



## Notice of a public meeting of Planning Committee

- To:** Councillors Fisher (Chair), Ayre, Barker, D'Agorne, Daubeney, Doughty, Douglas, Fenton, Hollyer, Looker, Lomas, Melly, Pavlovic (Vice-Chair), Warters and Waudby
- Date:** Thursday, 7 April 2022
- Time:** 4.30 pm
- Venue:** The George Hudson Board Room - 1st Floor West Offices (F045)

### AGENDA

#### 1. **Declarations of Interest**

At this point in the meeting, Members are asked to declare any disclosable pecuniary interest or other registerable interest they might have in respect of business on this agenda, if they have not already done so in advance on the Register of Interests.

#### 2. **Minutes** (Pages 1 - 12)

To approve and sign the minutes of the last meetings of the Planning Committee held on 3 February and 3 March 2022.

#### 3. **Public Participation**

At this point in the meeting members of the public who have registered to speak can do so. Members of the public may speak on agenda items or on matters within the remit of the committee.

**Please note that our registration deadlines have changed to 2 working days before the meeting, in order to facilitate the management of public participation at remote meetings. The deadline for registering at this meeting is 5:00pm on Tuesday 5 April 2022.**

To register to speak please visit [www.york.gov.uk/AttendCouncilMeetings](http://www.york.gov.uk/AttendCouncilMeetings) to fill in an online registration form. If you have any questions about the registration form or the meeting, please contact Democratic Services. Contact details can be found at the foot of this agenda.

## **Webcasting of Public Meetings**

Please note that, subject to available resources, this meeting will be webcast, including any registered public speakers who have given their permission. The meeting can be viewed live and on demand at [www.york.gov.uk/webcasts](http://www.york.gov.uk/webcasts).

During coronavirus, we've made some changes to how we're running council meetings. See our coronavirus updates ([www.york.gov.uk/COVIDDemocracy](http://www.york.gov.uk/COVIDDemocracy)) for more information on meetings and decisions.

### **4. Plans List**

This item invites Members to determine the following planning applications:

#### **a) Spark York, Piccadilly, York [22/00195/FUL] (Pages 13 - 38)**

Variation of condition 2 of permitted application 17/00274/FUL to extend duration of permission to 30.09.2025 [Guildhall Ward]

### **5. Urgent Business**

Any other business which the Chair considers urgent under the Local Government Act 1972.

#### Democracy Officer

Angela Bielby

Contact details:

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For more information about any of the following please contact the Democratic Services Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

**This information can be provided in your own language.**

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جا سکتی ہیں۔ (Urdu)

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City of York Council

Committee Minutes

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Meeting	Planning Committee
Date	3 February 2022
Present	Councillors Fisher (Chair), Ayre, Barker, D'Agorne, Daubeney, Doughty, Douglas, Fenton, Hollyer, Looker, Lomas, Pavlovic (Vice-Chair), Warters, Waudby and Webb (Substitute)
Apologies	Councillor Melly

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**66. Declarations of Interest**

Members were asked to declare, at this point in the meeting, any personal interests, not included on the Register of Interests, or any prejudicial or disclosable pecuniary interests they may have in respect of business on the agenda.

Cllr Waudby declared a non prejudicial interest in that her husband worked for a different Bingo provider in York.

Cllrs Ayre, Webb and D'Agorne declared non prejudicial interests that they were members of the Car Club.

**67. Minutes**

The Chair noted that, with reference to paragraph 6 of item 64a in the Minutes, the motion to approve the application was seconded by Cllr Fenton.

Resolved: That, subject to the amendment stated above, the minutes of the last meeting held on 6 January 2022 be approved and signed by the chair as a correct record.

**68. Public Participation**

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme on general matters within the remit of the Planning Committee.

**69. Plans List**

Members considered a schedule of reports of the Head of Planning and Development Services, relating to the following planning applications, outlining the proposals and relevant policy considerations and setting out the views of consultees and officers.

**70. Mecca Bingo, 68 Fishergate, York YO10 4AR  
[21/01605/FULM]**

Members considered a major full application from Petrina Ltd and Grantside (North Star West) Ltd for the demolition of existing buildings and redevelopment of the site to form 275no. room purpose built student accommodation with associated car parking, landscaping and facilities at Mecca Bingo 68 Fishergate York YO10 4AR. This item had been deferred at Planning Committee 2 December 2021.

The Head of Planning and Development Services gave a presentation on the application. The Case Officer then updated Members regarding the Section 106 requirement to secure funding towards assistance with travel planning, as well as responses to representations made concerning the consideration of the Equalities Act 2010, the viability of the former use and the highways effects.

Public Speaker

Ann Clayton, a local resident spoke in objection to the application. She raised concerns regarding the location, size and electromagnetic fields of the substation and switch house. She also referred to a loss of privacy and shared concerns regarding highway safety.

In response to a question from Members, Mrs Clayton explained that she had been informed by the Architect and Communication Officer that additional electricity generated by the substation would be sold to the National Grid.

Councillor Dave Taylor, spoke in objection to the application as a Ward Member for Fishergate. He raised concerns regarding the impact of increased traffic, in a narrow cul-de-sac and close to a primary school. There was the potential for increased

congestion from delivery vehicles and no provision have been made for parking.

He confirmed that he felt that student accommodation should have been built on university land. He also noted the shortage of accommodation for students within the city.

Cllr Pete Kilbane, spoke in objection to the application as a Ward Member for Micklegate. He raised concerns about the rise of short hold tenancies, temporary accommodation and short-term holiday lets within the city. He underlined that the application removed a community facility and cultural asset.

In response to questions, he noted that the city's emerging Local Plan sought to protect local facilities and applications should not be approved unless they add to or replace community and cultural facilities.

Stephanie Leeman spoke in objection on behalf of the Fishergate House and Fishergate Court residents as Director of the Fishergate House Management Company. She raised concerns regarding access, servicing and suggested a change of the user group from students to everyone. In response to Members queries, it was reported that parking was permitted down one side of the road and sightlines were not good when entering the highway. She expressed a preference for a mixed user development.

Michelle Davies addressed the Committee in support of the application. She spoke on behalf of the applicant and noted the benefits of the investment to the city, the efficient use of a brown field site and the future release of HMOs back into the housing market. She also noted that the building had been empty for two years and that Mecca Bingo had declined to renew the lease.

