

BOROUGH OF KETTERING

Committee	Full Planning Committee - 17/07/2012	Item No: 5.6
Report Originator	Chris Rose Development Officer	Application No:
Wards Affected		
Location	Kettering Town Centre	
Proposal	Seats on Streets Local Development Order	

1. PURPOSE OF REPORT

To seek Member's endorsement for a proposal to simplify the process for placing tables and chairs outside on pavements in Kettering town centre, to catalyse the formation of a café culture. The report proposes a Local Development Order to remove the requirement for planning permission to do this.

2. RECOMMENDATION

Members are asked to support the proposed strategy and agree to consult on a draft Seats on Streets Local Development Order for Kettering town centre.

If Members endorse this approach, they may wish to consider whether the draft LDO for Kettering should encompass A4 uses.

Officers Report

3.0 Information

A key aim of the Kettering Town Centre Area Action Plan is to encourage the development of a café culture with visitors to the town able to enjoy food and drink whilst seated outdoors, which can bring many benefits. Members of the Executive Committee have endorsed this approach. Significant investment has been made in new public realm removing through traffic and encouraging uses to spill out of buildings.

This report outlines how the current process to obtain the necessary consents for outdoor seating is problematic, duplicates effort and is presenting a significant barrier to the delivery of a café culture, or seats on streets. This report seeks Member approval to consult on a draft Local Development Order (LDO) which would give certain businesses permitted development rights to place tables and chairs outside of their premises without the need for planning permission, where certain criteria are met. Meaning only a Street Café Licence would be required from Northamptonshire County Council (NCC).

A Local Development Order (LDO) is a simple tool to allow a Local Planning Authority to introduce new permitted development rights. LDOs are a means for the planning system to encourage development in a way that meets locally specific policy objectives.

4.0 Consultation and Customer Impact

A Draft LDO would be subject to public consultation for a period of 28 days from late July 2012, meaning the Order could be adopted in late summer.

The strategy is likely to have a positive impact on customers, reducing the time it takes to apply for outdoor seating and freeing up Officer time to support applicants and liaise with colleagues at NCC to help the licence process along.

5.0 Planning Policy

- National Planning Policy Framework
- East Midlands Regional Plan
- North Northamptonshire Core Spatial Strategy
- Kettering Town Centre Area Action Plan
- Kettering Town Centre Urban Codes Supplementary Planning Document

6.0 Financial/Resource Implications

There may be a slight loss of income to the Council in terms of planning fees by negating the requirement for planning permission. However, this amount is likely to be negligible. The current cumbersome process, described below, is contributing to very few such changes of use applications being made. For example records show only 1 successful application in the town centre in the

past 4 years, and this permission has not been implemented due to highways issues.

Moreover, currently a significant amount of Officer time is spent attempting to help businesses to achieve outdoor seating by guiding them through the complex system, to date without much success. It is considered that the proposed LDO will result in less Officer time being spent on such matters and less duplication of work between Kettering Borough Council and NCC.

7.0 Planning Considerations

The key issues for consideration in this proposal are:-

1. The current process
2. Policy and legislative framework
3. The proposed process
4. Consultation and adoption arrangements

1. The current process

The current process presents an uncompromising barrier to restaurants and cafes wishing to place outdoor seating and tables on highways (which include areas of public realm and all pavements). The process is complicated and the outcome uncertain for applicants, who currently must apply for different permissions from 2 organisations: A Street Café Licence from NCC Highways Authority and a Planning Permission for change of use from highway to outdoor seating from Kettering Borough Council (KBC).

This process is problematic. The need for dual consents is considered to be overly bureaucratic, costly, daunting and complicated to applicants. The problems 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 £335 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** (£510 + alcohol consents) – this coupled with the complexity and time involved is currently proving enough to put businesses off, contributing to a lack of outdoor seating in Kettering town centre.
- **Overlap of processes** - There is a significant duplication of work between KBC Officers determining planning applications and NCC Officers determining licences.
- **Inefficient use of resources** – Officer time is being wasted managing planning applications and applicant expectations which are unsuccessful in obtaining an NCC licence.
- **Enforcement issues** - businesses giving up on the above process and placing tables and chairs outside without consent can result in enforcement against the very café culture we are hoping to encourage!

