

DELEGATED REPORT

Report by Helen Pressley	Date of report: 16/04/2026	Ref: 72980/P3JPA
Registration: 17/03/2026	LDFC: 16/04/2026	Expiry Date: 12/05/2026
Site Visit: 10/04/2026	Site Notice: N/A	Press Date: N/A
Objections: 0	Con Area:	Adv Type: N/A
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: NREQ

Proposal: Prior approval for change of use of from Use Class E to create 8 no. apartments (Use Class C3)

Location: 8-12 Silver Street, Bury, BL9 0EX

Description

The application site relates to Nos. 8, 8A and 10 - 12 Silver Street, which are located within the Bury Conservation Area. No 8 is currently utilised as a barbers (Class E), No. 8A is currently empty but was last used as a sandwich shop (Class E). Nos 10 - 12 relate to the same unit and has been in use as a bar since 2008 (Sui Generis).

This is an application under Part 3 of Class MA of the General Permitted Development Order 2015 (as amended) for the change of use of the first and second floors from Use Class E to create 8 no. apartments (Use Class C3)

Relevant Planning History

01004/E - Change of use from beauty salon to hot food takeaway (Class A5) - Enquiry completed 25/01/2012

72693 - Prior approval for change of use of first, second and third floor from Class E to 9 no. apartments (Class C3) - Prior Approval Required and Refused 18/02/2026

Publicity

Letters sent to neighbouring properties 23/03/2026.

No representations received.

Statutory/Non-Statutory Consultations

Traffic Section - No response

Environmental Health - Pollution Control - Secondary double glazing with trickle vents should be secured by condition.

Environmental Health - Contaminated Land - no comments to make regarding contaminated land.

Permitted Development Rights, Class MA permits commercial, business and services (class E) to dwellings (class C3) use subject to prior approval covering transport and highways, contamination, flood risk, noise impact and natural light to all habitable rooms. As such the Council is unable to assess and apply where necessary air quality mitigation measures to this type of permitted change of use.

Conservation Officer - The ground floor of the application site would not be part of the

proposed change of use. As such the impact on the proposal on the conservation area is not required to be assessed.

Pre-start Conditions - Not applicable.

Development Plan and Policies

S1/1	Shopping in Bury Town Centre
S2/3	Secondary Shopping Areas and Frontages
EN1/2	Townscape and Built Design
EN2/1	Character of Conservation Areas
EN2/2	Conservation Area Control
EN7/2	Noise Pollution
H2/1	The Form of New Residential Development
H2/2	The Layout of New Residential Development
H2/4	Conversions
H1/2	Further Housing Development
JP-H3	Type, Size and Design of New Housing
JP-H4	Density of New Housing
JP-P1	Sustainable Places
JP-P2	Heritage
JP-C1	Our Integrated Network
JP-C5	Streets For All
JP-C6	Walking and Cycling
JP-C8	Transport Requirements of New Development
SPD6	Supplementary Planning Document 6: Alterations & Extensions
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.

Legislative framework

Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.

*

unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;

*

if land covered by, or within the curtilage of, the building -
is or forms part of a site of special scientific interest
is or forms part of a listed building or land within its curtilage;
is or forms part of a scheduled monument or land within its curtilage;
is or forms part of a safety hazard area; or
is or forms part of a military explosives storage area;

if the building is within
an area of outstanding natural beauty;
an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981;
the Broads;
a National Park; or
a World Heritage Site;

if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or

before 1 August 2022, if—
the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and
the development would not have been permitted under Class O immediately before 1st

August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.

(2) The classes mentioned in sub-paragraph (1)(b) are the following classes of the Use Classes Order—

the following classes of the Schedule as it had effect before 1st September 2020—

Class A1 (shops);

Class A2 (financial and professional services);

Class A3 (food and drink);

Class B1 (business);

Class D1(a) (non-residential institutions – medical or health services);

Class D2(e) (assembly and leisure – indoor and outdoor sports), other than use as an indoor swimming pool or skating rink;

on or after 1st September 2020, Class E (commercial, business and service) of Schedule 2.

* Para a. and c. omitted by virtue of The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2024 (S.I. 2024/141), arts. 1(1), 3(2)(b)

Whilst the applicant has submitted floor plans that hatch out Unit 10 and the ground floor of Unit 8 stating "not part of the application" this does not remove these units from the building and they are clearly within the red edge submitted with the application.

Development under Class MA is subject to a number of limitations and conditions, as set out in paragraph MA.1. Development is not permitted under paragraph MA.1(1)(b) unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval. In the case of this application, the relevant class listed under sub-paragraph (2) is Class E (commercial, business and service).

The application relates to three units - Nos 8, 8A, 10 - 12 Silver Street. Nos 8 is in use as a barbers, and 8A was last in retail use which both fall under Class E. Unit 10 - 12 was in use as a bar since 2008 but was vacant since 2020. A recent site visit confirms that unit 10 is now in use as a bar. As such, the lawful use remains as a bar. A bar use, is considered to be sui generis and not Class E.