In response to questions from Members, the applicant's representatives explained:

- that the substation was the size necessary for the site.
- The planning report provided information on electro-magnetic fields.
- There were 168 cycle spaces in total, 14 of which were extra wide cycle parking bays.
- Student accommodation was the most economically viable of the options available to developers.

[The meeting was adjourned between 17:43 and 17:52]

Following the adjournment Members asked Officers a number of questions and they responded as follows:

- There were no loading bays on Blue Bridge Lane, existing parking bays allow for loading within an hour between 08:00 to 18:00, with parking unrestricted between 18:00 to 08:00. An amendment by a Traffic Regulation Order (TRO) was not guaranteed as they were subject to objections. Ad hoc deliveries could be accommodated in the evening and at non-busy times during the day within the existing bays.
- The Travel Plan was referred to in condition 24, this ensured that the monitoring of cycle provision would take place through annual usage surveys.
- There was sufficient parking for the development. Members could request that the TRO be changed to limit the stopping time in the parking bays through the section 106 agreement. The transport statement given by the developer was based on a national database, it showed that there would be zero cars at the development between 10pm and 7am.
- The development contributed to the Council's annual housing delivery.
- There was enough room and time for vehicles to turn round in the hammerhead on William Court, the anticipated number of vehicles turning round per hour was eight.

Cllr Warters moved to refuse the application, on the basis that it was detrimental to residents and highway safety and that it contributed to the loss of local facilities. This was seconded by Cllr Webb. After debate and on being put to the vote, Members voted 5 for the motion and 9 against. The motion was therefore lost.

[Prior to the vote, Cllr D'Agorne left the meeting at 18:26 and took no further part in the meeting]

Cllr Pavlovic then moved to approve the application as per the Officer recommendations, subject to the S106 agreement and the additional information as outlined in the Committee update. With the Traffic Regulation Order referring to both Blue Bridge Lane and Fishergate. This was seconded by Cllr Ayre.



Members voted 9 in favour of the motion and 5 against, it was therefore:

Resolved: that the application be approved subject to the conditions listed in the report and a Section 106 agreement to secure the following planning regulations:

- Traffic Regulation Orders (£6,000) to provide for – amending existing waiting restrictions on Fishergate and Blue Bridge Lane to ‘No waiting and no Loading at any time’.
- Travel Plan support (£25,000) (£5,000 per year) – for the Council to provide input and ensure the travel plan was implemented reasonable over a five year period following occupation.

Reasons:

- i. The NPPF establishes the need to take a positive approach to decision-making and the significant weight given to economic growth. Having regard to the statutory duties in sections 66 and 72 of Listed Buildings and Conservation Areas Act, the development would not harm the setting of any designated heritage assets. Archaeological interests can be appropriately maintained through recording. There are no policies in the NPPF that protect assets of particular importance which provide a clear reason for refusing the development in this instance. Therefore the presumption in favour of development applies in this case; that, as stated in NPPF Paragraph 11d, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.
- ii. The bingo hall closed as it was unviable and the operator declined to renew their lease. Officer’s advice is the permanent loss of the facility does not outweigh the benefits of the proposed use. There is demonstrable need for the proposed development; which must be given substantial weight in decision-making as stated in NPPF paragraph 120 and decisions must be made in accordance with the presumption in favour of sustainable development in NPPF paragraph 11d.
- iii. The scheme is considered an improvement over the existing site in terms of how it respects local character.

There would be no undue effect on neighbours' amenity and adequate amenities for future occupants. Technical matters can be addressed, to achieve policy compliance, through conditions in respect of sustainable design and construction, biodiversity, drainage, archaeology, the highway network and ground conditions and pollution.

- iv. Consequently, applying NPPF paragraph 11d, it is considered that there are no adverse impacts which significantly or demonstrably outweigh the benefits of the proposal, when assessed against the policies in the NNPF as a whole. It is therefore concluded that the proposal represents sustainable development and that permission should be granted in accordance with the presumption in favour of sustainable development.

**71. Alton Cars York Ltd, 3 James Street, York YO10 3WW  
[21/02164/FULM]**

Members considered a major full application from S Harrison Developments Ltd for the demolition of existing buildings and redevelopment of the site for purpose-built student accommodation with up to 319 bedrooms, associated communal facilities, car parking and landscaping at Alton Cars York Ltd 3 James Street York YO10 3WW.

The Head of Planning and Development Services gave a presentation on the application. The Case Officer then delivered an update to members covering the number of bedrooms in the clusters of student accommodation, the Travel Planning Assistance figure and the change to the site management condition, number 23. He also provided the updated comments from Highway Network Management.

Public Speakers

Cllr Rowley spoke, as the Ward Member, in objection to the application. He highlighted that he was waiting for an Officer response regarding the number of HMOs that had come back to market in his ward area since the development of student letting accommodation. He raised concerns regarding the overdevelopment of student rooms in the area and stated that there were 2,922 rooms within a 400m radius of the application. He expressed concerns that the units were not well-designed or

integrated and highlighted a need for affordable accommodation in the city for all residents of the city, not just students.

In response to questions from Members, he noted the NPPF guidance required a well-functioning design that added to the long term quality of the area.

Gavin Douglas, the applicant, spoke in support of the application. He highlighted the relocation of the existing business on the site to more suitable commercial premises. He noted that the company was an experienced developer and operator of student accommodation within the city and in Leeds. He stated that the location was convenient to both Universities which provided sustainable accessibility.

In response to questions from Members, the applicant gave the following answers:

- There were 16 accessible rooms in the plans.
- A cycle space per resident was an overprovision at the expense of other facilities. The travel plan allowed for the monitoring of cycle provision. There were 8 accessible cycle parking bays within the courtyard. Improving cycling routes had been discussed with highways officers but there was not a problem at the specific location.
- The social spaces were in the plans due to student demand and fostered shared experiences.
- The landscaping had been designed to reflect the location of the site which was close to the conservation area.
- The parking issues were expected to resolve following the relocation of the business.
- The study bedrooms were 12.5m<sup>2</sup> and the studios were between 20 and 28m<sup>2</sup>.
- Condition 4 covered the Construction Management Plan.
- The expansion of York University is not only for students but also for research facilities.

In response to questions from Members, the Officers answered as follows:

- There were not any size standards for student bedrooms.
- Developments such as this one had regeneration benefits to the area and are therefore viewed positively by the council.

