

## Report for Resolution

**Report to** Planning Applications Committee  
Date: 1 October 2009  
**Report of** Head of Planning and Regeneration Services  
**Subject** 09/00504/U - 7 Castle Street Norwich NR2 1PB

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Item  
**5(1)**

### SUMMARY

**Description:** Change of use from retail unit (Class A1) to Thai take-away (Class A5).  
**Reason for consideration at Committee:** Contrary to Policy  
**Recommendation:** Approve with conditions  
**Ward:** Mancroft  
**Contact Officer:** Jonathan Bunting Planner, Development Management  
**Date of receipt:** 23 July 2009  
**Applicant:** Mr Dave Trumpess  
**Agent:** Miss Lucy McNamara, Brown and Co.

### INTRODUCTION

#### The Site

##### Location and Context

1. The application premises comprise a one and two-storey retail unit situated on the east side of Castle Street within the primary retail area of the city centre. Castle Street is part of the network of historic pedestrianised streets lying between Gentlemans Walk and Castle Meadow and is characterised by a mix of small specialist shops and high street multiples. The premises have been in retail use for many years and are currently occupied by "Pretty Things" boutique on a short term let. The upper floors of the front range are in separate ownership with a "flying freehold" from Number 5 adjoining.
2. The shop has a floor area of 75 sq m. with a narrow frontage of approximately 4m and a relatively deep and irregular plan form extending back some 19m from the street. Access for servicing is taken from the rear from an enclosed service yard reached via steps from Castle Meadow.
3. Castle Street operates on a limited time servicing basis and is pedestrianised for much of the working day, with service and delivery traffic allowed in before 11am and after 4pm.

## **Planning History**

4. Until around 1998 numbers 7 and 9 operated as a single retail shop. Works to the shopfronts approved in October 1997 (ref 4/1997/0214/F) appear to have also involved subdivision of the unit back to two separate shops. There is no relevant planning history subsequent to that date aside from various applications for signage.

## **Constraints**

5. The premises are on the Council's local list of buildings of architectural and historic interest.

## **The Proposal**

6. The application seeks to change the use of the ground floor of the premises to provide a hot food takeaway (Use Class A5) specialising in healthy Thai cuisine, together with associated food preparation and storage areas occupying the rear part of the premises, which is single storey. There would be a small seating area internally for the use of visiting customers who wish to eat on the premises.
7. The application form as originally submitted indicated that the takeaway would be open between the hours of 12 midday and 11pm Monday to Saturday and between 12 midday and 10pm on Sunday. However, the applicant has since confirmed in writing that this is incorrect and he intends to operate the business solely as a daytime facility, the premises being staffed between 9am and 7pm and normally open to the public between 10am and 6pm. It is not intended that the takeaway would offer any late evening or night-time service. It would be run as a satellite business to the nearby Thai Wellbeing Centre at 19-25 Red Lion Street which is a popular health and beauty salon, gym and exercise studio offering a range of Thai therapies, also offering an ancillary food delivery service providing Thai meals to selected City centre business clients. The proposal is intended to develop this aspect of the business.

## **Representations Received**

8. Advertised on site and in the press. Adjoining and nearby occupiers have been notified in writing. An adjoining occupier had previously indicated verbally that an objection was likely to be lodged to the proposal but no formal representation has been received to date.

## **Consultation Responses**

9. Environmental Health (Pollution Control) – no objections

# **ASSESSMENT OF PLANNING CONSIDERATIONS**

## **Relevant Planning Policies**

### **National Planning Policies**

Planning Policy Statement 1 – Delivering sustainable development

Planning Policy Statement 6 – Planning for town centres

Looking After Our Town Centres (DCLG advice note, April 2009)