It is proposed that we change the process to make it simpler for town centre

businesses to place appropriate areas of tables and chairs outside of their premises. This could be done by drafting a LDO which would remove the need for planning permission for certain businesses to place tables and chairs outside of their premises.

Removing the need for planning permission has been done successfully elsewhere, for example in Wellingborough and Nottingham.

2. Policy and legislative framework

An LDO is an Order made by a local planning authority (under the Town and Country Planning (Development Management Procedure) (England) Order 2010) that grants planning permission for specific development proposals or classes of development. Recent government guidance has highlighted that LDOs are an underutilised tool and encouraged Local Authorities to consider their use to stimulate regeneration and economic development. Paragraph 199 of the National Planning Policy Framework 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.

The LDO which has been drafted (attached in Appendix 1) is considered to be in conformity with the Town and Country Planning (Development Management Procedure) (England) Order 2010 regulations. The regulations state 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. 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. English Heritage will be consulted on the draft LDO.

The policy context requiring measures to enhance town centre vitality and viability is well established. The Kettering Town Centre AAP and supporting Urban Codes SPD are clear that developing a café culture in Kettering is desirable with seats on streets 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 policy framework for the proposed approach is, therefore, established.

3. The proposed process

It is proposed to adopt a LDO for Kettering town centre (extent shown in Appendix 3) which would give certain businesses permitted development rights to place tables and chairs outside of their premises without the need for planning permission, where certain criteria are met. This would mean a business would just need to apply for 1 consent – an NCC Street Cafe Licence.

It is proposed that the LDO would apply to the following uses - A3 (Restaurants, cafes, snack bars) and C1 (hotels).

Wellingborough Borough Council's similar policy covers A3 uses only, whereas Nottingham and Romford also permits areas of outdoor seating to A4 uses (bars, wine bars and public houses, but not night clubs). **Members may wish to consider whether they would favour the draft LDO for Kettering to encompass A4 uses.**

Development Services' Kettering Team would retain a role as support and point of contact for businesses wishing to obtain outdoor seating. It is proposed to place a new, user-friendly page on our website explaining the new simplified process and how KBC can help. Officers can then advise and assist applicants with the NCC licence, provide a statement to NCC confirming that planning consent is not required (which satisfies their requirement) and liaising with NCC to expedite the grant of licences. We have surveyed the town centre, noting pavement widths and obstructions around premises which may wish to have outdoor seating. This means we have an idea of which premises are likely to have a good chance of achieving a Street Café Licence, given NCC's Highways requirements, and can advise businesses accordingly.

The proposed approach involves KBC retaining a degree of control. The NCC Licence and accompanying conditions (provided as appendix 2 to this report) 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. There is nothing additional which a change of use planning application would need to consider that the NCC licence does not adequately cover. Moreover, the draft LDO requires conformity with 6 conditions which would 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.

The proposed approach offers the advantages of:

- Providing a consistent approach;
- Removing barriers to development;
- Giving a degree of certainty to businesses;
- Greatly reducing the complexity, cost and time for applicants;
- A reduction in KBC Officer's time spent on the process; and
- It facilitates the aspirations of members and of the Kettering Town Centre AAP to create a café culture.

4. Consultation and adoption arrangements

It is proposed to publically consult on a draft LDO (attached as appendix 1 of this report) for a period of 28 days (as required by the regulations below) beginning in late July 2012. If feedback is favourable adoption should be possible for late summer 2012. The Town and Country Planning (Development Management Procedure) (England) Order 2010 sets out requirements for the consultation which are similar to those for consulting on a Supplementary Planning Document, for example displaying notices, placing an advertisement in the local press, notifying statutory consultees and stakeholders and making copies of the LDO and supporting documents available for viewing and

comment. Relevant businesses and stakeholders will be notified in accordance with the above regulations. It is proposed to use our online interactive consultation portal for the consultation, which has worked successfully in the past for consultation on Development Plan Documents and Supplementary Planning Documents.

