

# 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