

**Report to :** Planning Applications Committee  
**Date:** 25 July 2013  
**Report of:** Head of planning services  
**Subject:** Enforcement Case 12/00146/UCU/ENF – 6 Nelson Street, NR2 4DN

### **SUMMARY**

**Description:** Unauthorised change of use from Shop (Class A1) use to Hot Food Takeaway (Class A5) use.

**Reason for consideration at Committee:** Enforcement Action recommended.

**Recommendation:** Authorise enforcement action up to and including prosecution in order to secure the cessation of the unlawful Hot Food Takeaway (Class A5) use.

**Ward:** Mancroft

**Contact Officer:** Ali A N J Pridmore

### **INTRODUCTION**

#### **The Site**

1. The site is a detached painted brick built property formerly used as a Gun Shop located on the east side of Nelson Street. The premises have a small forecourt at the front facing onto Nelson Street and a small paved garden area at the rear elevation.
2. The premises are located very close to a number of nearby residential properties.

#### **Planning History**

3. There is no relevant planning history.

#### **Purpose**

4. This report relates to the unauthorised change of use of 6 Nelson Street from Shop (Class A1) use to Hot Food Takeaway (Class A5) use.

5. As the current change of use from Shop (Class A1) use to Hot Food Takeaway (Class A5) use does not have planning permission and the change of use has occurred within the last four years it is therefore not immune from enforcement action. The change of use is a breach of planning control and is therefore unlawful.
6. The owner of 6 Nelson Street has been informed that the current Hot Food Takeaway (Class A5) use is unlawful and has been asked to cease the unauthorised use or to apply for retrospective planning permission. He has been advised that the change of use would be unlikely to be supported. Unfortunately, the unauthorised use has continued and a retrospective planning application has not yet been submitted by the owner of the business.
7. Authority is sought from the planning applications committee for enforcement action to secure the removal of the unauthorised Hot Food Takeaway (Class A5) use. Enforcement action to include direct action and prosecution if necessary.

## **Breach**

8. The change of use from Shop (Class A1) use to Hot Food Takeaway (Class A5) use does not fall within the same use class and the change is not permitted under the Town and Country Planning (Use Classes) Order 1987 (as amended).
9. The change of use from Shop (Class A1) use to Hot Food Takeaway (Class A5) use is a material change of use for which planning permission would be required under section 171A(1) of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991).
10. It appears to Norwich City Council that the above breach of planning control has occurred within the last four years and is not therefore immune from enforcement action. The current unauthorised use is not an appropriate use of the land which is currently causing significant harm to the local amenity. The Council do not consider that planning permission should be given because planning conditions might not overcome these objections.

## **Policies and Planning Assessment**

### **Relevant Planning Policies**

#### **National Planning Policy Framework**

11 – Conserving and enhancing the Natural Environment

**Relevant policies in the City of Norwich Replacement Local Plan – saved policies (Adopted November 2004)**

EP22 – High standard of amenity for existing residential premises in the vicinity

**Emerging policies of the forthcoming new Local Plan (submission document for examination, April 2013):**

**Development Management Policies Development Plan Document – Pre-submission policies (April 2013).**

DM2 – Ensuring satisfactory living and working conditions

**Procedural Matters Relating to the Development Plan and the NPPF**

The Replacement Local Plan (RLP) has been adopted since the introduction of the Planning and Compulsory Purchase Act in 2004. With regard to paragraphs 211 and 215-216 of the National Planning Policy Framework (NPPF), policies have been subjected to a test of compliance with the NPPF. The 2004 RLP policies are considered to be only partially compliant with the NPPF, the policies referred to in this case are considered to be compliant with the NPPF. The Council has also reached submission stage of the emerging new Local Plan policies, and considers most of these to be wholly consistent with the NPPF.

**Justification for Enforcement**

11. The principal reasons why the current unauthorised change of use would not be supported is that residents living in the vicinity will be exposed to elevated noise levels as a result of the operation of this business. Furthermore, the residents living in the vicinity may also be subject to odour from the cooking of food and there are currently no restrictions on operating hours at the present time.
12. Several attempts have been made to negotiate with the owner of the business with a view to ceasing the unauthorised use of 6 Nelson Street or applying for retrospective planning permission but to no avail. No retrospective planning applications has yet been received by Norwich City Council seeking planning permission.

**Equality and Diversity Issues**

13. The Human Rights Act 1998 came into effect on 2nd October 2000. In so far as its provisions are relevant:
  - (a) Article 1 of the First Protocol (the peaceful enjoyment of ones possessions), is relevant in this case. Parliament has delegated to the Council the responsibility to take enforcement action when it is seen to be expedient and in the public interest. The requirement to secure the removal of the unauthorised building works in the interests of amenity is proportionate to the breach in question.

- (b) Article 6: the right to a fair hearing is relevant to the extent that the recipient of the enforcement notice and any other interested party ought to be allowed to address the Committee as necessary. This could be in person, through a representative or in writing.

