

**14 February 2020**

**Executive Member for Finance and  
Performance Decision Session**

**Report of the Director of Economy and Place**

**Proposal to grant a further 2 year lease to Spark:York for 17-21 Piccadilly  
site**

**Summary**

1. The report sets out a proposal to grant a further lease of 17-21 Piccadilly to Spark:York, when their existing lease expires on 30th June 2020, until March 2022 when the site will be needed for redevelopment as part of the Castle Gateway regeneration.
2. It is proposed that this further lease would only be granted when: (a) Spark York are in full compliance with the existing planning permission and (b) only if and when they obtain planning permission for continued use of the site for its present use for the duration of the further lease. The current planning permission will expire on 1<sup>st</sup> July 2020 unless the council as Local Planning Authority (LPA) grants an extension prior to that date.
3. Granting the proposed further lease will maintain the benefits of the existing lease to create footfall and economic vibrancy within the Castle Gateway area and continue to provide start up business development space for SMEs in the city centre until the site is ready for redevelopment. The short term nature of the proposal will not affect the council's proposal to deliver redevelopment on the site as part of the Castle Gateway scheme.
4. The new lease will contain additional conditions to prohibit noise nuisance and provide the council with greater financial security.

## Recommendations

5. The Portfolio Holder is asked to agree:

- i. To offer Spark York a new lease for the use of 17-21 Piccadilly from 1<sup>st</sup> July 2020 until 31<sup>st</sup> March 2022 (at basic rent of £13,333 per annum payable monthly in advance rather than annually in arrears, plus an additional rent equal to 30% of Spark's annual profit payable at the end of each year) to continue to operate a shipping container development for start-ups and street food,
- ii. That the new lease will require Spark: York will to pay a Bond/Deposit sum of £5,000 to the council towards securing compliance with the tenant's obligations in the new lease (such as payment of rent)
- iii. That the new lease will require a director of Spark:York to act as guarantor for the performance by Spark:York of the tenant's obligations in the new lease
- iv. That the new lease will contain a clause setting out the council's right to terminate the lease should Spark/the tenant breach their obligations in the lease (including breaching planning laws)
- v. That the new lease will specifically preclude Spark:York from running amplified live music or DJ sessions in the evening
- vi. That the new lease will only be granted if and when:
  - (a) Spark:York are in full compliance with all of the conditions to the site's existing planning permission, cladding the units and controlling noise nuisance.
  - (b) Spark:York obtain an extension from the LPA of the validity period of the existing planning permission from 1st July 2020 to 31st March 2022.
  - (c) Spark:York have settled all existing debts to the council.

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

## Background

6. In November 2016 Executive approved that Spark:York be granted a lease of 17/21 Piccadilly following the demolition of the redundant building on site earlier that year. During the summer of 2016, the Council explored various

alternative temporary uses for the site with a view of bringing it in to use in the short term and animate the area.

7. Other uses were explored with partner organisations including Make it York, The BiD, and Jorvik Viking Centre but they did not feel able to take the site on in the short term. Whilst these discussions were ongoing the council were approached by a Community Interest Company (CIC) called Spark:York who were interested in finding a site for pop-up development providing start-up spaces for social enterprises and new businesses. They subsequently submitted a business plan to the council for 17-21 Piccadilly.
8. The proposal was based upon the success of other similar schemes in London such as Pop Brixton, Boxpark Shoreditch and The Artworks London. Other schemes have since followed such as in Stack Newcastle in the Haymarket area. These have all become destinations in their own right as vibrant and creative hubs that attract people in to the area.
9. Spark:York were awarded a 3 year lease and successfully applied for planning permission (Ref 17/00274/FUL) and were granted temporary permission for use of the site until the end of June 2020. Their fund raising and construction works were undertaken and they started to trade on the site in May 2018.
10. The Spark scheme has provided street food kiosks, retail, shared workspaces, meeting room, performance spaces and public workspace. It has provided space for a considerable number of start-up businesses in York and a number of these have been very successful and outgrown their space in York, resulting in them expanding to take space on a permanent basis within the city centre. This has included the occupation of space within the council's commercial property portfolio. The facility is currently occupied by 16 businesses and host a range of events and provides shared space. There are currently 5 vacant units.
11. The following outcomes are taken from Spark's request for a further lease:
  - In 18 months of operation Spark as a project has to date supported 12 businesses in taking on permanent premises, with 85% of those businesses taking a premises in York City centre.
  - On average each business within the Spark site has taken on 3 members of staff, with a mix of full time and part time positions. Overall this equates to an increase of 60 FTE positions in the local economy.
  - Spark itself has also cultivated an additional 5 FTE roles.

