

Appendix 2 - Local Development Order: Seats on Streets

Local Development Order: Kettering Town Centre - Seats on Streets Statement of Reasons

1. Description of Development Permitted

- 1.1 It is proposed that the Local Development Order (LDO) extends permitted development rights for the placing of outdoor tables and chairs within parts of Kettering Town Centre where the lawful planning use of the adjacent premises used in connection with the outdoor tables and chairs falls within the following use classes as defined by the Town and Country Planning (Uses Classes) Order 1987 (as amended):
- A3 (restaurants, cafes, coffee shops, snack bars)
 - C1 (hotels)
- 1.2 Tables and chairs referred to are those placed on the public highway adjacent to the premises serving food and drink for the consumption outside. The public highway includes the carriageway and footway, alleys and passageways, and other areas of public realm. However, LDO provisions will largely be focused on the footway and similar of the public realm, as condition (h) will ensure that vehicular movements on the carriageway are not obstructed and highway safety is preserved.
- 1.3 Any eligible premises within the area specified by the LDO would therefore be able to place tables and chairs outside their premises, subject to adherence with the 9 conditions, without the need to apply for express planning permission.
- 1.4 Premises wishing to operate areas of outdoor seating that do not comply with the conditions set out within the LDO will require planning permission.

2. Proposed Area of Coverage for the LDO

- 2.1 The LDO will cover the main thoroughfares within Kettering town centre which also covers parts of the Kettering Purple Flag Zone area. The extent of the LDO area is shown on *Plan 1: Area of Coverage for the Local Development Order* attached to the proposed LDO and this Statement of Reasons for making the Order. The LDO boundary also follows parts of the Town Centre boundary adopted within the Kettering Town Centre Area Action Plan (AAP) (2011), but excludes areas where street café licenses are unlikely to be granted or A3/C1 uses are predominantly not present. As a result parts of the town centre including the Station Road, public car parks, supermarkets, and edge of centre residential areas have also been excluded from the LDO area. This reduces the area of coverage previously covered by the original LDO which has since expired.

2.2 Kettering town centre contains the largest concentration of eating and drinking establishments in the Borough and national, and local planning policy is clear that town centres must be the focus for such uses; and that Local Planning Authorities must take measures to enhance the vitality and viability of their town centre. The issues which the LDO seeks to address (set out below) are town centre wide. The designation of the LDO across the majority of the town centre where the concentration of A3/C1 uses are most present (or likely to be) will enable a consistent and equitable approach to be taken to businesses throughout this part of the town centre. For these reasons it is appropriate to apply the Order to this area.

3. Justification

3.1 A key aim of the Kettering Town Centre AAP is to encourage the development of a café culture and enable visitors to the town to enjoy food and drink whilst seated outdoors, which itself can bring many benefits. Members of the Executive Committee have previously endorsed this approach. Significant investment has been made in new public realm removing through traffic and encouraging uses to spill out of buildings. Pavement cafes could and should play a part in Kettering's busy street life.

3.2 The council has previously sought to encourage café culture through the adoption of a similar LDO which automatically granted planning permission to support the placing of outdoor tables and chairs on the highway adjacent to lawful food and hotel premises. The LDO may have helped facilitate some businesses to embrace the café culture, however, the LDO was limited to a period of 3 years and has now expired.

3.3 As a result the former process has been re-instated, which requires businesses to apply for planning permission and a license from 2 separate organisations before any seating or tables can be placed on the highway; A Street Café Licence is required from Northamptonshire County Council (NCC) Highways Authority and Planning Permission is required for a change of use of the highway to use for outdoor seating and highway from Kettering Borough Council (KBC). This presents an uncompromising barrier to restaurants / cafes and hotels wishing to place outdoor seating and tables on the highway, as the process can be complicated, expensive and the outcome uncertain.

3.4 The need for dual consents is considered to be overly bureaucratic, costly, daunting and complicated to applicants, and can duplicate the efforts of the authorities involved. The issues identified include:

- **Complexity** - involves lots of forms and organisations / departments.
- **Risk to applicants** - the NCC licence requires prior planning permission but in practice this means applicants run the risk of paying planning fees to obtain planning permission only to then be turned down for a Highways licence (typically the Highways licence is where proposals come unstuck).

