

Report of the Director of Economy and Place

**Update in relation to the impact of Covid-19 on the City of York Council's
Commercial Property Portfolio**

Summary

1. The report sets out the performance of the council's Commercial Portfolio in 2020 highlighting the impact of Covid-19. The report also sets out measures taken to support tenants and identifies the resulting financial position and the level of vacancies in the estate. The report includes an update on the situation on Spark York which was reported to the Executive Member, prior to the Covid-19 outbreak in the UK, on 14 February 2020.

Recommendations

2. The Portfolio Holder is asked :
 - To note the position and the support that the City Council has provided to the businesses within its commercial property portfolio in relation to the Covid-19 situation.
 - To agree and note the impact or COVID -19 situation on the previously agreed lease to Spark:York and to agree the removal of the obligation upon Spark:York to provide a deposit/bond payment and guarantee from one of its directors as part of the pre requisites originally required for the grant of a further lease.

Reason: To note the current impact of Covid-19 on the City Council's commercial property following the grant of rent deferments, as set out in the report and to provide Spark York with further support and financial viability for their short term use of 17-21 Piccadilly.

Background

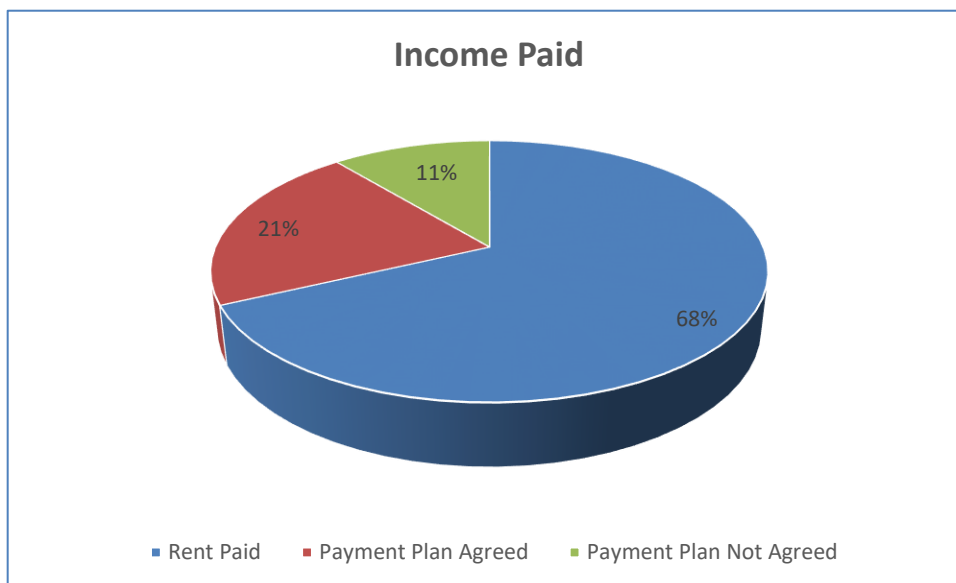
3. The period since March 2020 has seen sudden change in society and the economy, with the start of an unprecedented global recession as a result of the global Covid-19 pandemic and the immediate impact of the lock down. Whilst York's economy has fared better than many other cities, with York proving a continued draw to visitors and the city centre adapting rapidly to support new ways of trading, businesses in the city have been severely impacted.
4. The City of York Council is a major landowner within the City and thus has an important role in promoting and aiding businesses viability in these challenging times. The City Council, as a commercial landlord, moved quickly to assist its commercial tenants given the onset of the pandemic in the UK. The commercial rental charges due in the April to June quarter were deferred and with the prolonged national crisis, the Council wrote to its tenants stating that it was willing to consider deferring the quarter's rental due in July.
5. It was recognised that the Covid crisis had and would impact different sectors in different ways and to different extents and hence the council took a decision not to take a one size fits all approach to commercial rent recovery. Instead, individual circumstances have been discussed with tenants with a view of seeking to agree a suitable payment plan, whilst no interest would be charged on arrears from debts accrued from the Covid-19 situation.
6. The council currently receives approximately £6 million per annum in rent from its property interests in the city. This has risen over previous years given acquisitions such as Swinegate and Hospital Fields Road and the general health of the property market in York. The rents which the Council charge naturally are reflective of the market in York and the future level/trend of rents will be guided by the market.
7. The commercial estate has been assembled over a considerable period of time for various different reasons. For example, the ownership of Shambles dates back to the council purchasing most of the street to protect it from demolition in the 1930's whilst many other property interests were purchased for large capital schemes, such as a former proposal to develop an inner ring road. In the last few years the council has taken a pro-active role in managing its asset base and has disposed of low income returning assets which have realised development opportunities, such as the ground lease interest at Stonebow House. It has also acquired higher income