Officers will then take into account any representations made within the consultation period. If the consultation results show support for the LDO, a copy of the draft LDO will then be sent to the Secretary of State (SoS) for a period of 21 days. If no objection is made by the SoS during this period the LDO can be taken before Full Council for adoption.

Conclusion

Members are asked to support the proposed strategy and agree to consult on a draft Seats on Streets Local Development Order for Kettering town centre.

If Members endorse this approach, they may wish to consider whether the draft LDO for Kettering should encompass A4 uses.

Appendix 1:

Draft Local Development Order: Kettering Town Centre - Streets on Streets

July 2012

1. Introduction

1.1 Kettering Borough Council (KBC) is keen to encourage the development of a café culture with visitors to the town able to enjoy food and drink whilst seated outdoors. Appropriately placed seats on streets can add vibrancy, activity and vitality to public areas and encourage people to visit and spend time in the town centre. Outdoor seating is encouraged in the Kettering Town Centre Area Action Plan.

1.2 This draft Local Development Order (LDO) proposes to remove the requirement for planning permission to place tables and chairs outside on the public highway, for certain types of business and where certain conditions are met. This would remove the current requirement for dual permissions and mean only a Street Café Licence from Northamptonshire County Council (NCC) would be required.

2. Local Development Order

2.1 Within Kettering Town Centre (as defined in Map 1 and in the Kettering Town Centre Area Action Plan) planning permission will be granted for outdoor tables and chairs, for the consumption of food and drink, to be placed on the public highway where the lawful use of the premises is within the following use class orders:

- A3 (restaurants, cafes, coffee shops, snack bars)
- C1 (hotels)

2.2 Planning permission for the establishment of outdoor tables and chairs within the LDO area is granted subject to the following conditions:

1. Before the development commences a Street Café Licence must be obtained from Northamptonshire County Council Highway Authority, and the requirements and conditions of this licence fully complied with.
2. No permanent fixtures or installation constituting development is associated with the proposal.
3. All items placed on the highway must be removable and taken in at the close of trading each day.
4. 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.
5. 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 KBC should be sought.
6. 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.

3. Future arrangements for outdoor seating

3.1 If this draft LDO is adopted, proposals for outdoor seating which meet the above requirements would only need to apply for a Street Café Licence from Northamptonshire County Council. This licence requires applicants to supply information covering:

- Visual impact – furniture; parasols; barriers and means of enclosure etc.
- Storage of furniture and items
- Layout – including necessary pavement clearances
- Hygiene, amenity and public health
- Management
- Advertising

3.2 The proposed process for applying for outdoor seating following the adoption of the LDO is as follows:

- Contact KBC's Development Services for informal advice and get a named point of contact.
- Prepare your application for a Street Café Licence to NCC.
- Share this information with your KBC point of contact.
- If the proposal is satisfactory and in accordance with conditions 2-6 (above), a statement will be provided stating that planning permission is not required for the outdoor seating and that the proposal is supported. This statement should then be included in your application to NCC.
- Make your application for a Street Café Licence from NCC.
- Your point of contact can continue to support your application, including liaising with NCC if necessary.

3.3 There would be no charge from Kettering Borough Council for this service.

3.4 Finally, if alcohol is to be consumed in the outdoor seating area, an Alcohol Licence would be required from Kettering Borough Council's Environmental Health Service.

4. Lifetime of the LDO and options following its expiry

4.1 The LDO and the terms within it would be in force for a period of three years from the date of adoption, and expire following this period.

4.2 The following options would be available following its expiry:

- (a) Renew with no revisions
- (b) Renew with new terms and conditions
- (c) Revoke

4.3 Development which has started under the provision of the LDO would be allowed to be completed in the event that the LDO is revoked or revised.

5. Consultation arrangements

5.1 The draft LDO will be publically consulted on for a period of 28 days beginning in late July 2012 (exact dates to be confirmed). Consultation will be carried out in accordance with the requirements of the Town and Country Planning (Development

Management Procedure) (England) Order 2010 and the North Northamptonshire Statement of Community Involvement. This will include displaying notices, placing an advertisement in the local press, notifying statutory consultees and stakeholders, using our online interactive consultation portal (<http://consult.kettering.gov.uk/portal>) and making copies of the LDO and supporting documents available for public viewing and comment. Relevant businesses and stakeholders will be notified in accordance with the above regulations.

