: Place-making – Ensure design considers residential amenity so that residents living nearby are not unduly affected by noise, disturbance, overlooking or overshadowing.

### Assessment

4.42 The main considerations with regards amenity are the impact of the design changes on outlook from surrounding buildings and whether there is any increased overlooking.

#### Effect on outlook

4.43 The approved scheme had a ramped access to the upper floor area and its solid sides were to be clad in timber. Due to the position of the ramp these elements of the scheme would have screened the ground floor kiosks and associated activity from the upper floors of no.15 Walmgate and Mawson's Court. This alteration makes the activity associated with Spark more apparent; there is an impact from 3 windows which serve bedrooms at the aforementioned premises. This has not been raised as an issue in consultation and the presence of commercial activity is not out of character with the area. The metal finish to the installed balustrades does not differ significantly from materials to external balustrading on Mawson's Court.

#### Overlooking

4.44 One of the comments made by neighbours is the concern of overlooking and loss of privacy. This is as a consequence of people being able to look back towards properties from the 1<sup>st</sup> floor walkways. From these walkways there are views towards Mawson's Court and the back gardens to the new properties at Nelson's Yard.

4.45 The scheme is no different to the approved scheme with regards to such overlooking.

- The first floor walkway is around 12 m from the closest windows on Mawson's Court (these are bedroom windows) and further from the external access staircase and amenity areas.

- The row of housing at Nelson's Yard is a terrace and gardens can be overlooked into by neighbours. At its closest point the first floor walkway provides access into the community hub building only. Where the walkway provides a circuit around the facility it is significantly further away – 13 m from the closest garden.

4.46 In relation to the approved scheme there would be no different effect on residential amenity that would warrant refusal of the application.

## 5.0 CONCLUSION

5.1 The proposals have been identified as causing less than substantial harm to the character and appearance of designated heritage assets, being the Conservation Area and the setting of the grade II listed Red Lion public house.

5.2 Piccadilly has a number of vacant sites, and due to the width of street and presence of 20th century industrial and commercial buildings it differs in character to more intimate and historic parts of the Central Historic Core Conservation Area. Despite this vernacular, the make-shift appearance of the development overall, including how it relates with the street, and due to the lack of active frontage onto Piccadilly mean there is harm to designated heritage assets.

5.3 The level of harm to the Conservation Area and setting of the neighbouring listed building is low bearing in mind the extent character and appearance of this part of the Conservation Area and because the development is a 'meanwhile use' with permission expiring in July 2020.

5.4 The heritage asset test therefore according to the NPPF is whether there are public benefits which outweigh this less than substantial harm.

5.5 Regard is had to Sections 66 and 72 of the Act and paragraph 193 of the NPPF, and thus considerable importance and weight is attached to the harm to the setting and significance of the listed building and to the character and appearance of the Conservation Area. However, the public benefits outweigh the identified harm due to the economic and social benefits brought about by enabling this distinctive development which makes a positive contribution to the vitality and viability of this area and the overall city centre. The development is intended to be a meanwhile use whilst regeneration proposals for the area are developed and implemented. In the interim the Spark development has helped promote and give identity to the area; this will assist in allowing locally distinctive regeneration as advocated in the NPPF which requires "significant weight be placed on the need to support economic growth and productivity". These public benefits outweigh the low level of harm to heritage assets.

5.6 The temporary permission that has been proposed for the site is consistent with National Planning Guidance which states that a temporary planning permission may ... be appropriate on vacant land/buildings to enable use for a temporary period prior

to any longer term regeneration plans coming forward (a meanwhile use) or more generally to encourage empty property to be brought back into use. This can benefit an area by increasing activity.

5.7 In comparison to the scheme already approved and its associated planning conditions, there would be no undue effect on residential amenity, flood risk, or highway safety.

5.8 The presumption in favour of sustainable development contained in paragraph 11d) ii of the NPPF applies to this application to the effect that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole. The identified harm to heritage assets is not such that this adverse impact would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies of the NPPF as a whole. As a result, the proposal represents sustainable development and approval is therefore recommended subject to reinstatement of other previously imposed conditions.

## **COMMITTEE TO VISIT**

### **6.0 RECOMMENDATION:** Approve

#### 1 Approved plans

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

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

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 Cycle Parking

The cycle parking facilities shown on the approved ground floor plan (or any alternative approved as a non-material amendment) shall be installed with 2 months of the date of this permission.

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

### 4 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.

### 5 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.

## 6 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.

## 7 Hours of operation

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

The site shall be vacated by all staff, lighting (apart from any essential safety/security lighting) turned off and the site closed by 24.00 each day.

Reason: In the interests of residential amenity.

## 8 Reduced capacity after 21.00

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

Reason: In the interests of residential amenity.

## 9 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.

#### 10 Music

There shall be no performance, 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.

#### 11 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: the use of planning conditions.

#### **Contact details:**

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