

DELEGATED REPORT

Report by Charlotte Orrell	Date of report: 05/06/2026	Ref: 73064/LDCP
Registration: 21/04/2026	LDFC:	Expiry Date: 16/06/2026
Site Visit:	Site Notice: N/A	Press Date: N/A
Objections:	Con Area: BURY	Adv Type: N/A
Reason for Delay:		EIA: NA
N/A		Dec Level: DEL
		Stat Class: NREQ

Proposal: Lawful development certificate for proposed change of use from retail use to restaurant and café (Class E(b))

Location: 42 Haymarket Street, Bury, BL9 0AY

Description

Lawful development certificate for the proposed change of use from retail use (Class E) to restaurant and café (Class E(b)).

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
72643 - Change of use from Shop (Class E(a)) to Takeaway (Sui Generis).
- Refused 12/03/2026

Publicity

Not relevant

Statutory/Non-Statutory Consultations

Public Health - were consulted due to a previous, similar application for the change of use from a shop to a takeaway being refused in March 2026. Provided an advice note which has been attached to the decision notice as an informative.

Pre-start Conditions - Not relevant

Development Plan and Policies

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.

The building has been previously been in use as a retail use. Google street view images confirm that the use as a shop was established from 2016, and previously to that the building was a pharmacy which is also a Class E use. The planning history of the site also confirms that the property had been used as a shop with no evidence of any intervening use.

This establishes the lawful use of the building as Class E. The applicant proposes to use the building as a restaurant/cafe, with the serving counter and kitchen at ground floor and a small seating area. At first floor is the majority of the seating area.

The Town and Country Planning (Use Classes) Order 1987 has been amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 which came into force on the 1st September 2020. It created a new use class, Class E - Commercial, Business and Service use. The permitted change of use from a Shop Class E (a) to a cafe Class E (b) would be lawful as both the uses fall within the same use class and as such would not constitute development within the meaning of Section 55 of The Town and Country Planning Act 1990.

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Given the previous history of the site, including an application to change the use of the premises from a shop to a takeaway refused in March 2026, it was investigated as to how the proposal has changed since this application.

The proposal has now detailed the seating areas available within the cafe including how many covers there will be (50), and within the Planning Statement and additional information submitted states that food will be consumed at the site, and not taken off the site to be eaten. Given this, it is considered that a takeaway food component will be an ancillary use to the proposed use as a cafe.

It is noted however that the basis of this decision has been formed on the information submitted, and it is on the onus of the applicant to ensure the business operates in this way. Should the proposed start to operate as a takeaway in the fact that the majority of the food sold is consumed off site, this will no longer be a lawful use of the building and will therefore will be subject to enforcement action.

Recommendation: LAWFUL

Conditions and Reasons:

- 1 The proposal, described in the First Schedule, is not deemed to constitute development within the meaning of Section 55 of the Town & Country Planning Act 1990 (as amended) and therefore would be lawful.

<u>Case Officer</u> CO 05.06.2026	<u>Date</u>	<u>Sign off Officer</u> DM 05.06.2026	<u>Date</u>
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