Appendix 2: Northamptonshire County Council Street Café Licence Conditions



Northamptonshire County Council

STREET CAFE LICENCES

Highway Authority conditions

1. INTRODUCTION

Applications for street café licences on public highway pavements will only be considered by Northamptonshire County Council, as the highway authority, for areas immediately fronting a permanent premise. The County Council may grant a street café licence in accordance with Section 115E of the Highways Act 1980 which will be issued yearly to run from the 1st April to 31st March. This note and conditions will apply as far as The County Council, as the Highway Authority, views are concerned.

Planning Permission and/or listed building consent, if required, must be obtained before any café licence can be issued by the County Council.

2. THE VISUAL IMPACT

The positioning of tables and chairs outside your premises should relate to the existing street-scene and movement of pedestrians. Ideally it should be seen as an integral part of the main café rather than an unrelated after-thought.

Tables and chairs need to be selected to ensure...
the comfort of your customers
that you can store them securely on your premises
that their visual impact is in keeping with the area
they are easy to clean, and are kept clean

Domestic patio-style furniture is unlikely to be of sufficient standard to compliment the appearance of Town Centres or Conservation Areas where cast iron furniture may be specified.

You also need to have regard to the surface on which the furniture will stand. An uneven cobbled surface may require a more sturdy style of furniture than an even one. The following examples may help your choice of furniture.

Parasols may be needed...
for hygiene
where tables are under trees
where birds may cause nuisance
for shade for customers

Parasols made of wood and canvas are likely to be more acceptable than garden style umbrellas. They must be firmly secured.

Barriers and Means of Enclosure may be required for any furniture sited outside your premises. This is primarily to guide the visually impaired.

These need to be about 1000mm in height with no more than 150mm between the base rail and the ground. They must be able to resist pedestrian collision e.g. by fixing to substantial planters or being temporarily fixed to the ground during opening hours. All items including planters must be removed when closed. They also need to be in keeping with the visual appearance of the area. Designs for all items must be agreed.

Ideal barriers

Stable and sturdy, not flimsy; but light in weight (for ease of movement / storage as they will be taken in and out each day)

Light in colour (painted, natural colouring or similar) - a contrast to the café furniture

Close textured, fence like in appearance, with a tapping rail (i.e. a length of wood positioned at the base of the barrier, designed to assist the visually impaired).

Barrier designs not to be used

Post and Chain barriers - potentially hazardous to pedestrians, particularly the visually impaired

Hoop top garden fencing - too flimsy and not very tall posing a serious trip-hazard

The use of a variety of small plant tubs – untidy and inadequate as a means of enclosure or guide for the visually impaired.

3. STORAGE OF FURNITURE AND BARRIERS

Pavement café furniture **must not** be stored on the highway when the premises are closed. When premises are open, tables, chairs and barriers must be either fully set up ready for use **or** stored within the premises. The latter is preferred when it is not intended or practical to use these tables.

Tables, chairs, parasols and means of enclosure should be removed and securely stored inside your shop premises. In order to facilitate this, none of the furniture or barriers can be permanently fixed to the ground.

4. LAYOUTS

Where pavement cafés are to be located on a main pedestrian thoroughfare, tables and chairs may be required to be enclosed in order to allow for easy pedestrian movement and to contain the pavement café area. Spacing should allow for wheelchair and pram access, and adequate emergency service and Highway Authority access must be permitted at all times. The following guidelines need to be taken into account.

Café Furniture directly fronting the shop front

Normally a corridor of 1.8m minimum width must be provided to the shop entrance - this should remain unobstructed at all times.

A physical barrier may be needed either side of the area of tables and chairs to serve as a guide to the visually impaired. If chairs and tables spill out then a barrier may be needed in front of them. A minimum of 1.8m width of footway (preferably 2.4m, especially on a Category 1 footway) must remain available to passing pedestrians (taking into account telephone boxes, street lights etc.).

Café furniture sited away from the shop front

You should leave no less than 1.8m width (preferably 2.4m, especially on a Category 1 footway) of unobstructed footway between the front of your premises and the outer-most boundary of the street café.