- It was accepted that the universities currently provide sports provision. It was possible to request a financial contribution for community space or play areas.
- To obtain meaningful data, a whole street investigation of the cycle infrastructure was needed.

Following debate, Cllr Warters moved to refuse the application and this was seconded by Cllr Doughty. The exact wording of the reasons for refusal was delegated to the Head of Planning and Development in consultation with the Chair and Vice Chair and is shown below. Members voted 8 in favour of the motion and 6 against. It was therefore:

Resolved: That the application be REFUSED.

Reasons:

- i. The proposals due to the amount of development proposed, and its scale, height and layout, would be over-development of the site which would have an undue adverse impact on the amenity of neighbouring residents. As such the proposals are in conflict with NPPF paragraph 130 and policy D1: Placemaking of the Publication Draft Local Plan 2018.
- ii. The proposed development would provide an inadequate level of amenity for its future residents due to the inadequate amount of floorspace within the proposed student bedrooms and the inadequacy of the proposed layouts. As such the proposals are in conflict with NPPF paragraph 130, the National Design Guide in respect of homes and buildings and policy D1: Placemaking of the Publication Draft Local Plan 2018.
- iii. The proposed development, by virtue of its amount, scale and footprint would overdevelop the site. The consequent building would be over-bearing and over-dominant, and unduly imposing on its setting. It would provide an inadequate amount of public realm and soft landscaping to enable it to assimilate into its setting. As such the proposals are in conflict with NPPF paragraph 130, the National Design Guide in respect of identity and public spaces and policy D1: Placemaking of the Publication Draft Local Plan 2018.

Cllr T Fisher, Chair

[The meeting started at 4.30 pm and finished at 8.00 pm].

City of York Council

Committee Minutes

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Meeting	Planning Committee
Date	3 March 2022
Present	Councillors Fisher (Chair), Daubeney, Doughty, Douglas, Fenton, Hollyer [from 4.35pm], Lomas, Melly, Pavlovic (Vice-Chair), Waudby, Cuthbertson (Substitute for Cllr Barker), Warters, Widdowson (Substitute for Cllr Ayre) and Webb (Substitute for Cllr Looker)
Apologies	Councillors Ayre, Barker, D'Agorne and Looker

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## 72. **Declarations of Interest**

Members were asked to declare, at this point in the meeting, any personal interests, not included on the Register of Interests, or any prejudicial or disclosable pecuniary interests they may have in respect of business on the agenda. None were declared.

## 73. **Minutes**

Resolved: That the minutes of the last meeting held on 3 February 2022 be approved at the next meeting.

## 74. **Public Participation**

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme on general matters within the remit of the Planning Committee.

[Cllr Hollyer joined the meeting at 4.35pm]

## 75. **Plans List**

Members considered a schedule of reports of the Head of Planning and Development Services relating to the following

planning applications, outlining the proposals and relevant policy considerations and setting out the views of consultees and officers.

**75a Lindum Group Limited, York Road, Elvington, York YO41 4EP [21/01709/REMM]**

Members considered a major reserved matters application from James Nellist for outline consent the erection of 20no. employment units (Use Classes B1(b), B1(c), B2 and B8) with means of access and landscaping included following the grant of outline permission 18/02744/OUTM for Lindum Group Limited, York Road, Elvington York.

The Head of Planning and Development Services gave a presentation on the application noting the access into the site, the site location plan, elevations and landscaping. The Head of Planning and Development Services and Development Management Officer responded to Member questions as follows:

- The request from Elvington Parish Council regarding putting a 'Stop' sign as vehicles exited the site onto York Road could be examined as part of the discharge of conditions.
- The speed limit on York Road was 30mph.
- Regarding the reduction of planning on the western boundary, as much planting as possible would try to be achieved through the discharge of conditions.
- The developer could not be asked to fund tree planting offsite as this was a reserved matters application and planting would be looked as part of the discharge of conditions.
- Members were shown where trees were located on the site location plan.
- It was confirmed that landscaping could be included as an informative.
- Electric vehicle charging was included in condition 19 of the outline planning consent.
- Regarding the trees shown on drawings for the outline planning application and the reserved matters application, the landscaping shown on those drawings was illustrative.

At this point in the meeting the Senior Solicitor reminded Members that before them was a reserved matters application

for appearance, layout and scale of the proposed development and that landscaping was not a matter for consideration.

Cllr Webb proposed and Cllr Pavlovic seconded approval of the application with the addition of an informative on landscaping with a request that the applicant work with the Parish Council to establish landscaping offsite as a good will gesture. On being put to the vote with 12 in favour and one abstention, it was;

Resolved: That the application be approved subject to the conditions listed in the report and the addition of an informative in relation to landscaping.

Reasons:

- i. The reserved matters application provides the details required following the outline planning permission. The layout and form of development proposed and the landscaping principles accord with the outline permission. The details accord with the expectations established at outline stage and national policy within the NPPF and local policy within the 2018 eLP regarding design and landscaping.
- ii. Planning conditions relating to the scheme are contained in the outline permission. As part of the reserved matters application a number of details have been submitted relating to conditions on the outline consent. Although this helps to progress the scheme in a comprehensive manner and ensure that issues relating to reserved matters will not conflict with the goal of the conditions it will be necessary to discharge these matters through the formal approval of details process rather than through agreement of a reserved matters application.

Cllr Fisher, Chair

[The meeting started at 4.30 pm and finished at 4.50 pm].

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**COMMITTEE REPORT**

**Date:** 7 April 2022                      **Ward:** Guildhall  
**Team:** East Area                              **Parish:** Guildhall Planning Panel

**Reference:** 22/00195/FUL  
**Application at:** Spark York Piccadilly York  
**For:** Variation of condition 2 of permitted application 17/00274/FUL to extend duration of permission to 30.09.2025  
**By:** Mr Samuel Leach  
**Application Type:** Full Application  
**Target Date:** 29 March 2022  
**Recommendation:** Approve

**1.0 PROPOSAL**

1.1 The application was made valid 1.2.2022 and is for variation of condition; to extend the temporary permission for the Spark York complex at 17-21 Piccadilly. Cllr Fitzpatrick has requested the application be determined by Planning Committee, due to the level of public interest of the Council owned site and the Spark venue.

