

COMMITTEE REPORT

Date: 24 January 2019 **Ward:** Guildhall
Team: Major and **Parish:** Guildhall Planning Panel
Commercial Team

Reference: 18/02268/FUL
Application at: Spark York Piccadilly York YO1 9PB
For: Erection of a temporary stretch tent canopy over existing shipping containers (retrospective)
By: Mr Samuel Leach
Application Type: Full Application
Target Date: 18 January 2019
Recommendation: Approve

1.0 PROPOSAL

1.1 The application relates to the Spark York development which was first considered by main Planning Committee in May 2017. Planning permission was granted to operate until July 2020, as a meanwhile use in advance of an anticipated permanent re-development of the Council owned site.

1.2 An application to vary the approved plans; to allow the site to retain exposed containers (without the timber cladding) was refused at Planning Committee in August 2018.

1.3 This application is for the canopy which covers over the majority of the site. Permission is sought for a temporary basis, between the months of September and May the following year. This would relate to the existing period and 2019/2020.

1.4 Spark was initially granted a temporary permission to use the site in advance of comprehensive regeneration. This 'meanwhile use' was permitted to bring added vitality and viability to the area. The site is occupied by multiple small and independent businesses and the majority of customer floor space is external. The canopy is required to help attract custom during the winter months.

1.5 The application is brought to Committee for determination at the discretion of the Assistant Director for Planning and Public Protection. Previous applications were determined by the main Planning Committee. The development is on Council owned land and has been the subject to a high level of public interest.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:

Areas of Archaeological Interest: City Centre Area

Application Reference Number: 18/02268/FUL

Item No: 4d

Conservation Area: Central Historic Core

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

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

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

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

2.4 Relevant Policies of the 2018 Draft Plan:

SS5 Castle Gateway
D1 Place making
D2 Landscape and Setting
D3 Cultural Provision
D4 Conservation Areas
D5 Listed Buildings

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

2.6 Relevant policies of the 2005 Draft Local Plan:

CYGP1 Design
CYGP15 Protection from flooding
CYHE2 Development in historic locations
CYHE3 Conservation Areas

2.7 The revised National Planning Policy Framework was published on 24 July 2018 (NPPF) and its planning policies are material to the determination of planning applications. It is against the NPPF (as revised) that this application should principally be assessed.

3.0 CONSULTATIONS

Guildhall Planning Panel

3.1 Regret that this application is retrospective.

Publicity

3.2 Two objections have been received.

- Spark repeatedly ignore the planning permission procedures and has no respect to the council rules by continuing to carry out works without planning permission. The council shall not set the precedent allowing Spark organisation continuing the ignorant behaviour.
- Visual intrusion and inappropriate development in the conservation area. The existing container complex is a hideous alien feature that should never have been allowed in the first place. The tent like roof covering compounds this dreadful monstrosity and makes the eyesore worse.
- The applicants' argument that the roof is necessary to make the place viable in winter months and to maintain footfall is not a valid planning argument. Nor is the issue of temporary permission. York Council planning department have previously rejected these arguments on other sites stating that "they do not overcome policy objections".

4.0 APPRAISAL

KEY ISSUES

4.1 The key issues are -

- Impact on designated heritage assets
- Visual and residential amenity

ASSESSMENT

4.2 The canopy is a tensile structure which is fixed close to the top of the containers. At its maximum height it is some 1.5 m higher than the containers. The structure stops short of the boundary with adjacent houses (to the North-East); as is evident on the roof plan, and lowers down to 3.5 m. The canopy is a sand colour. Its means of fixing means it overlaps the side of the containers on the North-West side (above the main entrance).

Impact on Designated Heritage Assets

Relevant policy & legislation

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

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

4.5 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. Where there is found to be harm to the character or appearance of a conservation area, or the setting of a listed building, the statutory duties under section 72 and 66 mean that the avoidance of such harm should be afforded considerable importance and weight.

4.6 The NPPF advises that local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) and take this assessment into account when considering the impact of a proposal on a heritage asset. Paragraph 192 states that in determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

4.7 NPPF paragraphs 193 and 194 state that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given the asset's conservation. The more important the asset, the greater the weight should be. Any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraph 196 advises that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including where appropriate securing its optimum viable use.

Assessment

4.8 Spark only has permission to continue to operate until July 2020. The development has permission on the basis that given the nature of Piccadilly (as explained in the Central Historic Core Conservation Area appraisal which states that "Piccadilly was developed much later than the rest of the medieval city centre and has larger scale building plots, reflecting its industrial past. The lack of high quality retailers and historic buildings means it is not a destination for visitors, and locals mainly use it for car parking ... A number of buildings are in poor condition suggesting neglect and lack of investment over many years ...) during this short time period a temporary use of a vacant site, that would improve vitality and viability, would not cause undue harm to the conservation area.