returning assets in both Swinegate and Hospital Fields Road estate. The acquisition of assets has been made with the aim of ensuring the ongoing economic vibrancy of the city centre while increasing the income from the council's commercial property portfolio. These acquisitions have been in line with the Council's approach of purchasing assets which support wider council objectives while achieving a return rather than investing simply where the highest returns are to be made.

8. The portfolio includes a commercial estate comprising over 1,100 occupational agreements and which provide an annual revenue income of approximately £6 million. This contains retail, restaurant, light industrial, office and agricultural properties as well as the commercial lettings at West Offices and a lease of the land that the Race Course is situated upon. This also includes the recent acquisition of a strategic property in Coney Street which was the subject of an Executive report in November 2019 and which was purchased later that year.
9. The council has always focussed its commercial estate in York in order to promote and support economic vibrancy and ensure the preservation of historic buildings. Through its ownership of the estate the council therefore, provides accommodation which helps in developing and maintain the city's economy, serving a broad role in meeting social economic and environmental objectives such as regeneration and ensuring the sustainability and vibrancy of the city centre. The Council's ownership of commercial property in York and its pro-active stance to support business have therefore have enabled it to be instrumental in the resilience of the city during the Covid 19 crisis.

The Latest Situation

10. Following the deferral of rents as detailed above, for the period of April to September 2020, 68% of commercial rents due had been paid in full by its tenants. The Asset and Property Management team have been in discussion with individual tenants as regards their individual circumstances to ascertain the support that can be provided whilst recognising that the income from the portfolio is needed to pay for the Council's services. Council budgets have been hit hard by the immediate need to provide additional support to our communities and this income is now more vital than ever.
11. The vast majority of tenants whom have yet to pay the deferred rent, have now agreed to rental repayment plans spanning up to 24 months. The following graph depicts the income paid and repayment plans agreed.



12. For the April to September period and excluding invoices sent out in the last 28 days, the council had received 68% of income due. 21% has been agreed to be paid through payment plans ranging in duration from 3 to 24 months depending upon the individual circumstances of tenants. Approximately 11% of the sums invoiced through the period are not as yet subject to repayment plans. Again these are predominantly in areas of leisure, retail and hospitality where some tenants are monitoring the financial recovery situation and are not in a position to as yet agree a repayment plan. Discussions will continue with those tenants as they will with all tenants.
13. Given the impact of Covid-19 on the retail, restaurant and leisure sector in the city due to the lockdown and subsequent social distancing it is within these areas where the majority of payment plans have been sought and thus where the Council is primarily supporting businesses through its rent deferment plans.
14. The City Council's commercial property portfolio has not experienced a considerable rise of vacancies since the pandemic. As of end September 2020 all available and lettable city centre retail and restaurant commercial property is either occupied through occupational agreements or under offer. Whilst it is fully acknowledged that there are uncertain times ahead and

that there is a strong likelihood of some future vacancies arising, this is a positive sign for both the portfolio and York as a whole. Through the pandemic period the Council has let a number of properties, which are under offer or have become recently occupied. This includes a restaurant premises on Coppergate; retail premises on Little Stonegate and Shambles and a number of individual business suites within the Eco Business Centre on Clifton Moor.

15. The council's property ownership and its pro activity in offering assistance to its tenants during this unprecedented time has been a crucial part of York's recovery. Whilst, the assets bring in a valuable revenue stream to fund the Council and its services, it will continue to work with its tenants in the uncertain months ahead with the aim of offering continued support where it is able to do so.