- The project has given business opportunities to 40 start-up businesses in York, that have supported the local economy with up to £500,000 in strengthening local supply chains.
- The site wide turnover (a cumulative figure of turnover across all businesses situated on the site) is now close to £3,000,000 since opening in May 2018.
- Spark has hosted over 500 free or pay as you feel community events, ranging as a permanent home of two residents' associations, over 15 hours of free community events a week, while hosting more prominent, financially inclusive events for the community.
- Spark hosts 100 community groups each year who use the space either on a discounted or free basis.
- It was also the host venue for the inaugural York Design Week and York Dead Good Festival, the host for York Food Poverty Alliance in which a zero-waste supermarket and food bank operates and will be the first contactless point for homeless donation with York BID and Two Ridings Community Foundation (York Street Aid);
- It has been a regular venue for events relating to My Castle Gateway and consultation events for the future of the area
- It has been a venue for Aesthetica Film Festival, York Mediale and features in the Visit York Christmas Guide 2019.
- Spark will continue to support new business creation and ensure they have the space and time to ultimately grow and move into a permanent unit.
- Spark will continue to offer a destination to residents and visitors of the city, supporting city-centre regeneration and footfall generation, particularly as Piccadilly emerges as an improved and more well-used street.

## **Castle Gateway**

12. In January 2020 Executive agreed a workplan for the delivery of the Castle Gateway regeneration which will see further design work undertaken for a permanent development on the current site of Spark:York. This programme of work will result in no on site development activity until at least April 2022. If Spark are not granted a further lease then this would result in the site being empty and unused for c 2 years.
13. The activity generated by Spark:York has been a positive addition to the vision for the broader Castle Gateway site, bringing economic activity, footfall and vibrancy into an area that is now showing real signs of redevelopment and uplift. It would be undesirable to see the 17-21

Piccadilly site standing empty once again. The Castle Gateway team are therefore supportive of an extension to the temporary use providing that the lease does not delay any future redevelopment on 17-21 Piccadilly.

### **Request for Further Lease**

14. Spark has advised the Council that they would like to continue the operation for a further period on expiry of the current lease, which ends at the end of June this year. Spark advise that given the impending expiry of their lease, that this has led to a reduced demand for the units and concern amongst existing occupiers. The uncertainty created has resulted in a reluctance by would be occupiers to take units, given the investment needed to fit out a unit. The scheme has been well let throughout the operation of the facility and has attracted foot fall to the site. They have advised that throughout their operation, demand for the units has been strong and that since the possibility of Spark being granted a further lease has been publicised, they have been contacted by operators expressing an interest in taking on space within the vacant units.
15. Profit share/rent – Prior to Spark’s occupation, the land was previously unused land with few amenities and no rent received. To help de-risk the project, whilst also enabling the site for future development, the council agreed to provide the initial cost of providing services/infrastructure to the site. This was initially estimated at £40,000 and ultimately has led to council expenditure of £38,680 on utility supplies which formed the basis of the basic rent that Spark would pay. This investment was to be repaid in 3 base rent instalments of £13,333 at the end of each year. The first instalment has been paid and the next ones are due in March 2020 and at the end of the current lease in June 2020. These payments must be made before any new lease comes into place and will fully recoup the costs incurred on the site.
16. The proposed new lease will require Spark to continue to pay £13,333 per annum during the term of the new lease.
17. The current lease also obliged Spark to pay as ‘additional rent’ at the end of each year a sum equal to 30% of any profit generated by Spark from the site within the preceding 12 month period. It should be noted that this does not relate to the turnover of the units on the site quoted by Spark at c£3m. Spark made a loss in their first year of trading due to the front loading of their start-up costs and repayment of loans over a short period and hence the Council received no profit share. Their view is that in the 2<sup>nd</sup> full year of trading they will record a small loss and then make a profit in the following year once the loans have been repaid.

18. Under the new proposed lease, the council would similarly share any profit on top of its base rent at a figure as existing i.e 30%. If there are no profits, the Council would purely receive the base rent, being £13,333pa.

