

DELEGATED REPORT

Report by Helen Pressley	Date of report: 12/03/2026	Ref: 72643/FUL
Registration: 05/02/2026	LDfC: 05/03/2026	Expiry Date: 02/04/2026
Site Visit: 09/02/2026	Site Notice: 09/02/2026	Press Date: 12/02/2026
Objections: 0	Con Area: BURY	Adv Type: CAAF
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: COUS

Proposal: Change of use from Shop (Class E(a)) to Takeaway (Sui Generis).

Location: 42 Haymarket Street, Bury, BL9 0AY

Description

The application relates to a mid-terraced property located within a row of commercial premises fronting Haymarket Street opposite Kay Gardens. The site is located within Bury Town Centre Conservation Area.

Planning permission is sought for the change of use from Shop (Class E(a)) to Takeaway (Sui Generis).

The original description of development was change of use to a cafe. A cafe is a Class E use that would not require a change of use application. Given the extent of the ground floor counter, and the opening hours proposed (until midnight) the applicant's agent was asked to change the proposed description to a takeaway use and this was agreed by the applicant's agent in writing.

Relevant Planning History

63884 - Lawful development certificate for proposed change of use from A5 to A1 under Town and Country Planning (General Permitted Development) (England) Order 2015 - Schedule 2 Part 3: Class A - Lawful Development 02/04/2019

64994 - Replacement of roller shutter to shop front - Approve with Conditions 16/03/2020

64995 - 1 No. externally illuminated fascia sign - Approve with Conditions 16/03/2020

Publicity

Press Notice 12/02/2026

Site Notice 09/02/2026

Letters sent to neighbouring properties 06/02/2026

No representations received.

Statutory/Non-Statutory Consultations

Traffic Section - Recommend refusal insufficient information in relation to in curtilage bin storage.

Environmental Health - Pollution Control Conditions requested in relation to the submission of a scheme for treating, diluting and dispersing fumes and odours and for the installation to be designed to reduce noise.

Licensing Department - No response

Public Health - refer to Hot Food Takeaway Matrix

Waste Management - No response

Conservation Officer - Recommend refusal due to the detrimental impact on the character of the Conservation Area.

Pre-start Conditions - Not relevant

Development Plan and Policies

S1/1	Shopping in Bury Town Centre
S2/3	Secondary Shopping Areas and Frontages
S2/6	Food and Drink
EN1/2	Townscape and Built Design
EN2/1	Character of Conservation Areas
EN2/2	Conservation Area Control
HT5/1	Access For Those with Special Needs
JP-P1	Sustainable Places
JP-P2	Heritage
JP-C5	Streets For All
JP-C6	Walking and Cycling
JP-C2	Digital Connectivity
JP-S2	Carbon and Energy
NPPF	National Planning Policy Framework

Issues and Analysis

The following report includes analysis of the merits of the application against the relevant policies of both the National Planning Policy Framework (NPPF), the adopted Places for Everyone Joint Development Plan Document (PfE) and the saved policies within the adopted Bury Unitary Development Plan (UDP), together with other relevant material planning considerations.

The policies of the UDP that have been used to assess this application are considered to be in accordance with the NPPF and as such are material planning considerations. For simplicity, just the UDP and PfE Policies will be referred to in the report, unless there is a particular matter to highlight arising from the NPPF where it would otherwise be specifically mentioned.

Equality Act 2010: All planning applications are considered in light of the Equality Act 2010 and associated Public Sector Equality Duty, where the Council is required to have due regard for:

The elimination of discrimination, harassment and victimisation;

The advancement of equality of opportunity between persons who share a relevant protected characteristic and person who do not share it;

The fostering of good relations between persons who share a relevant protected characteristic and person who do not share it; which applies to people from the protected equality groups.

Human Rights: All planning applications are considered against the provisions of the Human Rights Act 1998.

Under Article 6 the applicants (and those third parties who have made representations) have the right to a fair hearing and to this end full consideration will be given to their comments.

Article 8 and Protocol 1 of the First Article confer a right to respect private and family life and a right to the protection of property, ie peaceful enjoyment of one's possessions which could include a person's home, and other land and business assets.

In taking account of the Council policy as set out in the Bury Unitary Development Plan 1997 and all material planning considerations, it is concluded on balance that the rights conferred upon the applicant/ objectors/ residents/ other interested party by Article 8 and Article 1 of the First Protocol may be interfered with, since such interference is in accordance with the law and is justified in the public interest. Any restriction of these rights posed by refusal/ approval of the application is legitimate since it is proportionate to the wider benefits of such a decision, is based upon the merits of the proposal, and falls within the margin of discretion afforded to the Council under the Town & Country Planning Acts.