### **East of England Plan Policies**

SS6 – City and Town Centres

ENV6 – The Historic Environment

ENV7 – Quality in the Built Environment

### **Saved Local Plan Policies**

HBE8 – Development in Conservation Areas

EMP2 – Expansion of existing businesses

SHO10 – Changes of use within the Primary Retail Area

SHO22 – Food and Drink Uses – conditions on hot food takeaways

### **Supplementary Planning Documents and Guidance**

City Centre Conservation Area Appraisal – Elm Hill and Maddermarket Area

## **Principle of Development**

### **Policy Considerations**

10. National planning policy for town centres is set out in Planning Policy Statement 6 (PPS6). PPS6 aims to maintain vital, viable and thriving town centres by encouraging well-located development which complements and supports their core retail function, and seeks to strike a proper balance between shops and supporting non-retail uses such as restaurants, cafes and financial/professional services. Whilst encouraging variety, innovation and diversity of uses in town centres as a whole, a distinction is made in PPS6 between primary retail areas (in which shops should predominate) and secondary areas (in which a broader and more diverse mix of uses can usually be accepted). These principles are taken forward in strategic town centres policy SS6 of the East of England Plan and the shopping strategy of the City of Norwich Replacement Local Plan, including policy SHO10 which aims to positively manage changes of use within primary shopping frontages.

11. Policy SHO22 of the Local Plan sets out criteria for the acceptance of hot food takeaways and allows control over opening hours to protect neighbourhood amenity. Policy EMP2 encourages development which provides appropriately for the expansion of existing local businesses. Policy HBE8 requires development within conservation areas to be well designed and appropriate to the character of the area.
12. Castle Street is located within a busy and attractive part of the pedestrianised primary shopping area and falls within the “Back of the Inns” frontage zone for the purposes of Policy SHO10. This zone comprises a group of linked pedestrianised streets which also includes Back of the Inns itself, White Lion Street, Davey Place and the Royal Arcade. Policy SHO10 seeks to protect the vitality and viability of the primary shopping area of Norwich by maintaining at least 85% of shopping frontage in retail use. Changes of use from A1 retail can be accepted where both of the following criteria or “policy tests” are satisfied:
- They would not have a harmful impact on retail vitality and viability (this can be regarded as the “qualitative” test) and
  - They would not result in the proportion of retail frontage falling below 85% (the “quantitative” test)
13. Where the 15% non-retail limit is already exceeded, uses in the A3 food and drink class can be accepted exceptionally if they would have a beneficial effect on vitality and viability or on the character of the area or the individual street (the “A3 exceptions” test). Changes to the Use Classes Order made in 2005 subsequent to the Local Plan’s adoption now bring current Use Classes A4 (drinking establishments) and A5 (hot food takeaways) within the scope of this clause of the policy. Accordingly, proposals for either of these uses can legitimately be assessed for their impact on vitality and viability.
14. The City Council has applied the “85% retail minimum” criterion in Policy SHO10 fairly rigorously and generally successfully over a long period. The aim has been to resist the loss of Class A1 shops in primary retail frontages, preserve the shopping function of individual streets and safeguard the distinct character and retail offer of particular areas of the centre, thereby helping to sustain the overall vitality and viability of Norwich as a regional shopping destination. Within prescribed limits, the Local Plan’s retail frontage policies offer the flexibility to accept a proportion of supporting uses (such as cafés and restaurants) which can often have a beneficial and enlivening effect on shopping streets, whilst seeking to retain the majority of core shopping frontages in A1 retail use. Non-retail uses can also be accepted on upper floors and at ground floor level in particular streets (such as Red Lion Street) which fall outside of a defined shopping frontage.

