
Meeting	Decision Session - Executive Member for Finance and Performance
Date	14 February 2020
Present	Councillors Ayre

1. Declarations of Interest

The Executive Member was invited to declare, at this point in the meeting, any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests that they might have in the business on the agenda. None were declared

2. Minutes

Resolved: That the Minutes of the previous meeting of the committee held on 16 December 2019 and the Joint Decision Session held on 13 January 2020 be approved and signed as a correct record.

3. Public Participation

It was reported that there had been eight registrations to speak at the meeting under the Council's Public Participation Scheme. All eight spoke on Agenda Item 4, 'the proposal to offer a conditional 2 year lease extension to Spark:York for 17-21 Piccadilly'.

Cllr Fitzpatrick, Ward Member for Guildhall, spoke regarding how city living was about vibrancy. She was supportive of the concept of this scheme and pleased that the space was being used rather than left empty. However, nearby residents had reported noise levels that had been intolerable at times and had adversely affected them. Attempts to notify residents regarding live music or televised events had not been good enough.

Mr James Flinders, Chair of the Walmgate Community Association and local resident, spoke in support of the positive aspects that Spark:York had offered. They welcomed the opportunities for new businesses able to take advantage of short term lease arrangements. He highlighted the frustration of

local residents in relation to noise levels in the evening and considered that reducing the time for the sale of alcohol by half an hour from the current operating hours, would help ameliorate this concern; along with compliance with previous planning permission regarding cladding the units, controlling noise nuisance and better communication with residents in notifying them prior to key events.

Mr Franz Wallmann, local resident, considered that the use of shipping containers was an unsuitable construction and that this was effectively an open air venue. Licensed premises are required to keep windows and doors closed to prevent noise nuisance, whereas Spark: York doesn't have windows. It was nearby residents that had to close their doors and windows. Even then, noise from Spark:York could still be heard. Other nearby, long established businesses were not offered the same level of leniency as Spark: York. The Council should protect its residents from this noise nuisance.

Mr Jody Toner, owner of Toner & Co hair salon spoke about how as a stylist it had not been possible to secure a lease in York with the costs involved in long term leases and business rates. The flexibility and short term one year lease that Spark:York had offered had enabled him to establish his business in a vibrant location, near a car park, until he had developed his business and was able to then move on to a more permanent fixture at Gillygate. He hoped that further businesses would continue to have the same opportunity that he had been given.

Ms Louise Warnes, considered that she lived in the closest proximity to the Spark:York location with her five year old son and had found the management team at Spark:York- Tom and Sam to be very communicative and accommodating. On the rare occasion that it had been too noisy, she had phoned and informed them and noticed an immediate reduction to noise. She considered Spark:York to be a valuable community asset and regularly attended events hosted there with friends.

Ms Gwen Swinburn spoke in objection to the continuation of the Spark:York lease. She considered that it was located at a prime site and had enjoyed a three year rent free period. That they should be paying a minimum £150K per annum rental, particularly in view of the Property Portfolio income being down by approx. £250K. She considered that the Council was

breaching its duties in relation to the public purse and equalities and were likely exposing itself to fines. She requested that this item be deferred until there had been an option analysis for the site and calculations proposed for rent using proper valuations and rationale for discounts offered.

Two further local residents who wished to remain anonymous made the following point, which included:

The Spark:York vision had been for smart, trendy, coffee culture, restaurants and community space. He considered the reality to be that it had now become a 'raucous watering hole'. The planning application in 2017 had assessed risk and noted potential noise and privacy issues. In not penalising Spark:York in relation to noise, the Council was complicit in this. Spark:York were being rewarded at the expense of resident's wellbeing. He urged the Council not to extend their lease, or if they do, to extend it for six months and then be charge them the going rate thereafter.

The second local resident raised concerns regarding the noise nuisance and how this had affected his two teenage sons who were sleep deprived whilst studying for exams. He urged the Executive Member not to extend this lease and to instead use the money to benefit the York area generally.