Managed Office facilities

16. The council manage a number of office facilities in York which include the Eco Business Centre in Clifton Moor and Swinegate. The council, has again not seen considerable vacancies arising in these facilities and currently has 2 of the 63 units vacant at the Eco Centre and 1 suite empty at Swinegate. Whilst the reception centre at the Eco Centre remains closed, on site staff have returned to the facility to manage the building given occupiers are now using the facility. Risk assessments have been undertaken at these buildings and cleaning regimes are in place to ensure the safety if the occupiers and it is envisaged the reception at the Eco Centre will re-open shortly depending on the national situation and Government guidance.

Spark:York, 17 -21 Piccadilly

17. On 14th February 2020 the Executive Member for Finance and Performance provided authority to grant a further lease to Spark York CIC, on the site of 17-21 Piccadilly, which would run from the expiry of what was then their current lease (on 30th June) until 31st March 2022. (Authority to grant that original/initial lease was given by Executive in November 2016). Spark York CIC currently occupy the site pursuant to a tenancy at will granted on 30th June 2020 – which is terminable by either the Council or Spark York at any time with immediate effect by either party giving notice to the other party.
18. The 14th February 2020 decision specified that a further lease would only be granted on the basis and subject to the following;

- i. To offer Spark York a new lease for the use of 17-21 Piccadilly from 1st July 2020 until 31st March 2022 (at basic rent of £13,333 per annum payable monthly in advance rather than annually in arrears, plus an additional rent equal to 30% of Spark's annual profit payable at the end of each year) to continue to operate a shipping container development for start-ups and street food;
- ii. That the new lease will require Spark: York will to pay a Bond/Deposit sum of £5,000 to the council towards securing compliance with the tenant's obligations in the new lease (such as payment of rent).
- iii. That the new lease will require a director of Spark:York to act as guarantor for the performance by Spark:York of the tenant's obligations in the new lease.
- iv. That the new lease will contain a clause setting out the council's right to terminate the lease should Spark/the tenant breach their obligations in the lease (including breaching planning laws)
- v. That the new lease will specifically preclude Spark:York from running amplified live music or DJ sessions in the evening
- vi. That the new lease will only be granted if and when:
 - (a) Spark:York are in full compliance with all of the conditions to the site's existing planning permission, cladding the units and controlling noise nuisance.
 - (b) Spark:York obtain an extension from the LPA of the validity period of the existing planning permission from 1st July 2020 to 31st March 2022.
 - (c) Spark:York have settled all existing debts to the council.
 - (d) A communication plan is in place which would be a two way communication agreement with Spark:York and local residents.
 - (e) That the Assistant Director of Regeneration and Asset Management in consultation with the Executive Member for Finance and Performance would investigate the viability of reducing the time for the sale of alcohol by half an hour from the current operating

hours. Current hours at the time were in accordance with statutory permitted times.

19. When the lockdown commenced Spark were part way through cladding the facility and were awaiting the determination of their planning application. All planning committee meetings were cancelled during lockdown and hence as the current planning permission expired on 1st July 2020, an interim tenancy at will was granted to Spark on 30th June 2020 to enable them to continue to occupy the property, which was terminable by either party with immediate effect upon serving notice at any time.
20. Planning permission was subsequently renewed on 2nd September under reference number 20/00561. The planning consent extended the planning permission to use the site until 31st March 2022. The extended planning consent was issued subject to conditions that; there would be no performance of amplified live music on site; no playing of amplified or recorded music on site which would exceed background noise levels at the site boundary with noise sensitive receptors; hours of use shall be limited between 0700 and 2300 save for part of the site closest to Nelsons Yard, which is to be limited to seating after 2100 given the proximity of residential accommodation. The area limited to seating after 21:00 will not be permitted to be used until the planning authority have received and approved a management strategy for the site.
21. Spark:York have completed the cladding of their facility and have no outstanding debts to the Council due. Annual trading figures for the previous year have been received from Spark and these illustrate that no profit has been made from the facility having accounted for all running costs including wages. Whilst this remains a concern, Spark are confident that the facility remains a viable prospect and all lettable units are currently occupied and in use, which is positive given the Covid-19 situation.
22. Like many other city centre traders Spark:York closed during lockdown after a brief period of delivering take away food. This has obviously impacted upon their overall financial position and they have now requested that to aid their financial situation that the requirement to provide a deposit and a guarantor requirement to take a deposit and act as a guarantor be removed from the list of pre requisites/conditions (for the grant of further lease) as set out in paragraph 18. The removal of the bond and guarantor from the lease pre-conditions would be comparable to terms offered to other existing CYC tenants when granting them renewal leases/further leases but reduce the council's ability to/prospects of successfully recovering any future arrears/ costs. However, given the tenant's recent

compliance to the conditions as set out, the risk of this is considered to have reduced. All other conditions will be set out in the proposed lease which will require Spark to fully comply with all planning conditions.