15. As at July 2009 the proportion of A1 retail frontage in the Back of the Inns zone already stood at the applicable minimum of 85%. Because of its narrow shop frontage the effect of the proposed change of use to A5 at 7 Castle Street would only be marginal, but would nevertheless further reduce retail representation in the frontage zone to 84.5%. It has been the Council's normal practice to accept changes of use where the non-retail threshold is exceeded by 0.5% or less, to allow for a margin of error in shop frontage measurement. Given the marginality of this case it may be difficult to defend a refusal of permission on appeal.
16. However, the strict application the "quantitative test" of Policy SHO10 means that a change of use to A5 would be inconsistent with the development plan. It is necessary in these circumstances to assess whether the proposed takeaway use can be regarded as a justifiable exception to policy taking account of any particular vitality and viability benefits which could not be secured by retaining the shop, and any other material considerations in its favour.
17. In recent years the number of non-retail businesses in the Back of the Inns frontage zone has been gradually increasing at the expense of shops (from around 11% non-retail frontage in 2006 to 15% currently). Since the start of the current recession, shop vacancy rates have also been rising, with 10 units out of 81 recorded as vacant in this area in July 2009, although with more recent shop lettings in the immediate area this rise in vacancy now appears to have peaked. However, regular approaches are received concerning the potential reuse of shops for purposes other than retail.
18. Recent good practice guidance from the DCLG (*Looking After Our Town Centres*, April 2009) suggests that temporary changes of use can be sanctioned where shops are long term vacant to help revitalise centres which are in decline. Innovative community uses (e.g. social enterprise, learning centres, arts and cultural uses or information points) are mentioned as examples of suitable uses for empty shops which can help to maintain vibrancy and liveliness in centres. However, it is important that such changes of use are allowed only temporarily so that shop units can easily revert back to their original purpose when required. The guidance does not refer to fast food outlets as being appropriate alternative uses in these circumstances.
19. Despite the recent economic downturn, it is not considered that Castle Street or the surrounding area is in serious decline. However it is evident that because of their inadequate size and configuration, many smaller shops (including the application premises) have struggled to find retail tenants of late and it is understood that the current lessee of 7 Castle Street is operating on a short lease at a peppercorn rent. Notwithstanding this, the street remains relatively busy, the premises are still in active retail use and the majority of the neighbouring shops either have retail tenants or are shortly to be relet and reoccupied as shops. The level of vacancy in the primary area is higher than it has been, but vacancy rates are not regarded as exceptionally high in comparison to other towns and cities of comparable size and retail offer.

20. The merits and demerits of this proposal have been very carefully considered and the policy issues raised with the applicant. In terms of retail policy it is considered that with suitable safeguards the business model of this proposal could offer significant benefits to retail vitality and viability which could not be offered by other types of takeaway or (arguably) by retaining a shop. It would provide appropriately for the expansion of an existing locally-based business, complying with Policy EMP2 of the Local Plan which accepts such development where it is consistent with the character and environmental amenity of the area and would secure the long term beneficial occupation of the premises. It could also contribute positively to vitality and viability by offering a specialist daytime takeaway food service (with a small café element) not currently represented in the city centre, enhancing the range of services in Castle Street where there are currently no cafés or restaurants of any kind, and increasing retail diversity and variety.
21. The characteristics of the takeaway operation as proposed have very little in common with typical late night fast food outlets and are more analogous with sandwich shops, coffee shops, cafés and similar complementary services of which the primary shopping area offers a wide variety. This also counts in favour of the proposal.

### **Other Material Considerations**

22. If members are minded to approve this application, appropriate conditions would need to be imposed to prevent subsequent permitted changes to other uses within Class A (such as financial and professional service uses or drinking establishments) which may offer minimal or no benefit to retail vitality and viability. Such changes could normally be made without the need for further planning permission unless these rights are expressly removed.
23. The applicant has indicated his willingness to accept such a condition, as well as any permission being made personal to him. It is proposed therefore to impose a condition which would restrict the use of the premises to the applicant only and to limit opening hours to between 9am and 8pm. This would allow the applicant to extend normal opening hours from time to time if required (for example when there is city centre late night opening in the run-up to Christmas) without significant impact on amenity which might arise from later opening.

### **Retail Implications**

24. With suitable conditions to control opening hours and management arrangements, it is not considered that the change of use would have a material impact on the retail function of this part of the primary shopping area or on the City Council's planning strategy for the central shopping area as a whole. With these safeguards it would not create an undesirable precedent making it more difficult to resist similar applications in future.

### **Impact on Living Conditions**

#### **Noise and Disturbance**

25. There are no residential properties in this area. Given the business's limited opening hours it is not considered that the takeaway use would have a significant adverse impact on the amenity of neighbouring commercial tenants through noise,

smell, disturbance or antisocial behaviour. It is considered therefore that the proposal is consistent with saved policy SHO22 of the Replacement Local Plan.

## **Design**

### **Conservation Area – Impact on Setting**

26. The works necessary to accommodate fume extraction plant can be undertaken without undue impact on the character of the locally listed building and the extractor unit would be in a position which is effectively concealed behind the street frontage to both Castle Street and Castle Meadow. Provided that opening hours were conditioned to daytime opening as intended, there would be little detrimental effect on the character of Castle Street which could otherwise arise in the case of a more typical takeaway outlet open into the evening and night-time and closed for much of the day. That would not be the case here. It is considered therefore that the proposal is consistent with saved policy HBE8 of the Replacement Local Plan.