1.2 The venue comprises of multiple small commercial units and outside amenity space. The commercial units are occupied as a social hub / studios and multi-purpose event space, retail and food and drink outlets

1.3 The site is Council owned and the Spark venue has been subject to temporary permissions only. Spark being a temporary use of the site until a permanent scheme is developed. The Council's process, as landowner, in determining the future of the site and presentation of the preferred option for redevelopment were reported to executive 17 March 2022. The intention is to dispose of the site, so it can be developed for an affordable housing lead scheme. The executive report provides anticipated timeframes for redevelopment of the site and details of the proposed lease with Spark including break clauses. The planning application must be determined on its own merits and is to extend the duration of the permission to 30.9.2025.

Relevant Planning History

17/00274/FUL

Application Reference Number: 22/00195/FUL

Item No: 4a

Original temporary permission (to 1.7.2020) granted 12.5.2017.

20/01181/FUL

Permission for covering canopy to be in-situ between 1 September in any year and 1 May the following year. Granted 24.8.2020.

20/00561/FUL

Permission to extend duration of permission 17/00274/FUL to 31.03.2022. Granted 2.9.2020.

## **2.0 POLICY CONTEXT**

### Legislation

2.1 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. 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.

### National policy

2.2 Key sections of the NPPF are as follows -

7. Ensuring the vitality of town centres
12. Achieving well-designed places
16. Conserving & Enhancing the historic Environment

### Publication Draft Local Plan 2018 (eLP)

2.3 In accordance with paragraph 48 of the NPPF eLP 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.

2.4 Key relevant Publication Draft Local Plan 2018 Policies are as follows -

- SS3 York City Centre
- SS5 Castle Gateway
- D1 Place-making
- D2 Landscape and Setting
- D3 Cultural Provision
- D4 Conservation Areas
- D5 Listed Buildings

### **3.0 CONSULTATIONS**

#### Design, Conservation and Sustainable Development

3.1 No comment.

#### Public Protection

3.2 Since the previous permission granted in 2020 Public Protection have only received one complaint about the premises that lead to investigation, regarding smoke from one of the vendors. No further breaches of the planning permission relating to noise from music at the venue have been witnessed.

3.3 If music is audible at nearby residential dwellings then due to the lack of sound insulation at the premises it would appear the condition which relates to noise from amplified music being inaudible beyond the site boundary, is not fit for purpose.

#### Historic England

3.4 No comment. State it is not necessary for HE to be consulted on this application again, unless there are material changes to the proposals.

#### Police Architectural Liaison Officer

3.5 An analysis of crime and disorder for a 12 month period (1 February 2021 to 31 January 2022), showed that crime and disorder associated with the site is very low. No further comments.

#### Guildhall Planning Panel

3.6 Appreciate the benefits Spark has brought to the local community. A further extension of three and a half years is considered too long and suggest two years.

3.7 If permission is granted the following issues need addressing:

- Noise issues for local residents.
- How many future renewals will occur before the site has a permanent development.
- There seems to have been a gradual drift from original concept of business incubator site to licensed bar with music.
- Lack of tight controls on sound levels in the evening. Perhaps consideration should be given to limiting upstairs bar and music use after 7pm to 3 or 4 days per week to provide residents with some respite.

## 4.0 REPRESENTATIONS

4.1 Publicity lead to 50 representations in support of the Spark facility and 6 in objection.

4.2 The letters in support reference the diverse, varied and independent nature of the venue, its community focus; providing spaces for creative and communal activities by hosting workshops, classes and events, and that it provides a valuable group of spaces for small scale and emerging businesses.

4.3 Objections made raise the following issues –

### Noise

- The applicant's own noise management measures issued have not been adhered to. The engagement with residents is limited to the whatsapp group. There are typically noise complaints on 1 or 2 occasions a week. There are no in person meetings or letter drops. Residents frequently have to complain to have noise levels reduced.
- Following the 2020 permission, part of the site was allowed to operate after 9pm, provided it were all seated. This had made noise pollution far worse, effecting Nelson's Lane residents until 11pm.
- Noise from amplified music, customers/crowds and live sport. Amplified music is played approx.10 hours a day, 6 times a week.
- The Wednesday quiz is so loud it can be heard in neighbouring dwellings, even with windows closed.
- The venue is predominantly open with no soundproofing
- Bottle bins emptied early in the morning (06:15 cited; the planning condition states not before 07:00).

- If the proposal is approved can the committee help residents live with the venue more harmoniously? Could further restrictions on amplified music and other performance events (including quiz night, TV sporting fixtures etc) be implemented and more strictly applied?
- Issues with cooking odour.

### Principle / other matters

- Most of the outlets are food and drink orientated
- The use was meant to be temporary but will end up lasting up to 8 years ... there is no objection to Spark in principle but it needs to be accommodated within a suitable venue.
- Would an alternative use of the site would bring more income for the city through taxation?

### Visual impact

- The venue is unattractive and visually out of character.

## **5.0 APPRAISAL**

### Key issues

5.1 The key issues are as follows –

- Principle
- Impact on designated heritage assets (setting of listed buildings / character and appearance of the conservation area)
- Impact on residential amenity

### Assessment

#### Principle

5.2 The development is acceptable in principle for the site, taking into account national and local planning policy. The economic benefits, specifically for the city centre, carry significant weight in decision-making, as explained in NPPF paragraph 81. National guidance on the use of conditions specifically refers to temporary uses (such as Spark); intended as meanwhile uses and advocates the control of such through allowing planning permission for a temporary period.

5.3 The application site is Council owned and is one of the sites allocated for redevelopment as part of the Castle Gateway Project. The area/project covers an extensive part of the city centre and is of strategic importance; the aspirations are set out in policy SS5 in the Publication Draft Local Plan 2018 (eLP).

5.4 The Castle Gateway regeneration project is to be delivered in phases. The following schemes have been subject to planning applications to date -

Castle Mill Car Park, Piccadilly

19/02415/FULM - Residential development and new bridge over the River Foss - approved December 2020.

St Georges Field Car Park

19/02063/FULM - Multi-storey car park enabling redevelopment of the castle car park, creating improved public realm around Clifford's Tower – approved January 2021.

Castle Car Park

22/00209/FULM – public realm works enhancing the setting of the Castle Precinct - decision pending.