A recent appeal decision (appeal reference 3367078) confirmed that the whole building needs to be in Class E use to benefit from the prior approval under Class MA. As Class MA applies to the building as a whole a sui generis use at ground floor makes the building mixed-use. The applicant cannot use permitted development for only parts of the building, and full Planning Permission is therefore required.

This position has been confirmed by the previous application Class MA application at the site 72693. This was confirmed in writing by the previous Case Officer both to the applicant and agent prior to determination. Whilst this application has amended drawings, using hatching on the ground floor and annotations stating "not part of the application" this does not remove these units from the building. The LPA therefore has to come to the same decision as previously made in relation to this issue.

The existing use of the site does not wholly fall within one of the uses falling within Class E of Schedule 2 to the Use Classes Order. Therefore, the proposal does not comply with the statutory limitation in paragraph MA.1 (1)(b) of Schedule 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Development under Class MA is permitted subject to the following conditions.

Before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will

be required as to—

(a) transport impacts of the development, particularly to ensure safe site access;

The building is located within Bury town centre with good transport links. There is currently no vehicular access to the site. The proposed use of 8 flats would not be expected to generate large enough amounts of traffic to cause access issues when compared with the possible Class E uses which could occur if the building was brought back into use.

The proposed flats would be accessed via an entrance on Silver Street and an entrance on Parks Yard.

The proposed 660ltrs bins shown on the floor plans also have a width of approximately 800mm. 600ltr bins, with hinges are typically 720 - 780mm wide. The door leading to the bin storage area is approximately 800mm wide. It therefore appears that bins could potentially be stored in this area - although manoeuvrability for future occupiers would be difficult.

(b) contamination risks in relation to the building;

Environmental Health - Contaminated Land Section has confirmed they have no comments to make on the proposal.

(c) flooding risks in relation to the building;

The site is not in a Flood Risk Zone.

(d) impacts of noise from commercial premises on the intended occupiers of the development;

The site is located within the town centre, with a busy night time economy.

The Noise Assessment submitted in support of the application has been updated following the previous refusal at the site however retains the assertion that in paragraph 3.6 *"There are several restaurants close to the site but there is no outside drinking or dining associated with them, and most do not operate after approximately 10pm."* The Noise Assessment then goes on to list 13 venues/businesses that do open beyond 10pm which although contradictory to this statement in paragraph 3.6 have been assessed in terms of their noise impacts.

The Noise Assessment recommends secondary double glazing is installed at the site, which would allow the original windows to be retained which is an important consideration when assessing applications within the Conservation Area. Environmental Health have not raised any objections to the installation of this glazing as mitigation.

(e) where—

(i) the building is located in a conservation area, and

(ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;

The proposed development is located within the Bury Conservation Area and would involve the change of use of part of No. 8a to a bin and bike store. As this would be an internal change, the proposal would not have an adverse impact upon the character or sustainability of the conservation area.

(f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;

The proposed site plan, and supporting floor plans are poor in detail and do not include the footprints of the neighbouring properties and do not give any indication of heights of neighbouring sites that may impact on habitable room windows. A site visit however confirms that there is a 3 storey building to the north of the site.

There are no adopted aspect standards for new build residential properties however, Supplementary Planning Document 6 (SPD6) provides guidance on aspect standards between residential properties and as such, would be a reasonable guide in this case.

For clarity the following aspect standards, when assessing overbearing relationships and natural light would be applicable:

- 13 metres between an existing habitable room window and a proposed two storey blank wall
- 6.5 metres between an existing habitable room window and a proposed single storey blank wall

The proposed first floor bedroom windows for Apartments C and D and the Proposed living room window for Apartment D would face towards the side elevation of 6 Silver Street. The bedroom windows for Apartment C would appear to face towards the 3 storey elevation of this premises, the bedroom windows of Apartment D towards the two storey element and the living room window towards the single storey lean to the is currently used as a taxi office. A distance of approximately 5.7 metres can be provided which would fail to meet aspect standards however the bedrooms would have two windows and as such it is considered these rooms would retain adequate light. As the bedroom faces towards the single storey element this would also retain sufficient light.

The proposed first floor living room windows, and bedroom windows for Apartment B would face towards a two storey building. A distance of approximately 6.25 metres can be maintained between the living room window and this directly facing building however this room would also have 3 no. smaller windows on the side elevation to overcome this deficit in relation to overbearing relationships.

The layout of the proposed units has been amended since the previous scheme, with only non-habitable rooms (kitchens) now relying on light from the central lightwell rather than habitable rooms. This is considered to be acceptable.

Nationally Described Space Standards - The floor space of the proposed flats would exceed the relevant space standard and would comply with the national described space standards.

(g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses; and

The site is not in an area important for general or heavy industry, waste management, storage and distribution, or a mix of such uses.

(h) where the development involves the loss of services provided by—

(i) a registered nursery, or

(ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006, the impact on the local provision of the type of services lost; and

There would be no loss of such provisions.

(i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

The development does not consist of two or more dwellings whilst also exceeding seven storeys in height.

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 existing use of the site does not wholly fall within one of the uses falling within Class E of Schedule 2 to the Use Classes Order. Therefore, the proposal does not comply with the statutory limitation in paragraph MA.1 (1)(b) of Schedule 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
HP 16/04/2026		DM 16.04.2026	