## **Conclusions**

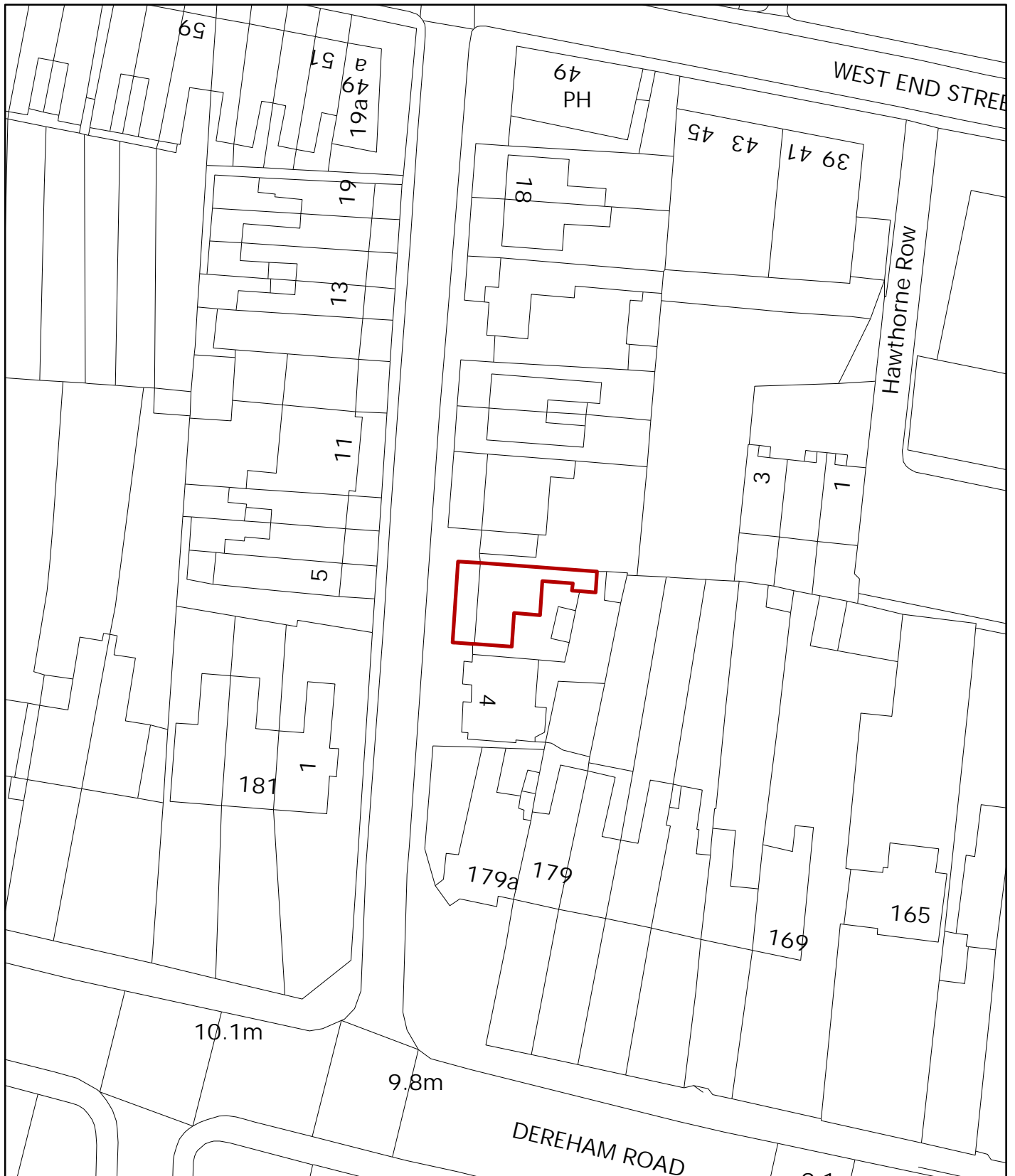
- 14. It is considered that the current unauthorised Hot Food Takeaway (Class A5) use is not acceptable. Problems of noise and odour disturbance from the business to existing residents in the vicinity might be mitigated by the use of appropriate conditions on any planning permission for the change of use. However, despite asking the owners to apply for retrospective planning permission no application has yet been received.
- 15. It is therefore considered appropriate to ask for authorisation from the Planning Applications Committee to ensure the cessation of the unauthorised Hot Food Takeaway (Class A5) use and therefore remedy the breach of planning control.

## **Recommendations**

- 16. Authorise enforcement action to secure the cessation of the unauthorised Hot Food Takeaway (Class A5) use including the taking of direct action including prosecution if necessary.

## **Background Documents**

Relevant correspondence – Enforcement File – 11/00046/BPC/ENF and Civica File EH12/20417



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Planning Application No 12/0146/UCU/ENF

Site Address 6 Nelson Street

Scale 1:600



**NORWICH**  
City Council

PLANNING SERVICES