## **Transport and Access**

### **Vehicular Access and Servicing**

27. Given its location within the pedestrian priority area the proposed takeaway would not be intended to serve customers arriving by car and the majority of visits would be on foot. Servicing and deliveries can be undertaken acceptably outside of the core closure period of Castle Street.

## **Environmental Issues**

### **Waste Management**

28. The applicant has submitted a detailed refuse and servicing statement. It provides for secure waste storage within the rear service yard and regular and frequent waste collections which would be undertaken from Castle Street in the early evening on a daily basis. These proposals are in accordance with the applicable environmental and hygiene standards.

## **Conclusions**

29. The planning issues here are finely balanced. The applicant is anxious to promote the proposal as a unique specialist food outlet catering to city centre clients during the day, which has little in common with the more typical fast food takeaway operation geared to the evening and night-time user. Nevertheless the principle of introducing an A5 takeaway in a prime shopping street raises material issues of retail policy and planning precedent.
30. On a strict interpretation of policy, introducing an A5 Thai takeaway in this location would fail the “quantitative test” of policy SHO10 by breaching the 15% limit for non retail uses in the Back of the Inns frontage zone and would thus be contrary to the adopted development plan, albeit that the policy breach would be only very marginal.
31. The benefits offered by the Thai takeaway as proposed can be seen mainly in terms of retail innovation (broadening the range and choice of specialist catering

services in this part of Norwich city centre), and supporting the local economy by allowing the expansion and diversification of a locally based business. This part of the city centre has a good level of pedestrian footfall, is still relatively buoyant and is able to sustain a good range of high street shopping, albeit that of the application premises may make them less suitable for the operational needs of some retailers. On balance it is considered that the proposal would have a generally positive impact on the vitality and viability of Castle Street and can be regarded as a justifiable exception to policy SHO10 if strictly controlled.

32. However it is important to make clear that such benefits would only derive from this particular business model (or one with similar characteristics) and this would not be true of A5 takeaway uses in general. Notwithstanding the benefits offered by this specific proposal it is considered that a cautious approach is merited and strict controls on opening hours, restriction of permitted development rights and a grant of permission personal to the applicant are necessary and justifiable. This would ensure that:

- a) Any major changes to the hours of operation of the business and in the character and scope of the approved use can be effectively controlled by the City Council;
- b) Incremental changes which could result in the establishment of a more typical A5 takeaway (which would not offer such obvious benefits as the application proposal) would not occur;
- c) Subsequent changes of use of the premises to other uses within Class A (such as high street office use and bars) could not be carried out without the need to apply for planning permission.

## **RECOMMENDATION**

To approve application no. 09/00504/U and grant planning permission, subject to the following conditions:-

1. Standard time limit.
2. Restriction of opening hours to 0900-2000 on any day
3. Permission personal to the applicant - permission ceases to have effect and use reverts to A1 retail if he ceases to operate from the premises.
4. Removal of permitted development rights to restrict use of the premises to a hot food takeaway (use Class A5) and prevent use for any other purpose
5. Details of waste storage areas
6. Development to accord with submitted plans.