The Crime and Disorder Act 1998 imposes (without prejudice to any other obligation imposed on it) a duty upon the Council to exercise its functions and have due regard to the likely effect of the exercise of its functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. In so doing and on making planning decisions under the Town and Country Planning Acts, the material Planning considerations shall have due regard to the provisions of the Crime and Disorder Act 1998 and its implications in the exercise of its functions.

Principle (Take Away)

Town Centre Uses

The site is located within the Main Shopping Area of Bury Town Centre, as allocated under UDP Policy S1/1. It is also considered to be a secondary shopping area and frontage as defined under Policy S2/3.

UDP Policy S1/1 confirms that the Council will protect, maintain and enhance the role of Bury Town Centre as a sub-regional shopping centre and promote the centre as a focal point for further development. This is further supported by UDP Policy S2/3 that states within secondary shopping areas identified in the Borough's town centres, and in the main shopping areas of district centres, the Council will seek to maintain retailing (Class A1) as the predominant land use at ground floor level. Proposals for change of use or redevelopment within these areas will be assessed on their merits and by taking into account the following factors:

- the design and appearance of the proposed frontage;
- the maintenance or provision of a display window at ground floor level, where appropriate;
- access for the mobility impaired, where appropriate and through negotiation with the developer;
- whether the proposals will give rise to disturbance or nuisance;

In addition, where a proposal would lead to more than 40% of any identified secondary shopping frontage being in non-retail (Class A1) use, the Council will also take into account the following factors:

- the location and prominence of the proposal within the secondary shopping frontage;
- the number, distribution, and proximity of other premises in non-retail (Class A1) use or with planning permission for such uses;
- the particular nature and character of the use proposed, including the level of activity associated with it.

In relation to the proposed use UDP Policy S2/6 and states that in considering proposals, regard be given to the following factors:

- the amenity of nearby residents by reason of noise, smell, litter and opening hours;
- whether or not the proposal would result in an over concentration of these types of uses;
- parking and servicing provision and traffic generation;
- provision for the storage and disposal of refuse and customer litter;

- environmental impact of any ventilation flues and/or ducting.

As the Use Class Order has been updated since the publication of the UDP an assessment has been made in relation to units retained in E use. The site is located within a row of commercial properties between No. 46 and 28 Haymarket Street (9 properties) there are already 2 takeaway/hot food uses at No. 38 and 36 Haymarket Street. 2 public houses are also located within the row. The addition of one more takeaway would mean that a third of the units within this short stretch of town centre frontage would be in takeaway use, and 55% would be in non-retail/Class E use. This is considered to be an over concentration of uses contrary to UDP Policies S2/6 and S2/3.

Character of Conservation Area

As the site is located within the Bury Town Centre Conservation Area it is necessary to consider the proposal in terms of UDP Policies EN2/1 - Character of Conservation Areas and EN2/2 - Conservation Area Control of the UDP in that the Council will take action as appropriate to preserve or enhance the character or appearance of the Borough's Conservation Areas. PfE Policy JP-P2 - Heritage also applies, and ensures that the LPA will work pro actively to conserve, sustain and enhance our historic environment.

Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states: In the exercise, with respect to any buildings or other land in a conservation area, of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

Paragraph 202 of the National Planning Policy Framework (NPPF) states that heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites which are internationally recognised to be of Outstanding Universal Value. These assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

Paragraph 212 of the NPPF states when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Paragraph 215 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Paragraph 219 of the NPPF states that local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.

The conservation area is on Historic Englands (HE) heritage at risk register. The HE register of assets at risk describes the conservation area as being in a poor condition, with medium vulnerability and exhibiting a deteriorating trend.

There is a proliferation of hot food takeaway establishments in the Conservation Area as a whole. As set out above there are already 2 takeaway uses within this short row. This proliferation increase as you move onto Market Street directly to the north of the site. The increase in the use of hot food takeaways has a cumulative impact slowly eroding the special distinctiveness of the conservation area, characterised by mixed uses, not preserving its character or appearance. The Conservation Area is in danger of being

gradually dominated by this type of use, particularly in this part of the Conservation Area to the exclusion of other uses and creating a different contemporary character of use that does not preserve the special character and distinctiveness of the conservation area.

As such it is considered from the heritage conservation point of view the change of use would represent less than substantial harm with no public benefit identified by the applicant that would outweigh the harm identified.

Local Health

Paragraph 97 of the National Planning Policy Framework States:

Local planning authorities should refuse applications for hot food takeaways and fast food outlets:

- a) within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre; or
- b) in locations where there is evidence that a concentration of such uses is having an adverse impact on local health, pollution or anti-social-behaviour.

The application has therefore been assessed against the Bury Hot Food Matrix (<https://www.theburydirectory.co.uk/jsna/interactive-tools/bury-fast-food-take-away-matrix>) by Public Health. The Bury Hot Food Take Away Matrix is a tool that enables new hot food take away applicants to check the proposed premises against a range of data metrics including health, deprivation and schools on an Lower Super Output Area (LSOA) footprint. The Council wants to take a balanced and fair approach to supporting local business and economic growth whilst also taking steps to ensure our environments support the health and wellbeing of our residents and the Matrix can be utilised to make these assessments.