- **Prohibitive cost** – The annual cost of a street café license is currently between £225 and £630 depending on the number of tables/chairs being proposed. The current planning fee for a change of use application is £462, and further charges apply for obtaining alcohol licenses, etc. In addition to these costs, the complexity and time involved in making these applications discourages businesses from making the necessary applications and contributes to a lack of outdoor seating in Kettering town centre.
 - **Overlap of processes** - There is also a significant duplication of work between KBC Officers determining planning applications and NCC Officers determining licence applications.
 - **Inefficient use of resources** – Officer time is being used to manage planning applications and applicant expectations which then do not always proceed past the NCC licence application stage.
 - **Enforcement issues** - businesses giving up on the above processes, may instead place tables and chairs on the highway without planning permission which can result in enforcement action being taken against the café culture we are hoping to encourage within the town centre.
- 3.5 The proposed LDO aims to streamline the process and make it simpler for town centre businesses to place tables and chairs outside of their premises in appropriate areas.
- 3.6 The aim of the LDO is to contribute to the vitality and attractiveness of Kettering town centre, by creating a welcoming environment that caters for a mix of users and encourages people to stay within the town centre. Kettering has a vibrant day and night time economy, but there is still a need to diversify this so that the town centre, particularly in the evenings, is more attractive to all groups. This will become increasingly important as the number of town centre residents increases and is something which the Kettering Purple Flag Scheme seeks to enhance further. For this reason, the proposed LDO focuses on the Kettering Purple Flag area which falls within parts of the Kettering Town Centre. With the Kettering Town Centre AAP providing for around 1,000 additional homes within the town centre, this focus will become ever increasingly more important.
- 3.7 The evidence base for the Kettering Town Centre Area Action Plan (KTCAAP), and successive rounds of public consultation highlighted this issue and the need to diversify the leisure offer in the town centre, particularly around eating establishments and family-friendly environments. An underpinning theme of the KTCAAP is to make visiting Kettering experiential – more than just somewhere to shop and access services. The presence of attractive areas of outdoor seating can contribute towards these objectives. The proposed LDO is considered to be a proactive management tool to support the regeneration objectives within the town centre.
- 3.8 The general impetus behind the LDO is supported through the existing policy and legislative framework and provides a sound rationale for the proposed approach – see section 4, below.

- 3.9 The adoption of an LDO will serve to simplify the regulation process for businesses in the town centre, through the removal of planning delay and associated cost, and thereby eligible premises will be encouraged to establish well-designed pavement cafés that make a positive contribution to the street scene. Currently planning applications for pavement cafés are largely determined based on highways and environmental health considerations, which are appropriately covered under NCC's Street Café Licence. The conditions accompanying the LDO will ensure that any pavement cafes established make a positive contribution to the appearance of the town centre, and assure businesses that regulations are applied consistently to all eligible premises.

4. Supporting Policies

- 4.1 A LDO is an Order made by a local planning authority (under the Town and Country Planning (Development Management Procedure) (England) Order 2015) that grants planning permission for specific development proposals or classes of development. Government guidance has highlighted that LDOs are an underutilised tool, and encourages Local Authorities to consider their use to stimulate regeneration and economic development. Paragraph 199 of the National Planning Policy Framework (NPPF) states that Local Planning Authorities should consider using LDOs to relax planning controls for particular areas or categories of development, where the impacts would be acceptable, and in particular where this would promote economic, social or environmental gains for the area.

- 4.2 The Seats on Streets LDO is intended to remove a barrier to sustainable economic development which is clearly in line with the NPPF, which states in Paragraph 21 that:

Investment in business should not be over-burdened by the combined requirements of planning policy expectations. Planning policies should recognise and seek to address potential barriers to investment....

- 4.3 The LDO is aimed squarely at enhancing town centre vitality and viability, strengthening the town centre's leisure offer, and contributing to its regeneration. These aims are in accordance with Section 2 of the NPPF and Policies 8, 11, 12 of the North Northamptonshire Joint Core Strategy (NNJCS).

- 4.4 The KTCAAP and supporting Urban Codes and Public Realm Supplementary Planning Documents are clear that developing a café culture in Kettering is desirable with outdoor seating adding vibrancy, activity and vitality to public areas, encouraging visitors and dwell time, and contributing to the experiential offer envisaged for the town centre. The Seats on Streets LDO is, therefore, consistent with and supports the objectives and aspirations of the Kettering Town Centre AAP, specifically the following policies:

- Policy 3: Primary Shopping Area (Primary and Secondary Frontages) and the Evening Economy – Promotes the vitality and vibrancy of Primary and Secondary Shopping Frontages and active frontages.

- Policy 5: Culture, Tourism and Leisure - seeks to diversify the leisure offer and the day and evening economy.
- Policy 11: Public Realm and Public Art - encourages high quality public realm and measures which would improve the appearance and attractiveness of the town centre.
- Section 3.6 - Create opportunities for public seating as well as for pavement cafes and retail uses spilling out onto the pavement.

4.5 The LDO is not in conflict with any other policies or objectives of the AAP. For example it does not influence the mix of uses within the town centre. The establishment of non-retail uses within the Primary and Secondary Shopping Frontages is determined against the criteria within Policy 3, which controls the number and concentration of non-retail uses in the town centre. Premises establishing a pavement café under the LDO must already have planning permission for an eligible use.