4.9 The canopy would only be installed until 1st May 2019 and then between 1st September 2019 and 1st May 2020.

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

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

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

4.13 The canopy structure is fixed fairly tightly to the containers and generally has a low visual impact. It is most apparent above the main entrance because the fabric overlaps the side of the containers and is in a contrasting colour. If this area were re-designed (i.e. fixed so the canopy either stops short of the edge or closer to it, as it is elsewhere) the structure (on the basis that it is temporary only and is applied to a development that is, and evidently appears, temporary) would not harm the significance (including the setting) of the Red Lion next door. The canopy does not impact on the setting/views of St Deny's Church.

4.14 The canopy is another utilitarian/functional structure that fails to enhance the appearance of the Spark site or the Central Historic Core Conservation Area in which it is located. However as it is fixed tightly to the existing structures on site it is not visually prominent and causes very little further harm to the character and appearance of the conservation area.

4.15 In assessing the scheme against NPPF policy it causes 'less than substantial harm'. As such the heritage policy test is whether any public benefits outweigh this harm. According to NPPG (national guidance) public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in the National Planning Policy Framework.

4.16 The canopy is required to help continue to attract custom/footfall during the period from September to May. This will benefit the small and independent traders based at Spark, who are reliant upon customers being enticed into the site due to the inward orientated design and layout.

4.17 The canopy will provide a more appealing environment for customers and consequently bring about economic benefits consistent with the grounds for granting permission originally; providing a space for small businesses and bringing commercial activity to the area.

4.18 Given the low level of harm identified, the economic (and therefore public) benefits of allowing the canopy for temporary/seasonal periods outweigh the low level of harm the canopy brings to the character and appearance of the conservation area.

Visual and residential amenity

Relevant planning policy and guidance

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

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

Assessment

4.21 Some objections made against the development in previous applications were that there was overlooking over neighbouring properties, in particular from the walkway on the upper floor. Residents in Mawson's Court and Nelson's Yard had a preference for more enclosure to screen activity within the site. The canopy encloses the upper floor area and removes this overlooking issue.

4.22 The canopy is fixed closely to the top of the containers; it lowers in height on the North-East side and stops short of the boundary. Development on site remains lower in scale than the surrounding houses. The canopy conceals the interior of Spark in this corner, where unlike in other areas it was previously exposed, and gives a

coherent appearance. Due to the reduced scale of the canopy on its North-East side and as it coherently conceals the interior of the Spark site, it does not have an adverse impact on visual amenity and development is not over-bearing or over-dominant over surrounding properties.

5.0 CONCLUSION

5.1 The application is to allow the canopy during temporary periods, between September and May the following year.

5.2 In principle allowing the structure subject to a condition requiring a temporary installation only would not conflict with National Planning Policy Guidance on the use of planning conditions which states that "a temporary planning permission may be appropriate on vacant land/buildings to enable use for a temporary period prior to any longer term regeneration plans coming forward (a meanwhile use) or more generally to encourage empty property to be brought back into use. This can benefit an area by increasing activity".

5.3 The addition of the canopy causes a low level of harm to the character and appearance of the Central Historic Core Conservation Area. The applicants consider the canopy is necessary for Spark to be viable during its tenure. It is accepted that the Spark development is desirable on economic grounds, both in terms of the business it facilitates and also assisting with the vitality, viability and regeneration of Piccadilly.

5.4 To grant permission, subject to conditions, on times the canopy can be in-situ and regarding the finish above the entrance, would bring about a public benefit that would outweigh the low level of harm to the conservation area and prevent any harm to the significance of the grade II listed Red Lion or to St Deny's Church. As a consequence the proposals would be acceptable when assessed against the NPPF and even when considerable weight and importance is given to this harm.

COMMITTEE TO VISIT

6.0 RECOMMENDATION: Approve

1 The canopy hereby approved shall only be in-situ between 1 September 2018 and 1 May 2019 and 1 September 2019 and 1 May 2020. Outside these dates the canopy and its associated fittings shall be removed from the site.

Reason: The temporary nature of the site is such that it is considered inappropriate on a permanent basis. The current use has been permitted for a temporary period prior to regeneration plans coming forward (a meanwhile use), and the canopy will benefit the businesses on site (and vitality and viability of the wider area) by encouraging increased activity during the winter months.

2 The development hereby permitted shall be carried out in accordance with the
Application Reference Number: 18/02268/FUL Item No: 4d

following plans:-

Site plan 16YRK-GA-001

Proposed plans and sections - 103, 110, 111, 112, 114, 120, 121

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

3 Notwithstanding the approved plans details of the finish to the canopy, where above the main entrance (on the north elevation), shall be approved by the Local Planning Authority, and the canopy installed in accordance with the approved details within 1 month of the date of this permission.

Reason: To reduce the extent the canopy overlaps the north side of the structure and to ensure a more tidy appearance, in the interests of the appearance of the conservation area.

7.0 INFORMATIVES:

Notes to Applicant

1. STATEMENT OF THE COUNCIL`S POSITIVE AND PROACTIVE APPROACH

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (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.

Contact details:

Author: Jonathan Kenyon Development Management Officer

Tel No: 01904 551323