This matrix can therefore be directly applied to paragraph 97 when making an assessment in relation to distances to schools, concentration of uses, and evidence of adverse impact on local health. The Matrix shows the following for the LSOA in which the proposal is sited:

- There are 21 Hot Food Take Aways in this area.
- 41% of year 6 pupils in this area are overweight or obese, so nearly 1 in 2
- The LSOA IMD rating for health deprivation is 3 (1 being best and 10 worst)
- The LSOA is ranked 16th out of 120 LSOA's for adult obesity which is in the top 13%
- The LSOA is ranked 35th out of 120 LSOA's for highest rates of adult diabetes which is within the top 30%

In addition the Hot Food Takeaway Matrix data above shows that the location in which the proposed takeaways would be sited would not be acceptable in terms of impact on health.

The emerging Hot Food Takeaway SPD (SPD 19) which is currently out to consultation, and currently carries limited weight also needs to be taken into consideration as this sets out the priorities of the Council and Local Planning Authority (LPA) in relation to proposed Takeaway uses. Whilst acknowledged limited weight can be attributed to this document at this time it is a useful document to understand how Public Health assess applications for takeaways and how the Matrix referenced above should be utilised when assessing paragraph 97 of the NPPF. SPD 19 confirms that proposals for all new hot food takeaways will be assessed against the Matrix referenced above and proposals that are not accepted by the Matrix will be refused, unless other material considerations indicate otherwise.

The emerging SPD 19 confirms that in LSOA where obesity levels in primary school Year six pupils are more than 25% and there are more than 5 existing hot food takeaways within that ward, planning permission will not be granted on the grounds that it would be harmful to public health. The site is in an LSOA where 41% of year 6 students, so nearly 1 in 2 students overweight or obese which is significantly higher than the threshold set out by this emerging guidance. SPD 19 confirms that childhood overweight and obesity rates in Bury remain significantly above national averages, with National Child Measurement Programme

(NCMP) data showing that more than 25% of children in some Lower Super Output Areas are affected. These figures have risen in recent years, alongside an increase in hot food takeaway outlets and evidence demonstrates a clear association between the density of hot food takeaways and unhealthy weight outcomes, particularly in deprived communities. There are already 21 existing takeaways sited within this LSOA which is 17 takeaways over the limit set within the emerging SPD, and the matrix confirms that the LSOA IMD rating for health deprivation is 3 (1 being the worst).

Given all of the cases set out above it is considered that the proposal would result in the over concentration of Hot Food Takeaway Uses which would have an adverse impact on local health, a detrimental impact on the character of the shopping area and frontage, and would fail to preserve or enhance the Conservation Area within which it is sited. The proposal is therefore considered to be contrary to Bury Unitary Development Plan and Places for Everyone Joint Development Plan Policies S1/1, S2/3, S2/6, EN2/1, EN2/2, JP-P2 and the National Planning Policy Framework.

Design and Layout

In addition to the policies set out above UDP Policy EN1/2 seeks to ensure that development proposals would not have a detrimental effect on the visual amenity and character of a particular area. PfE Policy JP-P1 seeks to create a city region that consists of a series of beautiful, healthy and varied places.

No elevations have been submitted as part of the application. No details of any flues required for the proposed use have been included with the application. It is noted that Environmental Health have asked for conditions in relation to the submission of a scheme for treating, diluting and dispersing fumes and odours and for the installation to be designed to reduce noise however given the constrained nature of the site, located centrally within a row of properties with limited outdoor space and sited within a Conservation Area it is considered that the visual amenity of any proposed flue would also need to be assessed in relation to a planning application.

The application and submitted plans therefore contain insufficient information in relation to the location of and specification of any proposed flues to enable them to be properly assessed in terms of visual amenity. The proposed development therefore conflicts with the following policies of the Bury Unitary Development Plan and the Places For Everyone Joint Development Framework EN1/2, S2/6, EN2/1, EN2/2 and JP-P1 - Sustainable Places.

A counter is proposed at ground floor that extends the depth of the public facing area (approximately 6.6 metres). A seating area is proposed to the first floor with WC shown. No accessible WC is proposed at ground floor for users of the site and whilst a "cafe" area is shown at ground floor it is unclear whether any seating could be accommodated in this area given the extent of the counter proposed, and the need to access the front entrance, stairs and floor preparation area. Policy HT5/1 confirms that Council will encourage the provision of satisfactory access to public transport, car parks, pedestrian areas and public and private buildings for the mobility impaired and those with special needs. It is unclear how the proposal would meet this policy requirement given the extent of facilities associated with the proposed use that are accessed primarily by stairs. However, planning control is limited in this context and when access considerations are not covered by the Building Regulations or other legislation.