5. Lifetime of the LDO

5.1 The LDO will be in force indefinitely from the date of adoption unless formally revoked or amended. This will avoid the need to renew the LDO and give greater certainty to businesses within the LDO area.

5.2 Genuine reasons for revoking the LDO may include a change in direction of planning policy which does not support café culture, such as at a national level or through future updates to the KTCAAP or Part 2 Local Plan; the emergence of unintended consequences which have a detrimental impact on the viability and vitality of the town centre, or other material issues. Poor uptake of the LDO is unlikely to provide sufficient reason to revoke the LDO unless an alternative, more suitable vehicle is used to achieve the same outcomes.

5.3 Amendments to the LDO may be made, where it is identified that adjustments are necessary to address unintended adverse impacts.

6. Monitoring

6.1 The LDO will be formally monitored through the Kettering Town Centre Health Check, published annually. This will highlight how many pavement cafés have been established under the LDO and the general impact of the LDO on the town centre. This will be done by counting the number of street café's present in the LDO area. In addition, tracking the number of corresponding NCC Street Café Licenses issued annually within the LDO area will enable the council to verify whether the street cafés are authorised or not.

6.2 The Council will actively monitor the establishment of pavement cafés to ensure that the LDO is operating effectively; that conditions are complied with; and that any necessary adjustments to the process can be made. Where conditions are

not complied with, appropriate enforcement action can be considered to secure desired objectives of the LDO.

7. Risk assessment and risk management

7.1 Retention of control

There is a small risk that the LDO could result in a loss of control of regulation for outdoor seating. However, it is considered that the NCC Licence and accompanying conditions are very thorough and consider issues such as highway safety, design, barriers, access, storage of furniture, layouts, public health and safety and statutory consultees, including the police. Moreover, the proposed approach involves KBC retaining a degree of control – the 9 conditions proposed would also need to be met for the LDO to apply which would prevent inappropriate developments. The NCC Licence requires a supporting statement from KBC, so if an application was deemed inappropriate this would be raised at this stage by KBC Officers. This risk has, therefore, can be effectively managed.

7.2 Heritage Considerations

The impact of the LDO on designated heritage assets has been considered in line with the guidance in the NPPF, and the Council considers that their significance will not be harmed by the measures set out in the LDO. The Town and Country Planning (Development Management Procedure) (England) Order 2015 states that LDOs should not permit development which affects Listed Buildings. It is considered that, as temporary structures, tables and chairs which are taken in each day and are only in use during certain times of the year, do not permanently alter the Conservation Area or any of the Listed Buildings therein. Historic England have been consulted on the draft LDO. Moreover, the 9 conditions and the conditions associated with the NCC Street Licence require a high standard design, appearance and a positive impact on character. This consistent application of minimum standards is especially important within the Conservation Area which has been designated as ‘at risk’ by Historic England. As an additional ‘safety net’, one of the conditions will also prohibit the benefit of the LDO where it affects a listed building, which will prevent any proposals which would adversely affect a Listed Building from benefiting from Permitted Development.

7.3 Amenity and Community Safety

Amenity and community safety concerns relating to pavement cafés are controlled through non-planning regulations. NCC Licensing regulations cover hours of use and health and safety considerations. The Council considers that licensing regulations are sufficient to safeguard amenity and community safety within the town centre under the LDO. Condition (f) of the LDO requires proposals to not have a detrimental impact on residential amenity and public health and safety. This condition will prevent any proposals which would adversely affect these aspects, from benefiting from Permitted Development.

7.4 Highway Safety and Traffic

Technically the LDO could grant planning permission for development (i.e. material change of use) which could adversely affect highway safety by permitting tables and chairs to be located on the carriageway. The fact that a street café license is also required, is likely to prevent this from happening, but the impact of