The tables and chairs may need to be enclosed by physical barriers in order to act as a guide for the visually impaired.

Where vehicles are alongside, you must maintain 0.5m clearance.

Café furniture and existing features

Where possible, you should take advantage of the existing structures within the street scene, e.g. planters and other landscaping features, when setting out your tables and chairs. In some cases, you may not need to erect barriers.

Where vehicles are alongside 0.5m clearance must be maintained

Requirements may vary from one café to another so applicants must agree details with the Highway Authority.

5. HYGIENE, AMENITY AND PUBLIC HEALTH

- a) The defined area and the area between the premises and the furniture must be kept free of litter.
- b) Spillage of any kind must be removed immediately and the surface washed if necessary.
- c) All tables and chairs and the outdoor area must be regularly cleaned, and food debris and waste must be removed immediately.
- d) There must be no excessive levels of noise, disturbance, smell, or other nuisances.
- e) Amplified Music will not be permitted.

6. MANAGEMENT AND OTHER ISSUES

- a) Where table service operates within the premises, it must be extended to cover the street café area.
- b) The area must be maintained to a high standard at all times.
- c) All trays, crockery and utensils, take-away packaging and any other litter must be removed at regular and frequent intervals.
- d) The furniture must be kept clean and in a good state of repair to the satisfaction of the Council.
- e) If the Highway Authority's property is damaged or defaced as a result of the street café, the café owner shall be responsible for the cost of repairs which shall be carried out by the Highway Authority.
- f) There shall be no use made of any street furniture, trees etc for any purpose whatsoever in connection with the café.
- g) Where drinks are served in glasses these should be made from **polycarbonate safety glass**.
- h) No patio heaters will be permitted on the highway.
- i) If the street café is to be used for the drinking of alcoholic beverages the applicant is required to consult with the local Licensing Authority concerning the drinking of alcoholic beverages on the highway.
- j) You must inform the local Planning Authority so that they can decide whether you require Planning Permission in order to operate a café on the highway.
- k) The Highway Authority shall be indemnified against all claims, injuries or accidents whatsoever and the applicant shall provide evidence of public liability insurance providing cover up to £5,000,000 for any one incident.
- l) The Highway Authority reserves the right to give notice to remove all items associated with the street café at any time for highway improvements, highway maintenance purposes, or for any purpose concerning the public highway.

7. ADVERTISING

Where the café furniture is sited away from the shop frontage a discreet statement of "Café" or the café's name e.g. "Café de Paris" in letters no more than 100 mm high may be permitted at one or two locations on the barrier to clarify the intended purpose.

No other advertising will normally be permitted on the furniture, parasols or barriers. Planning permission and/or controlled advertisement consent may be required and there may be additional fees for this.

You must check first with the District/Borough Council.

8. SUBMITTING THE APPLICATION AND WHAT HAPPENS NEXT

All applications must be accompanied by the following...

- a) An accurate (OS base) plan outlining the application site in red and land in the applicant's ownership in blue (1:1250 or 1:500 scale plan as appropriate).
- b) A site plan of at least 1:200 showing the precise location and proposed setting out of the tables and chairs.
- c) The replies from the local Planning Authority:-
 1. concerning planning permission;
 2. listed building consent, if applicable;
 3. controlled advertisement consent, if applicable;
- d) Proof of public liability insurance cover up to £5,000,000 for any one incident.
- e) Full details of the tables and chairs, barriers and parasols proposed.
- f) Full details of the envisaged use.
- g) Replies from consulting with the:-
 1. police;
 2. local Licensing Authority if the area is envisaged for the drinking of alcohol;
 3. local Town or Parish Council, if one exists;

Note: there is an annual fee of **£175** payable at the time of the issuing of the licence.

Note: any permission is NOT transferable to new owners. A new application has to be made if the business is sold etc.

Please note that if the permission is refused, you will be given seven days notice to stop operating the street café. Any cost you may incur if you begin operating based on the above letter of authorisation, before the matter can be formally considered, is entirely at your own risk.