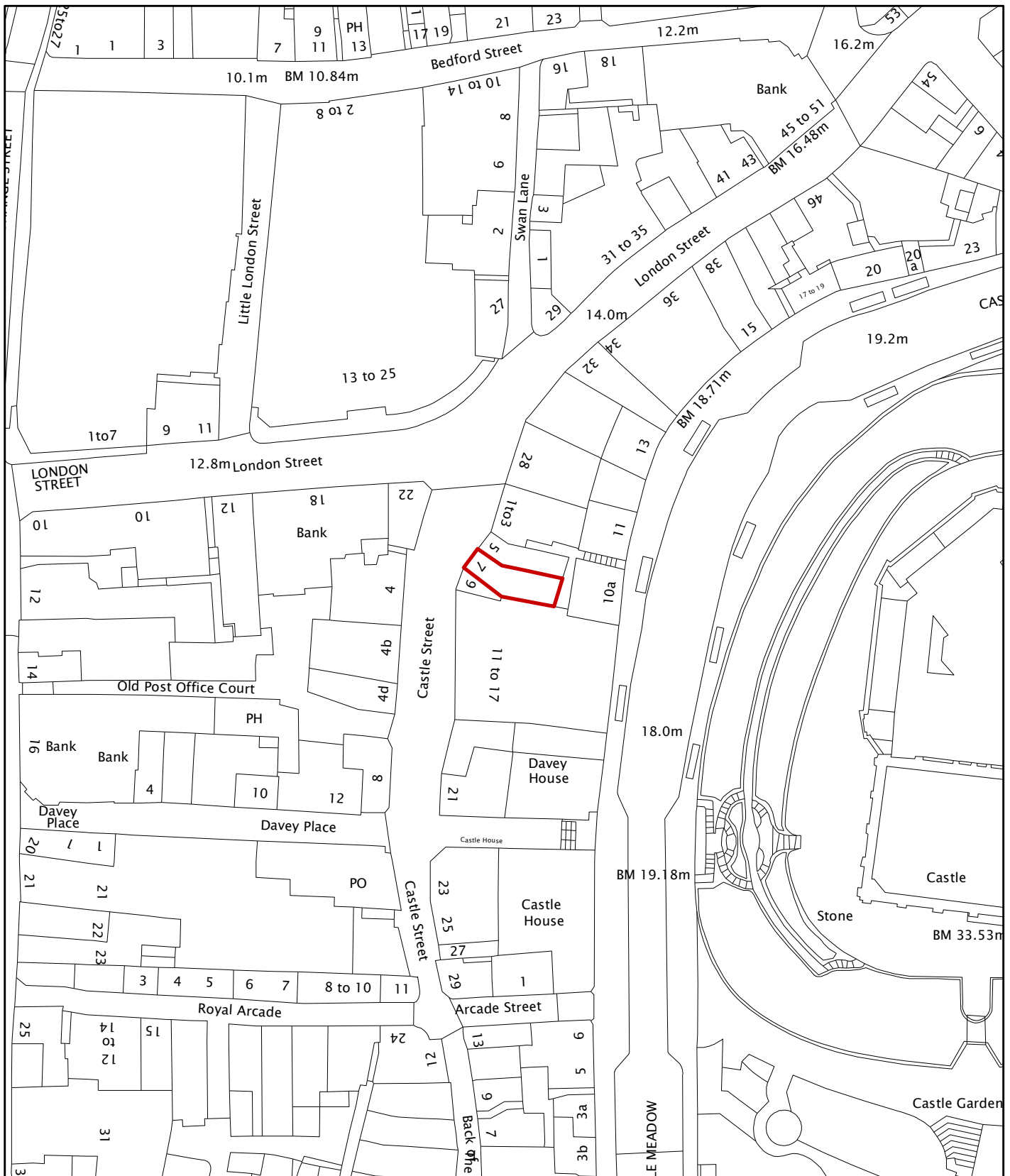
## **Reasons for Recommendation**

Following careful consideration, negotiation with the applicant, it is considered that the change of use as proposed can be accepted, subject to the imposition of appropriate restrictive planning conditions. Thus conditioned, it would not materially affect the



character and appearance of the locally listed premises and would contribute positively to the retail character, vitality and viability of Castle Street. It would not undermine the objectives of the City of Norwich Replacement Local Plan to protect the retail function of the primary shopping area nor would it jeopardise the city council's planning strategy for the central shopping area as a whole.

In reaching the decision to recommend approval, account has been taken of national planning policy (Planning Policy Statements 1 and 6), regional planning policy (adopted East of England Plan policies SS2, ENV6 and ENV7), the City Centre Conservation Area Appraisal and the following saved policies of the City of Norwich Replacement Local Plan (Adopted November 2004): HBE8, EMP2, SHO10 and SHO22.



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Planning Application No - 09/00504/F

Site Address - 7 Castle Street, Norwich

Scale - 1:1000



**NORWICH**  
City Council

DIRECTORATE OF REGENERATION  
AND DEVELOPMENT