5.5 The original planning permission for Spark was granted in 2017. Permission for a further 3 years is now sought. The Council (as landowner) has a preferred option for residential lead redevelopment of the site with a preference for Spark to remain in the short-term. The Executive report 17.3.22 anticipates it would take at least 18 months to progress any permanent redevelopment of the site. It also contains details of the lease, which the Council would be able to terminate as early as November 2023. Rather than leave the site vacant, in the interim Spark remaining is the preferred option due to the wider economic benefits for the area that would result.

5.6 NPPF policy with regards the economy and town centres is to support economic growth and productivity, taking into account both local business needs and wider opportunities for development and to take a positive approach facilitating growth, allowing diversification and promoting distinctive character.

5.7 Of the eLP policy SS3 York city centre states the city centre is a “priority area for a range of employment uses and is fundamental to delivering the plans economic vision... it will be the principal location ... for the delivery of economic growth in the tourism, leisure and cultural sectors”. Policy SS5: Castle Gateway advises purposes of regeneration of the area include improvement of the economic and social sustainability of the area and integrating it with the broader city centre.

5.8 In terms of supporting the economy and the town centre, it would be consistent with planning policy to allow Spark to remain operational until a future landowner has secured planning permission for redevelopment.

5.9 The development provides affordable small-scale commercial spaces not otherwise provided for in the city centre and community space. The facility is beneficial to the local economy and vitality of the city centre. Consistent with local policy aspirations it is successful in better integrating the Piccadilly area with the broader city centre. The scheme is consistent with sections 6 and 7 of the NPPF on building a strong competitive economy and ensuring the vitality of town centres, specifically the following advice -

- That “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” (paragraph 81).
- “Recognise and address the specific local and national requirements of different sectors” (paragraph 83).
- Take a positive approach to the growth, management and adaptation of town centres, 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 (paragraph 86).

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

5.10 In addition to the legislation, as set out in section 2, the approach to the assessment on Heritage Assets is set out in section 16 of the NPPF. The NPPF has been updated since the original application for the site. The guiding principles have not changed significantly in respect of Heritage Assets. Relevant to this case is the following approach -

- Identify and assess the particular significance of any heritage asset that may be affected by a proposal and take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal (paragraph 195).
- When considering the impact on significance, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be) (199).

- 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 (202).

#### Assessment of significance of heritage assets affected and impacts

5.11 The site is within the Central Historic Core Conservation Area. The site, and its main entrance, is adjacent the Grade II listed Red Lion public house and its curtilage.

5.12 The heritage assets affected, and their significance, as established in the original application, is unchanged. There would be no harm to the setting of listed buildings and less than substantial harm, at the lower end of less than substantial, to the character and appearance of the conservation area.

5.13 The Central Historic Core Conservation Area has 24 character areas. The site is within the Piccadilly Character Area. Within the area appraisal the overview to the Piccadilly Character Area explains the area and the justification for inclusion within the Central Historic Core Conservation Area as follows “Piccadilly was developed much later than the rest of the medieval city centre and has larger scale building plots, reflecting its industrial past. Although Piccadilly does not have the obvious architectural interest of other parts of the Conservation Area, historically the land was within, and formed part of, the city's defences. Therefore, its inclusion is justified as part of the historic core”.

5.14 At the site (17-21 Piccadilly) the land was previously occupied by the trolleybus garage, described in the character area appraisal as a utilitarian building, of art deco style dating from 1921. At the time of its demolition, it was derelict and deemed unsafe. Since the Conservation Area allocation the site has always contained development utilitarian in appearance.

5.15 The area appraisal issues and opportunities section identifies no “strengths”. In terms of weaknesses and opportunities, there is a focus on revealing views and increasing access to the Castle Area and River Foss to the south and public realm improvements. The Spark development is, in no way, at variance with the aspirations for the area in the conservation area appraisal.

5.16 Less than substantial harm to the appearance of the conservation area, at the lower end of less than substantial, has been (consistently) identified as a consequence of the development, because of its temporary nature and the appearance of the venue. The development, in its current iteration, is considered



not to be an appropriate permanent solution for the site given the aspirations for regeneration of Piccadilly. The identified harm is set out below -

- The sites' inward orientation does not provide an active frontage onto Piccadilly. An aspiration for Piccadilly as set out in policy SS5 for Castle Gateway is to "ensure active ground floor frontages to new developments fronting Piccadilly". The harm in this respect is mitigated currently in that Spark is an attraction that draws footfall to the area and contributes to a further aspiration which is to integrate Piccadilly with the broader city centre.
- The building has a very functional and low cost appearance (always justified due to its temporary nature). In the current context the adverse effect is very low. Whilst in land use terms this is an appropriate location for the venue in principle, the building's quality and its immediate setting are not consistent with the long-term aspirations for Piccadilly. Further, whilst conditions and site management are in place to mitigate noise, it is evident that a higher cost solution (compared to the seasonal canopy covering) could provide an architecturally more appropriate scheme visually and in terms of containing noise and providing an internal environment better suited to all seasons.

#### Assessment of public benefits

5.17 As less than substantial harm to the conservation area is identified an assessment of any public benefits are required, to determine whether these outweigh the harm.

5.18 National planning guidance states "public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives, as described in NPPF paragraph 8".

5.19 The public benefits of the scheme are both economic and social. As in determining previous schemes for the development; the benefits are deemed to outweigh the low level, non-permanent harm to the conservation area.

5.20 The site is in a prominent location, was previously vacant and hard-landscaped; it made a negative impact to both the appearance of the conservation area and the vitality of the area. The economic benefits are covered in the principle of the proposed development section. The provision of affordable, small-scale commercial and communal spaces; a hub for a certain business sector, is not otherwise provided for in the city centre. The venue itself makes a strong contribution to the vitality and viability of the city centre and local distinctiveness. Sections 6 and 7 of the NPPF on building a strong competitive economy and ensuring the vitality of town centres require significant weight to be given to these benefits. NPPF paragraph 81 states "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”.

5.21 The social objective of the NPPF is to support strong, vibrant and healthy communities, which involves providing services which reflect communities’ health, social and cultural well-being. The development does provide community space and facilitates activities and events for a variety of individuals and community groups. This provides a local asset; a public benefit.

### Residential Amenity

5.22 In assessment of the operation of the development and its impact on amenity NPPF paragraphs 130 and 185 state developments should -

- Create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- Mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.

