

Meeting	Planning Committee
Date	7 April 2022
Present	Councillors Fisher (Chair), D'Agorne, Doughty, Douglas, Fenton, Pavlovic (Vice-Chair), Warters, Waudby, Widdowson (Substitute for Cllr Ayre), Perrett (Substitute for Cllr Melly) and Hunter (Substitute for Cllr Daubeney)
Apologies	Councillors Barker, Daubeney, Hollyer, Looker, Melly, Ayre and Lomas

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## **76. 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 D'Agorne declared a non-prejudicial interest as a Director of the York Business Improvement District (BID) Board. There were no further declarations of interest declared.

## **77. Minutes**

Resolved:

- i. That the minutes of the meeting held on 3 February 2022 be approved and then signed by the chair as a correct record subject to the beginning of the first sentence under public speakers changing to 'A Member spoke in objection to the application.'
- ii. That the minutes of the meeting held on 3 March 2022 be approved.

## **78. 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.

## **79. 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.

## **80. Spark York, Piccadilly, York [22/00195/FUL]**

Members considered a full application from Samuel Leach for the variation of condition 2 of permitted application 17/00274/FUL to extend duration of permission to 30 September 2025 at Spark York, Piccadilly, York.

The Head of Planning and Development Services gave a presentation on the application. She then updated Members on the list of operators, and further representations that had been received from Spark, York BID, Make it York (MiY) and an interested party.

### Public Speakers

Cllr Fitzpatrick (Ward Member) explained her request for the application to be determined by the Committee as it was in the public interest. She explained that as a resident of the city centre as with residents near Spark, noise was expected. She suggested that the use of the community room at Spark was reactive, and speaking on behalf of Walmgate Community Association (not present at the meeting) she added that there had been no proactive attempt to involve them.

In answer to Member questions, Cllr Fitzpatrick noted that:

- A WhatsApp (social media) group had been created for Spark and local residents, however, the residents' concerns on that group were not recorded by the Council (although the information had been provided to the Council). This included complaints about noise and food odour. She added that a number of residents felt that communication had fallen down and she confirmed she was speaking on behalf of Walmgate Community Association. She noted that Spark management needed to be more robust.

- Neighbours would like the sound off at 9pm and wanted conditions to be enforced.

A Member thanked Cllr Fitzpatrick for determination of the application by Committee.

Matthew Laverack spoke in objection to the application noting previous offers for use of the site. He expressed dislike for the appearance of the containers for being out of character for the area. He suggested that there needed to be an independent enquiry into Spark. He stated that the recommendation (to approve the application) failed on planning policy and he requested refusal of the application on the basis of harm to the conservation area and detriment to residents' amenity.

Yvonne van Zeller (the closest residential neighbour to Spark) detailed the impact of the application on neighbouring properties. She noted as a matter of record that she had been an original supporter of Spark. She noted that certain operators at Spark would like to be good neighbours and concerning and privacy, Spark was in the process of addressing this with a screen. She added that Spark had made a practical demonstration of addressing residents' feedback. She concluded that the extension of planning permission for 18 months, with a compliant business plan and properly managed exit would give residents peace of mind for the future. She was asked and explained the timeline for the request and implementation of the privacy screen.

Sam Leach (Applicant) spoke in support of the application. He expressed concern about proposed condition 4 regarding no amplified sound in external areas after 9.00pm on Sundays, Mondays, Tuesdays, Wednesdays and Thursdays. He outlined the businesses supporting the application, and the community space and community farm. He noted that neighbour relations were strong and a positive meeting with them in March. He added that there had been improved privacy for Mawson Court. Referring to the 9pm music curfew (condition 4) he explained that there had been no noise complaints for the last two years, adding that the condition would threaten viability of the operation. He asked that the application be approved without that condition.

Sam Leach was asked and explained that:

- With regard to good relations with neighbours it was not fair to suggest that a number of residents did not want to attend the meeting as they had gone on public record via their submissions to the planning portal; it was fair to suggest that some residents did not want Spark there. He added that Spark supported economic growth and the best way forward was to continue dialogue with residents. He noted that there had been no complaints to Public Protection.
- He was asked why they would be after previous planning conditions had not been met. Referring to the privacy screens he explained that there was no unanimous consensus amongst residents. He noted that regarding residents, communication had improved by immediate conversations. He added that it was not fair to suggest they were at odds with residential amenity.
- The opening hours had never changed and the busiest period was 6.30pm to 9.00pm.
- Concerning the provision of music after 9pm on Friday and Saturday, 9.00pm to 10.00pm was still important to businesses for their viability and it was a popular venue during the week.
- Giving residents more certainty about the 18 month planning permission extension, and the timeline for the ending of leases had helped with working to an end date.
- The 2017 planning permission in 2017 did not include a condition for the sound off at 9.00pm, it was related to the vacating of seating areas. They also now used localised smaller speakers and the July 2021 breach of condition when investigated showed no breach of condition.
- Regarding the suggested 20% loss of turnover from turning the music off at 9.00pm, there was no evidence and it was felt that music was essential to the operation.
- With reference to the 46 complaints on the WhatsApp group, in the last 6 months, three had been about music with the vast majority being related to the quiz on a Wednesday night. There was one complaint about music post 9.00pm.
- Music was not audible in the boundaries of properties. If there was no music this would affect the feel of the venue.