23. Furthermore, given the challenging economic conditions and the fact that the planning committee have reviewed the hours of use as part of the application to extend the use on the site for a further period, it is not considered necessary to impose any additional restrictions on the hours of use that Spark may trade, under the terms and conditions of the new lease.
24. Given the continuing challenges facing businesses in the city centre, the continued presence of Spark as an affordable space for local start-up businesses, social enterprises, community groups and charities remains a positive attraction which provided an important footfall draw as lock down was eased and should continue to be a positive addition to the city centre economy.
25. Since the February report, Spark's compliance with the requirement to clad the facility and renew the planning consent are an illustration of the tenant's wish to remain on site and comply with the lease terms as set out by the council as its landlord. Whilst it is anticipated that Spark will comply with its obligations in the future if it should not then the council will take such action as it is able to as landlord (under the terms of the lease which it is proposed to enter into and under landlord and tenant law).

Consultation

26. The council previously consulted with Make It York and The York BiD who are supportive of the "Spark" proposal.

Council Plan

27. The success of the property portfolio and need to support its tenants accords with the Council Plan 2019-2023 key outcome of "Well paid jobs and an inclusive economy".

Implications

28. The following implications have been identified:

Financial – The performance of the commercial portfolio is critical in providing revenue to the Council and repayment plans and income owed

through the Covid period will be monitored closely throughout the year, particularly any build-up of arrears or vacant properties.

The removal of the bond and guarantor from Spark would reduce the council's ability to offset any future arrears however, given the tenants recent compliance to the conditions as set out, the risk of this is considered to have reduced.

Human Resources – There are no human resource implications.

Equalities – There are considered to be no equalities implications.

Legal – There is a risk that the proposed removal of the Deposit Condition and the Guarantor Condition as requirements for the granting of the proposed further lease to Spark: York may:

- (i) Increase the likelihood of Spark: York not complying with the tenant's obligations in the proposed further lease (such, as for example, the obligation to pay rent instalments on the dates and of the amounts specified in the proposed further lease)
- (ii) Reduce/weaken the Council's prospects of fully recovering any rent arrears or other losses/damage incurred by the Council as a result of any breach by Spark: York of the tenant's obligations in the proposed further lease as:
 - (a) If the Deposit Condition is removed, then the Council would no longer hold a £5,000 deposit/bond payment to make deductions from to reimburse us if, for example, Spark: York fall into rent arrears
 - (b) If the Guarantor Condition is removed, then the Council would be unable to take enforcement/recovery action against any of Spark:York's directors if the company breaches any of its obligations as tenant in the proposed further lease.

By way of information, temporary legislation is currently in place which severely restricts the ability of commercial landlord to forfeit(terminate) leases for non-payment of rent or to obtain an insolvency order against a company tenant which owes rent arrears to the landlord. It is not known when the Government/Parliament may repeal or modify that legislation, which was

introduced due to the impact of Covid 19 pandemic and lockdown restrictions on businesses.

Crime and Disorder – Continued use of the Spark site reduces the risk of anti-social behaviour that is attached to vacant sites.

Information Technology – There are no information technology implications.

Property – covered in the report.

Other – There are no other implications.

Risk Management

29. Whilst Spark have advised they continue to make a small loss in the period of occupancy thus far, this has been due to greater than expected capital expenditure and the onset of Covid -19 and whilst there are challenges ahead they consider the project remains viable. Should the project fail the risk rests with Spark:York. In a scenario in which they cease to trade the value of the converted shipping containers and their ability to be transported and used elsewhere would mean they were not left on the site.

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Report

Approved



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Specialist Implications Officer(s) List information for all

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Wards Affected:

All

For further information please contact the author of the report

Background Papers: None

Annexes

Annex 1 – Map of 17-21 Piccadilly