Background Papers

Title of Document:

Date:

Contact Officer:

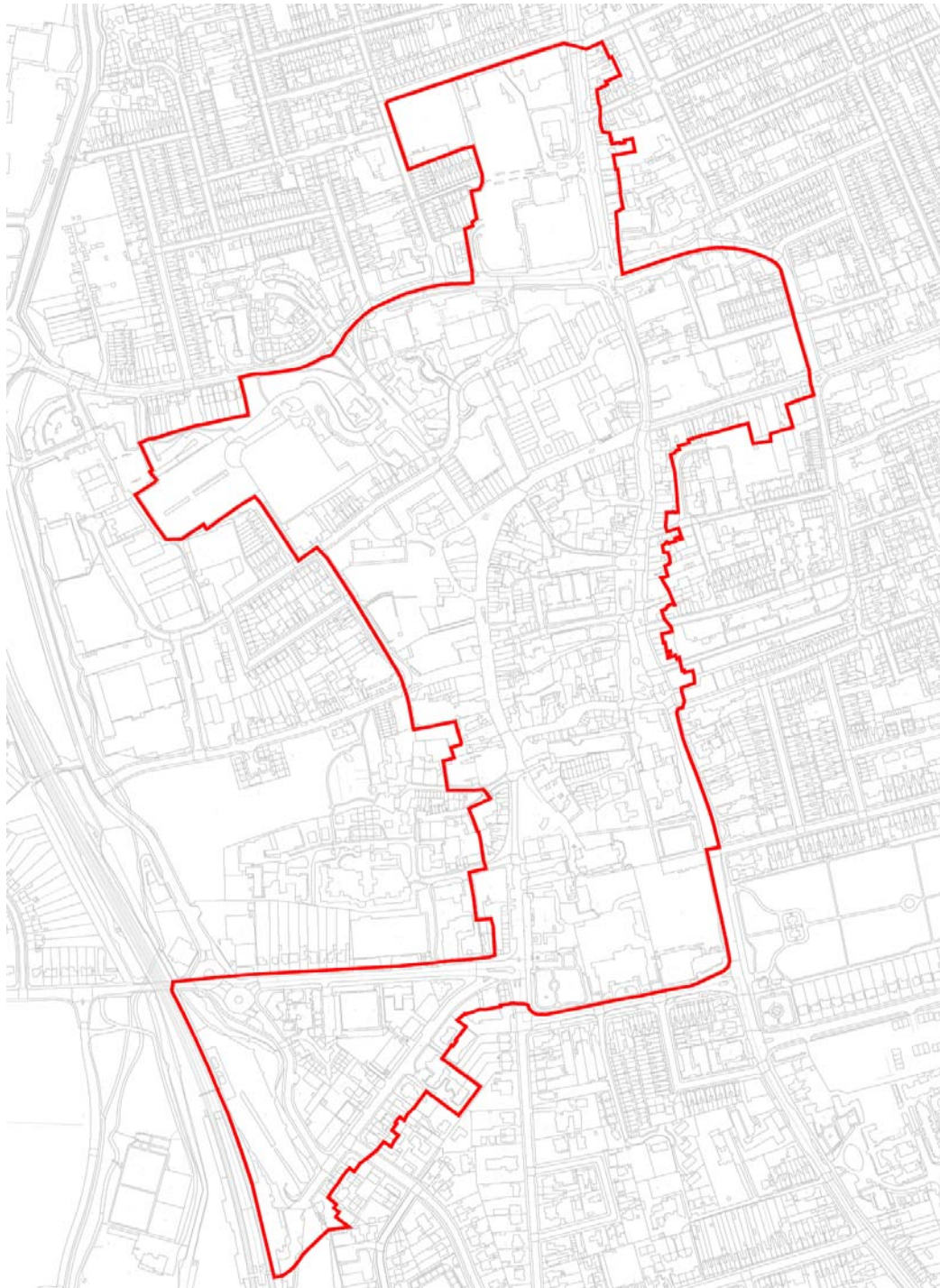
Chris Rose, Development Officer on 01536 534316

Previous Reports/Minutes

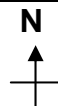
Ref:

Date:

Appendix 3 - Area of Coverage for the Kettering Town Centre Seats on Streets Local Development Order



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