## **Planning Issues**

19. Whilst the scheme has been successful in delivering a range of economic and social benefits there remain concerns regarding failure to comply with the conditions of the planning consent regarding the provision of timber cladding on the units. This condition has not yet been complied with. Spark have indicated that they are unable to secure further capital loan funding at this stage to enable them to comply with planning, without an extension to their lease.
20. The proposed further lease will not be granted unless Spark:York install the cladding by the 31<sup>st</sup> March 2020. If they fail to do this then a new lease will not be granted and their tenancy will be end when the current lease expires on 30<sup>th</sup> June 2020.
21. There have been a number of ongoing neighbour complaints from nearby residential properties regarding the level of noise being generated from amplified music on the site. The noise issues have breached the planning conditions placed upon Spark:York to protect residential amenity for local residents and enforcement action is being considered. This issue seems to be particularly linked to evening DJ sessions run by Spark:York and this is not an acceptable situation going forward.
22. This issue has been discussed with Spark:York. The proposed further lease will (like the current lease) oblige the tenant/Spark to comply with laws and regulations (including relating to planning) and prohibiting them from doing anything which creates a nuisance to neighbouring owners or occupiers. If it is evidenced that there has been a persistent breach of these conditions then the council as landlord will take enforcement action including commencing forfeiture proceedings to terminate the lease. This will be in addition to any planning or environmental enforcement activity undertaken by the council's statutory teams. It is also proposed that the new lease specifically precludes open air amplified live music or DJ sessions in the evening.
23. The existing planning permission is time limited and ends at the end of June 2020. In order to continue operating after that, Spark will need to obtain a time limit extension from the local planning authority. They intend to submit

this application to the LPA in the coming months. It is proposed that no further/new lease will be granted unless:

- (i) Spark submit the necessary planning application by April 2020 and
- (ii) by 30<sup>th</sup> June 2020 obtain a further/extended planning permission by July 2020 that would cover the term of the proposed further lease until 31<sup>st</sup> March 2022. Normally Breach of Condition Notices give the occupier a minimum of 90 days/3 months to comply with the specified breach(es) and the LPA's normal processing time for a planning application is 8 weeks

24. Spark will be responsible for clearing the site upon their vacation at the end of the lease period.

### **Consultation**

25. The council previously consulted with Make It York and The York BiD who are supportive of the proposal. No formal public consultation has been undertaken but the views of customers and local residents have been taken into account.

### **Council Plan**

26. The proposal accords with the Council Plan 2019-2023 key outcome of "Well paid jobs and an inclusive economy".

### **Implications**

27. The following implications have been identified:

- (a) **Financial** – The recommended option would involve the Council receiving the rental payments outlined within the report. No further capital expenditure is envisaged.
- (b) **Human Resources** – There are no human resource implications.
- (c) **Equalities** – There are considered to be no equalities implications.
- (d) **Legal** – Comments from Legal Services have already been incorporated above.

The Council has statutory power to dispose of (including by granting a lease) of property owned by the Council. If, after the grant of the proposed further lease, the Council as landlord considers that the tenant is in breach of the tenant's obligations in the lease (including to comply with planning law) then the council as landlord can take enforcement action including commencing forfeiture proceedings to terminate the lease. (This would be additional to, and separate from, any regulatory enforcement action for breaches of planning law, environmental law or licensing law etc that might be undertaken by the relevant departments).

- (e) **Crime and Disorder** – Continued use of the site reduces the risk of anti-social behaviour that is attached to vacant sites. The continued use of the development requires planning permission, and the application would be considered in consultation with statutory authorities
- (f) **Information Technology** – There are no information technology implications.
- (g) **Property** – covered in the report.
- (h) **Other** – There are no other implications.

## **Risk Management**

- 28. The council is offering the renewal of the tenancy subject to Spark:York complying with the terms outlined. Whilst Spark have advised they have made a small loss in the period of occupancy thus far, this has been due to greater than expected capital expenditure and they have continued to operate the facility and envisage that the project should turn a profit within the third year.
- 29. Should Spark:York reject the proposed terms of the lease there is a risk that scheme could close before the end of the existing lease. If the company went into administration there is a risk that outstanding rents may not be paid in full.
- 30. In that scenario the assets of the company lie largely in the converted shipping containers and their ability to be transported and used elsewhere would mean they were not left on the site indefinitely.



## Contact Details

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**Wards Affected:** *Guildhall*

**All**

**For further information please contact the author of the report**

### Annexes

Annex 1 – Map of 17-21 Piccadilly