5.23 The original permission had conditions to control noise, specifically preventing amplified music being audible beyond the site boundary, limiting capacity at 9pm by only allowing customers to gather in parts of the site better enclosed (therefore shielded from neighbouring residents) and an overall closing time of 11pm.

5.24 When the application for extension of the initial permission was made in 2020 it was reported that planning conditions were breached on occasions and consequently (primarily due to amplified music) there was a demonstrable adverse effect on neighbours’ amenity. The Council took enforcement action at the time.

5.25 Prior to the 2020 permission the majority of the ground floor seated area, and part of the upper floor area were required to close at 9pm. Since the 2020 application, site management has evolved. Customers are required to be seated (when consuming food and drink). A management strategy for the site was required through planning condition (in 2020) and subsequently approved. The strategy advised that as part of the sound system, Spark can set a sound limiter, which ensures the dB cannot exceed a certain level. Spark advise that they always control the noise output rather than anybody that may use the system.

5.26 The planning conditions currently seek to manage noise as follows –

- No performance of amplified music on-site.
- No playing of amplified or recorded music that would exceed background noise levels at the site boundary with noise sensitive receptors.
- 23:00 closing.
- Management strategy, which advises a seated only venue for customers ordering food and drink.

5.27 Objections from neighbours to this application state that the site operators need to be contacted on a regular basis, with requests amplified noise levels are lowered. Noise from the quiz has also been reported.

5.28 Further to Public Protection comment in section 3, complaints have been received by Planning Enforcement, regarding music and cooking odour. In July 2021 a Breach of Condition Notice was issued regarding playing music louder than the background noise at the site boundary. Planning Enforcement then wrote to Spark in October 2021 advising that, following monitoring, officers were satisfied noise levels were satisfactory.

5.29 Cooking odour was also raised as an issue in 2021. The compliant lead to no formal action.

5.30 Monitoring by Planning Enforcement has illustrated the site can play amplified music, at background level, without breaching planning conditions previously applied and therefore not causing undue impact on neighbouring resident's amenity. However in light of ongoing noise issues in respect of amplified music, a variation of the previous conditions is suggested. The recommendation is that a precise condition is used that prevents the playing of any recorded or amplified music in external areas after 9pm Sundays through to Thursdays only. Amplified music would be permitted otherwise, but subject to the condition requiring it not exceeding background noise levels.

5.31 The applicants advise the quiz has always ended prior to 9pm. They acknowledge it has caused noise issues. The event has been paused and methods of enabling it, whilst avoiding disturbance are under consideration. Condition 4 would prevent events such as this from leading to undue disturbance in future.

## **6.0 CONCLUSION**

6.1 In principle the use of the site is consistent with the economic and town centre policies in the NPPF. The use, on a temporary basis, is also not in conflict with local policies regarding such, including the strategic strategy for Castle Gateway. Issues

around residential amenity and flood risk can be controlled reasonably through planning conditions.

6.2 There is less than substantial harm to the appearance of the conservation area; at the lower end of such harm. In giving weight to such, 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. NPPF para. 199 requires great weight should be given to an asset's conservation (and the more important the asset, the greater the weight should be).

6.3 The identified harm to the conservation area must be balanced against the public benefits. The identified benefits in this case outweigh the low level of harm to the conservation area, which are to its appearance only and not its character. This conclusion takes into account that the harm is temporary (whilst the area is in transition) and contained to a character area that, as stated in the area appraisal, does not have the obvious architectural interest of other parts of the Central Historic Core Conservation Area, and has no "buildings of merit" or strengths".

## **7.0 RECOMMENDATION:**

### **Approve temporary permission subject to the following conditions -**

#### **1 Approved Plans**

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

Floor plans and roof plan - 101-P2, 102, 103  
Elevations 104-P2, 105-P2, 106-P2

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**

The development hereby permitted shall cease trading by 30 September 2025. Prior to the specified closure date a schedule for the removal of all associated structures from site shall be submitted to the Local Planning Authority and approved in writing. These works shall take place in accordance with the approved schedule thereafter.

Reason: To enable a meanwhile use of vacant land prior to its expected longer term regeneration, in the interests of vitality and viability of the city centre.

3 Live Music

There shall be no performance of amplified music on-site.

Reason: In the interests of residential amenity.

4 Amplified / recorded sound

At all times there shall be no playing of amplified sound (including speech and recorded music) that would exceed background noise levels at the site boundary with noise sensitive receptors.

There shall be no playing of amplified sound (including speech and recorded music) in external areas after 21:00 on Sundays, Mondays, Tuesdays, Wednesdays and Thursdays.

Reason: In the interests of residential amenity.

5 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 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.

6 Customers to be seated when consuming food and drink

All customers consuming food and drink on the premises shall be seated; there shall be no vertical drinking.

Reason: To prevent noise disturbance, in the interests of the amenities of surrounding occupants.

7 Plant & Machinery

The combined rating level of any building service noise associated with plant or equipment at the site shall 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.

## 8 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.

## 9 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.

## 10 Flood risk management

The development incorporate the proposed flood resilience measures as detailed in the revised Flood Risk Assessment approved under application 17/00274/FUL.

Reason: To reduce flood risk in accordance with section 14 of the NPPF.

## 8.0 INFORMATIVES:

### 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 (paragraph 38) 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 to control the effect on residential amenity.

#### Contact details:

**Case Officer:** Jonathan Kenyon

**Tel No:** 01904 551323

# Spark York, Piccadilly, York

22/00195/FUL



Scale : 1:1541

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<b>Organisation</b>	City of York Council
<b>Department</b>	Directorate of Place
<b>Comments</b>	Site Location Plan
<b>Date</b>	25 March 2022
<b>SLA Number</b>	