4. Proposal to offer a conditional 2 year lease extension to Spark:York for 17-21 Piccadilly

The Executive Member considered a report which sets out a proposal to grant a further lease to 17-21 Piccadilly to Spark:York, when their existing lease expires on 30th June 2020, until March 2022 when the site will be needed for redevelopment as part of the Castle Gateway regeneration.

It was proposed that this further lease would only be granted when: (a) Spark York are in full compliance with the existing planning permission and (b) only if and when they obtain planning permission for continued use of the site for its present use for the duration of the further lease. The current planning permission would expire on 1st July 2020 unless the council as Local Planning Authority (LPA) granted an extension prior to that date.

The Assistant Director of Regeneration and Asset Management and the Property Manager – Commercial, were in attendance to present the report and to respond to questions.

Officers explained how this scheme had been initiated by the Castle Gateway regeneration, as a lack of footfall had been identified in that area. The lease had been offered to Spark:York to generally enliven the area through growing small businesses. Officers recognised that there was a balance to be struck with energising this area and the needs of local residents. The businesses in Spark:York must work within the boundaries permitted, particularly in relation to evening events. The officer report had recommended a continuation of the positive aspects of the scheme with clear restrictions in relation to the prevention of amplified live music and DJ sets and full compliance with all of the conditions to the site's existing planning permission, cladding the units and controlling noise nuisance.

The Executive Member stated that he was making his decision in consultation with and representing full Executive. It would not be possible to bring an end to this scheme and to evict Spark:York as it supported a number of small businesses that would need to re-locate. He was supportive of how this scheme had regenerated that area, noting that although a number of proposals for that area had been put forward, it had been difficult to find a project that all relevant parties could agree upon. This scheme had seemed ideal as it had offered a coffee culture environment and attracted city workers for the 5-8 pm time period. Although he considered that Spark:York had been positive for the City, he fully understood and appreciated residents' concerns regarding how the scheme had impacted upon their amenity. He considered that these concerns could be resolved with an improvement in communication, enforcement and the planning process. He stressed that having considered the concerns raised by residents, a zero tolerance approach to compliance would be taken.

Resolved: That the following be confirmed by the Executive Member for Finance and Performance:

- (i) To offer Spark York a new lease for the use of 17-21 Piccadilly from 1st July 2020 until 31st March 2022 (at basic rent of £13,333 per

annum payable monthly in advance rather than annually in arrears, plus an additional rent equal to 30% of Spark's annual profit payable at the end of each year) to continue to operate a shipping container development for start-ups and street food,

- (ii) That the new lease will require Spark: York will to pay a Bond/Deposit sum of £5,000 to the council towards securing compliance with the tenant's obligations in the new lease (such as payment of rent)
- (iii) That the new lease will require a director of Spark:York to act as guarantor for the performance by Spark:York of the tenant's obligations in the new lease
- (iv) That the new lease will contain a clause setting out the council's right to terminate the lease should Spark/the tenant breach their obligations in the lease (including breaching planning laws)
- (v) That the new lease will specifically preclude Spark: York from running amplified live music or DJ sessions in the evening
- (vi) That the new lease will only be granted if and when:
 - (a) Spark: York are in full compliance with all of the conditions to the site's existing planning permission, cladding the units and controlling noise nuisance.
 - (b) Spark: York obtain an extension from the LPA of the validity period of the existing planning permission from 1st July 2020 to 31st March 2022.
 - (c) Spark: York have settled all existing debts to the council.
 - (d) A communication plan is in place which would be a two way communication agreement with Spark:York and local residents.
 - (e) That authority be delegated to the Assistant Director of Regeneration and Asset Management in consultation with the Executive Member for Finance and Performance to investigate the viability of reducing the time for the sale of

alcohol by half an hour from the current operating hours. Current hours are in accordance with statutory permitted times.

Reason: To allow the continued use of 17-21 Piccadilly to support SME businesses and create footfall and economic activity in advance of the long term redevelopment of the Caste Gateway scheme.

Cllr Ayre, Chair

[The meeting started at 1.30 pm and finished at 2.10 pm].