The Head of Planning and Development Services clarified the breach of conditions notice served and the Senior Solicitor confirmed that the notice was for breach of condition 1 – plans, condition 2 – fencing/boundaries, condition 4 – area open to customers, and condition 6 – playing or recorded/amplified music. The Head of Planning and Development Services had

written to them twice, which was followed up by two further letters arising from further issues.

Questions then resumed to the Applicant, Sam Leach. He was asked and confirmed that the quiz was held 7.00pm to 8.45pm Wednesdays and the 9pm music condition would not affect this. He added that the reference to noise in the breach of condition was related to food extraction.

[The meeting adjourned at 5.38pm and resumed at 5.45pm]

Andrew Lawson spoke on behalf of York BID in support of the application. He explained that the business community welcomed the application, noting that Spark was innovative and offered a flexible working space. He listed the groups using the community room, and noted that Spark was food led. He noted that the 9pm music condition was restrictive and that there had been no noise complaints. He noted that Spark brought a unique experience was a community asset. When asked about other open air venues in the locality he listed the Red Lion and Walmgate Ale House, noting that Spark was different to them.

Nigel Wilson, a local resident, spoke in support of the application. He explained that his experience as a resident had been good and spark provided a venue that York didn't have. He noted that Piccadilly was moving towards being a vibrant residential quarter. He was asked and confirmed that he had lived at there for three years and was aware that Spark would not be there forever.

Geoff Beacon, a local resident before and after Spark was introduced, spoke in support of the application. He noted that he hardly ever found the noise objectionable, rarely hearing the music and quiz, which had also rarely irritated him. He added that there was a barrier between his residence and Spark and he hadn't smelt food odours much over the last month. He noted that Spark customers were nice and it made Piccadilly a much better environment. He suggested consulting with the police architect about the site. He was asked if he would have concerns if the application was not granted or was granted for a shorter period of time and he noted that the site provided natural policing.

Louise Warnes, a local resident, spoke in support of the application. She explained that the noise emitted from the site

was a background hum and that the noise from the quiz had been a bone of contention. She also didn't see how the reduction of noise to 9.00pm would help. She felt that Spark was positive for the community and was concerned that if Spark went the site would be derelict.

Cllr K Taylor spoke in support of the application. He began noting that there had clearly been issues with Spark and their neighbours over the last few years. He explained that the Spark offered a free space for creatives and community groups. He expressed concern regarding the 9.00pm noise condition which he believed to be excessive and would have consequences for Spark. He suggested that 10.00pm would be more of a compromise.

Members then asked Officer further questions for clarification. The Head of Planning and Development Services was asked and clarified that:

- The breach of condition notice was served in February 2020. In summer 2021 there were further complaints regarding noise and odour which was followed up with reminder letters regarding breach of conditions.
- The council was not connected to the WhatsApp group and complaints needed to go through formal enforcement process.
- Condition 4 was clarified.
- Notification of site visits for breach of conditions were not given.
- Reminder letters for breach of conditions were issued on July and September 2021. No further action was taken following this.
- The Public Protection Officer explained that noise emitted during his evening visit to Spark with Planning Enforcement in 2020 was in breach of planning conditions but was not a statutory nuisance. He explained how complaints for statutory nuisance were investigated and that the breach investigated was for amplified music. The Head of Planning and Development Services then clarified that officers monitored the breach of conditions following the further complaints that had been received. There had been no complaints since then.

Head of Planning and Development Services was then asked and clarified:

- It was felt that the 9.00pm music condition was reasonable following the issues with amplified music.
- Each planning application was considered on its own merits.
- There had been issues with the applicant over the past 5 years and they had been served with a breach of condition notice. There had been no further complaints following the reminder letters.
- Break Clauses had been included in the lease should a scheme come forward for development on the site. The time periods for this were outlined to Members. The Chair and Senior Solicitor confirmed that the lease was not a planning matter.
- The planning conditions were specific to the site.
- Members were reminded of the NPPF guidance on temporary planning permission.

Following debate Cllr Fenton moved approval of the temporary planning permission with Condition 4 amended to:

*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 22:00 on Sundays, Mondays, Tuesdays, Wednesdays and Thursdays.*

This was seconded by Cllr D'Agorne. Members voted 10 in favour of the motion and 3 against, it was therefore:

Resolved: That the application for temporary planning permission be approved subject to the conditions listed in the report, and the following amendment to Condition 4:

*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 22:00 on Sundays, Mondays, Tuesdays, Wednesdays and Thursdays.*

Reason:

- i. 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.

- ii. 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).
- iii. 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".

Cllr T Fisher, Chair

[The meeting started at 4.30pm and finished at 7.00pm].