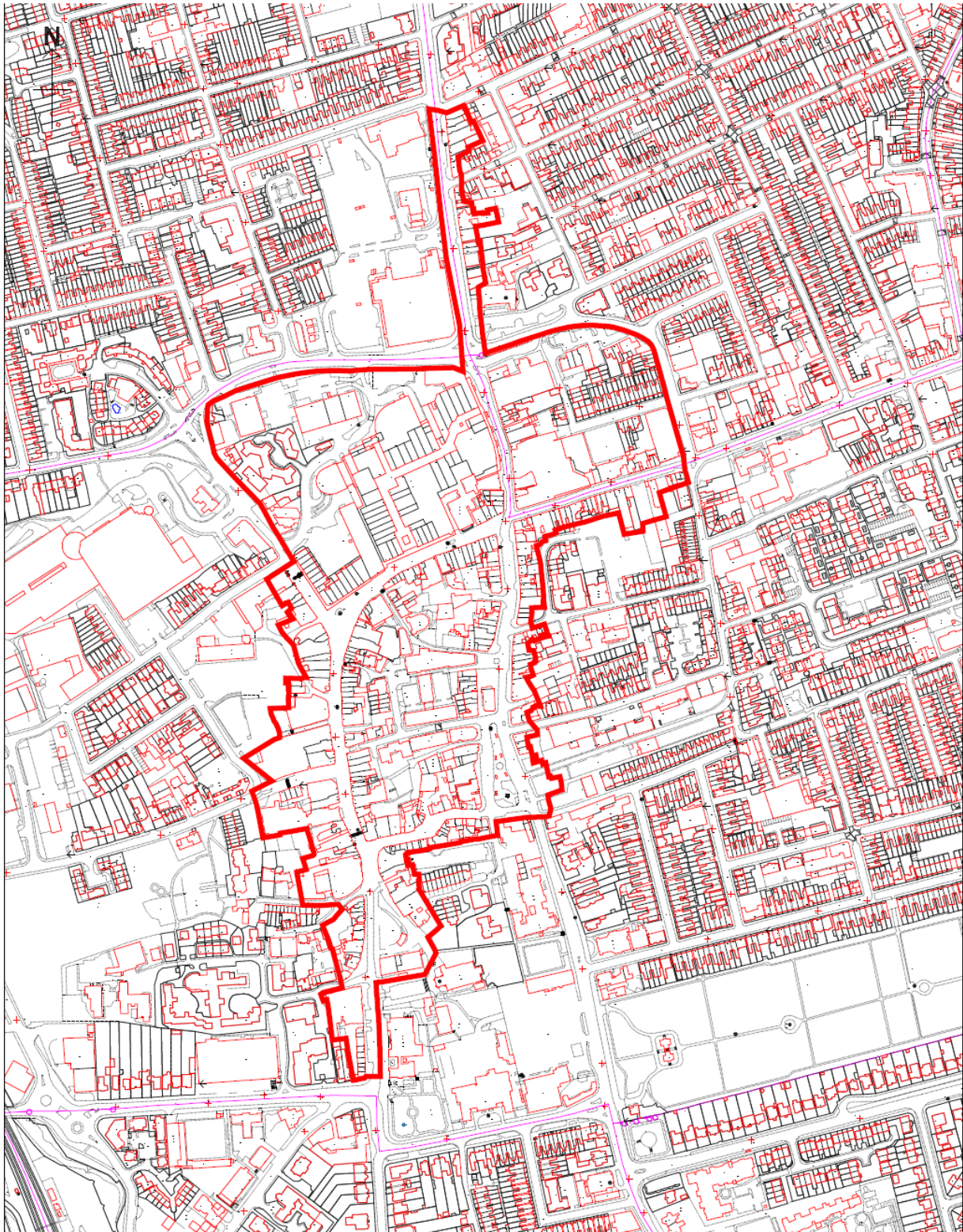
the LDO should be considered in isolation. On this basis, a condition is included to prohibit development which would adversely affect highway safety and obstruct vehicular movements within the carriageway.

8. Conditions to be applied

8.1 Planning permission for the placing of tables and chairs on the highway within the LDO area is granted subject to the following conditions:

- a) Before the development commences a Street Café Licence must be obtained from Northamptonshire County Council Highway Authority (NCC), and the requirements and conditions of this licence fully complied with.
- b) No permanent fixtures or installation constituting development is associated with the proposal.
- c) All items placed on the highway must be removable and taken in at the close of trading each day.
- d) The design of the outdoor seating area, including barriers, furniture and materials used, must be of high quality and appropriate to the character of the area and to the Conservation Area, where appropriate.
- e) Advertisements or branding on barriers or parasols will be limited to discrete corporate branding showing only the name of the establishment and/or logo, in accordance with NCC guidance. Any other forms of advertising may require advertisement consent and advice from Kettering Borough Council should be sought.
- f) The proposal must make a positive contribution to the street scene, enhance the character of the town centre and suitably maintain residential amenity and public health and safety.
- g) The proposal will not occupy land where it will adversely affect a listed building or its curtilage as designated under Section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- h) The proposal will not occupy land falling within the carriageway where there could be an adverse impact on highway safety or cause obstruction to the flow of traffic and vehicular movements. In addition, in all instances a pedestrian footway clearance of 2 metres shall be maintained within the public footway whilst the street café seating area is in operation. All associated furniture, barriers and planters must be temporary and able to be removed each and every night to ensure that clear access and use of the public highway is maintained.
- i) A clear vehicular access space to land/buildings of no less than 3.7 metres width shall be maintained for emergency service appliances, as recommended by Approved Fire Safety: Document B of the Building Regulations 2010 (or any successor to this document).

Plan 1: Area of Coverage for the Local Development Order



Title: Local Development Order

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Kettering
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