Amenity

In addition to UDP Policy S2/6 UDP Policy EN1/2 seeks to ensure that the proposals for development are considered in relation to their relationship to the surrounding area.

The nearest residential property is sited approximately 27 metres away from the site, above 28 Haymarket Street. As stated above conditions have also been proposed by Environmental Health in terms of odour and noise. As such no residential amenity issues are foreseen.

Access and Highways

In addition to UDP Policy S2/6 which has been set out above UDP Policy EN1/2 requires the consideration of the design and appearance of access, parking and service provision. PfE Policies JP-C5 and JP-C6 require streets to be well designed and managed to make a significant positive contribution to the quality of place and support high levels of walking, cycling and public transport. PfE Policy JP-C5 states that proposals should provide appropriate places and routes for servicing, deliveries and "drop-off". PfE policy JP-C6 includes the provision to create, where needed, dedicated separate space for people walking and cycling. In addition when considering layouts PfE Policy JP-P1 states that all development should be functional and convenient, enabling people and uses to act efficiently with minimal effort, and responding to needs relating to servicing, recycling facilities, refuse collection and storage.

The submitted site plan and floor plans are poor in detail, and whilst an area is labelled as "bin" on the ground floor the area proposed to be utilised is very narrow it is unclear if this space is adequate to meet the refuse storage needs of the proposed end use in terms of space.

The application and submitted plans contain insufficient information to ensure that adequate off-highway bin storage arrangements can be provided for the proposed use within the curtilage of the site in order to ensure that the adjacent adopted highways are not used for refuse collection purposes or the storage of communal bins contrary to Bury Unitary Development Plan and Places for Everyone Joint Development Plan Policies S2/6, EN1/2, JP-P1, JP-C5 and JP-C6.

Biodiversity Net Gain

While every grant of planning permission in England is deemed to have been granted subject to the biodiversity gain condition, commencement and transitional arrangements, as well as exemptions, mean that certain permissions are not subject to biodiversity net gain.

The proposed change of use would occupy an existing building and therefore the de-minimis exemption applies.

Carbon and Energy

Policy JP-S2 sets out the steps required to achieve net zero carbon emissions.

The submitted Carbon and Energy Statement confirms that as the development does not involve any new construction of physical alterations, and that no high energy cooking equipment or extraction systems are proposed.

Digital Connectivity

Policy JP-C2 requires all new development to have full fibre to premises connections unless technically infeasible and / or unviable.

The applicant has confirmed that the premises are capable of accommodating full fibre to the premises broadband connectivity, subject to availability from the local network provide

Statement in accordance with Article 35(2) Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2015

The proposal would not improve the economic, social and environmental conditions of the area nor does it comply with the development plan and therefore does not comprise sustainable development. There were no amendments to the scheme, or conditions which could reasonably have been imposed, which could have made the development acceptable and it was therefore not possible to approve the application. The Local Planning Authority has therefore implemented the requirement in Paragraph 38 of the National Planning Policy Framework.

Recommendation: Refuse

Conditions and Reasons:

- 1 The proposal would result in the over concentration of Hot Food Takeaway Uses which would have an adverse impact on local health, a detrimental impact on the character of the shopping area and frontage, and would fail to preserve or enhance the Conservation Area within which it is sited. The proposal is therefore considered to be contrary to Bury Unitary Development Plan and Places for Everyone Joint Development Plan Policies S1/1 - Shopping in Bury Town Centre, S2/3 - Secondary Shopping Areas and Frontages, S2/6 - Food and Drink, EN2/1 - Character of Conservation Area, EN2/2 - Conservation Area Control, JP-P2 - Heritage and the National Planning Policy Framework.
- 2 The application and submitted plans contain insufficient information in relation to the location of and specification of any proposed flues to enable them to be properly assessed in terms of visual amenity. The proposed development therefore conflicts with the following policies of the Bury Unitary Development Plan and the Places For Everyone Joint Development Framework EN1/2 - Townscape and Built Design, S2/6 - Food and Drink, EN2/1 Character of Conservation Area, EN2/2 - Conservation Area Control, JP-P1 - Sustainable Places and JP-P2 Heritage.
- 3 The application and submitted plans contain insufficient information to ensure that adequate off-highway bin storage arrangements can be provided for the proposed use within the curtilage of the site in order to ensure that the adjacent adopted highways are not used for refuse collection purposes or the storage of communal bins contrary to Bury Unitary Development Plan and Places for Everyone Joint Development Plan Policies S2/6 - Food and Drink, EN1/2 - Townscape and Built Design, JP-P1 - Sustainable Places, JP-C5 - Streets for All and JP-C6 - Walking and Cycling.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
HP	12/03/2026	DM	12.03.2026