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# Planning Committee

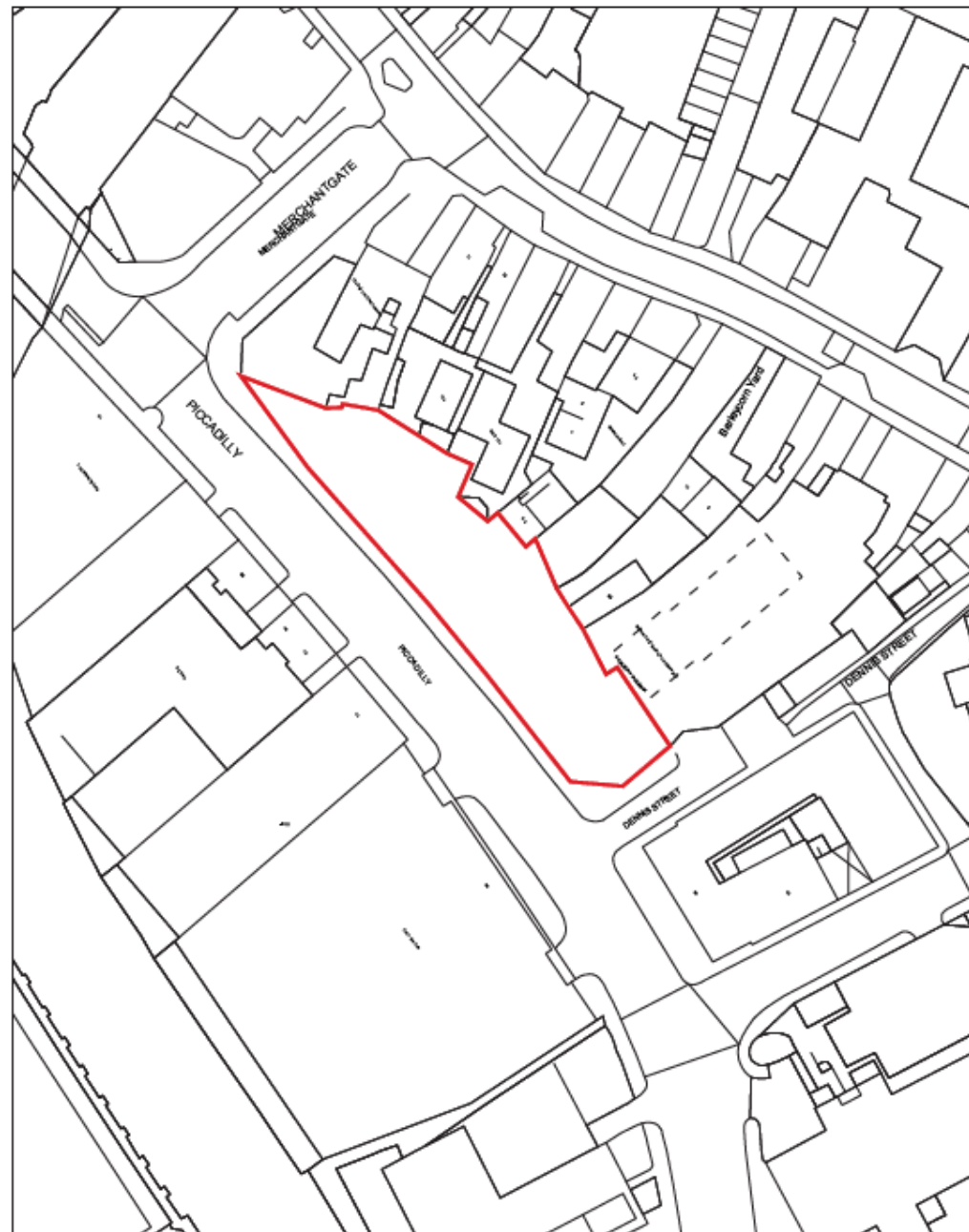
To be held on Thursday 7<sup>th</sup> April 2022

# 22/00195/FUL – Spark York, Piccadilly, York

Variation of condition 2 of permitted application 17/00274/FUL  
to extend duration of permission to 30.09.2025

Page 30

# Site Location Plan



# Site Location – Surrounding Context



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Views toward Nelsons Yard (1)



Views toward Nelsons Yard (2)



Looking towards Nelson's Yard from upper level

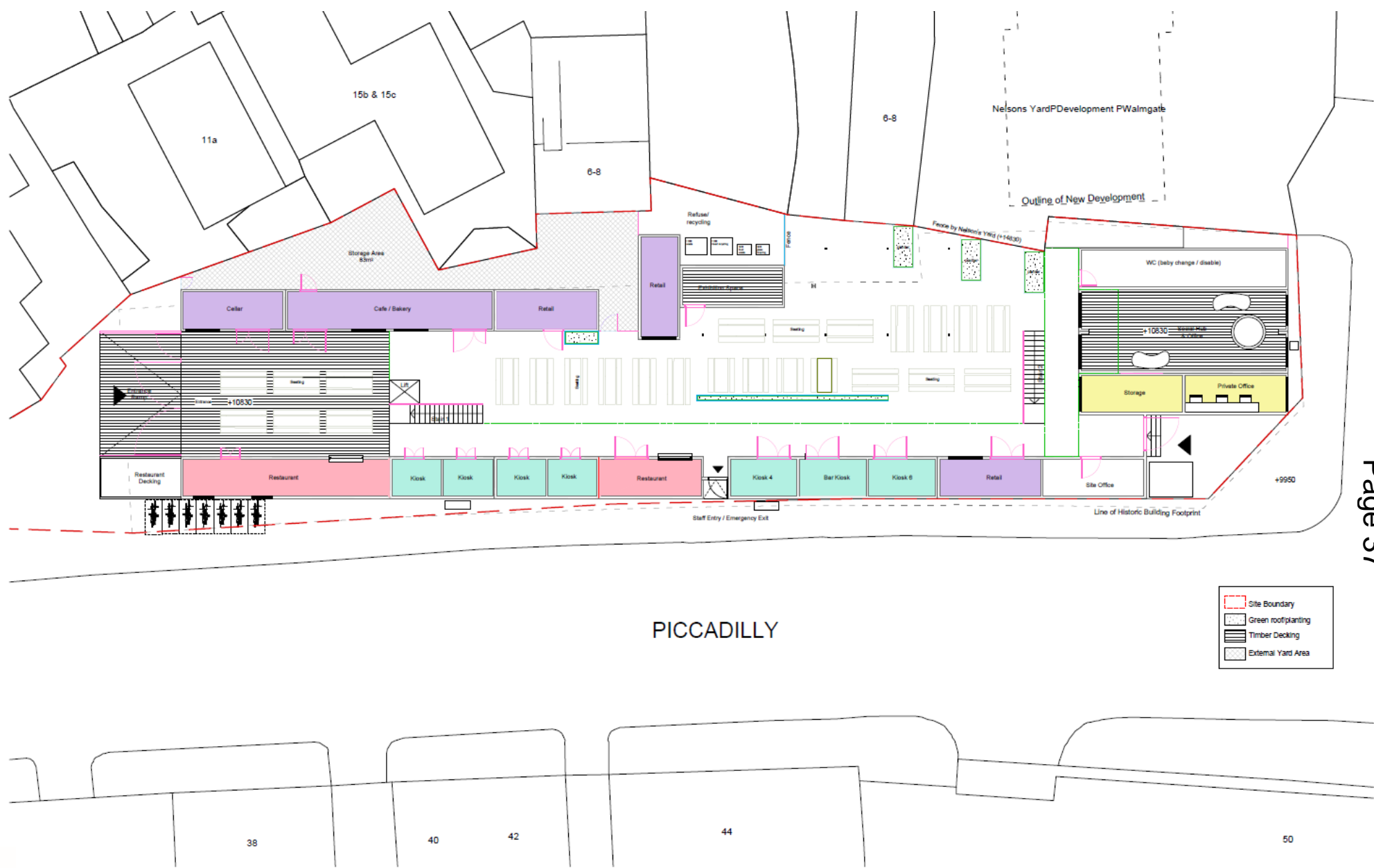


Looking towards 15 / 6-8 Walmgate from upper level  
(15 – gable window / 6-8 outside seating & gable window also)



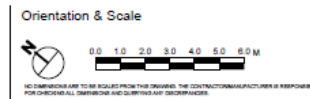


# Ground Floor Plan



Rev	Date	Description
-	08.03.20	Planning Issue
P2	15.03.20	Drawing revised as per planning officer's comments
P3	28.03.20	Final design updates

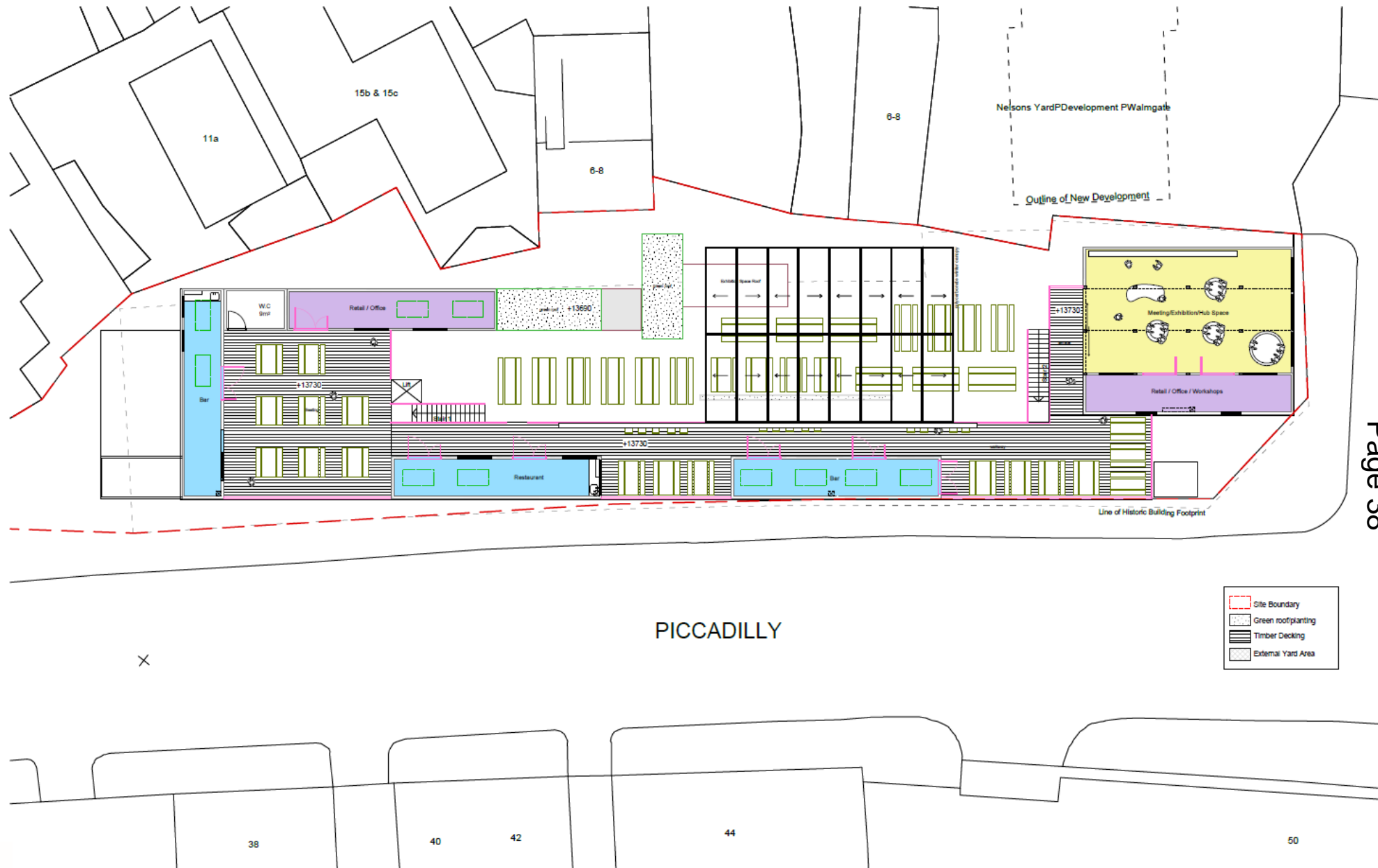
City of York Council Planning Committee Meeting - 7th April 2022



Project  
Spark York  
Drawing Title  
Existing Ground Floor Plan  
Drawing No.  
101

Drawn by  
GRH  
Date  
08.03.20  
Scale  
1:100 @ A1

# Upper Floor Plan



Rev	Date	Description
-	06.03.20	Planning Issue
1	28.01.21	Tabletop discussions updated

City of York Council Planning Committee Meeting - 7th April 2022

Orientation & Scale

NO DIMENSIONS ARE TO BE SOLELY FROM THIS DRAWING. THE CONTRACTOR SHALL MANUFACTURE AS RESPONSIBLE FOR CHECKING ALL DIMENSIONS AND QUANTITIES ARE CORRECT.

Project  
Spark York  
Drawing Title  
Existing First Floor Plan  
Drawing No.  
102

Drawn by  
GRH  
Date  
08.03.20  
Scale  
1:100 @ A1