

MUNICIPAL YEAR 2009/2010 REPORT NO. 67

MEETING TITLE AND DATE:

Planning Committee

26th August 2009

REPORT OF:

Assistant Director
(Planning & Environmental Protection)

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AGENDA – PART:	ITEM:
SUBJECT: Proposed Local Development Order and Street Trading	

1. Summary

- 1.1 This report follows a review of the consent regimes that permit the use of the public highway as external seating areas outside existing cafes and restaurants with the objective of delivering efficient and coordinated service across regulatory functions within Environment and Street Scene.
- 1.2 The making of a Local Development Order would remove the need for a separate planning application to be made for the change of use of the highway land in question. The consent process would then focus on the application for a street trading license that replicates some of the procedures associated with planning process. This would lead to a simplified consent process, making it easier for operators to obtain the necessary consent whilst retaining effective control for the Council. At the same time it is envisaged this would support the creation of a more vibrant public realm within our town and local centres; a key planning policy objective for the Council.
- 1.3 A decision to proceed with the adoption of a Local Development Order has been agreed by the Cabinet Member for Environment and Street Scene (17th July 2009) and officers are now arranging for consultation with local residents and ward councilors to take place. A report on the consultation responses will be presented to Planning Committee for consideration before referral to the Secretary of State

2. Recommendations

- 2.1 That Members note the contents of the report.

3. Background

3.1 There is demand from the operators of cafes and restaurants to place tables and chairs on the footway in front of their premises and a limited number of such consents are granted each year. For Development Services, since the beginning of 2008, four such applications have been received by the local planning authority. Of these, only 1 was refused planning permission and this was on grounds relating to the free flow of pedestrians and highways safety.

3.2 However, it is considered that in appropriate circumstances and with the right controls, external seating areas have the potential to contribute positively to the vitality and viability of the Borough's town and local centres with particular emphasis on supporting the vibrancy of a night time economy.

3.3 Presently, there are separate consent processes applicable to any person wishing to place tables and chairs on the highway:

- a) an application for a street trading licence; and:
- b) a planning application for the change of use of the land;

A café or restaurant owner has to obtain all three consents before any external use can commence.

3.4 Within the particular statutory consent regimes, there is some overlap between an application for planning permission and an application for the street trading license. Both involve public consultation with neighbouring residents and both are able to consider issues of residential amenity that is often the key determining factor for a planning application.

3.5 Applications for planning permission are assessed on 4 main issues:

- i) residential amenity;
- ii) highway safety;
- iii) design and appearance.
- iv) character of locality

Applications for street trading licences consider residential amenity together with issues relating to public order and the management and operation of the area. An application for a tables & chairs licence may only be refused on one or more of the following grounds:

- i) there are enough tables & chairs licences in this (or an adjoining) street;
- ii) the applicant is not the owner or occupier of the premises;
- iii) the applicant has failed to identify suitable storage for the tables & chairs;
- iv) the applicant has failed to avail himself fully of a previous tables & chairs licence;
- v) the applicant has had a previous tables & chairs licence revoked;
- vi) the applicant is unsuitable to hold a licence.

However, in any event, a licence will NOT be issued unless both :

- i) The Council's Planning Service confirm that premises are lawfully permitted to provide food and drink for consumption by the public on the premises; and
 - ii) The Council's Highways Service confirm that safe and convenient pedestrian movement can be ensured on the footway outside the premises.
- 3.6 This review has sought to look at existing procedures and to establish ways of working which provide a more coordinated approach. It is considered this can be achieved by introducing a Local Development Order that would address the material planning issues but still enable issues of residential amenity to be considered through the process for a street trading licence.

What Are Local Development Orders

- 3.7 A Local Development Order (LDO) is a mechanism to extend permitted development rights for development specified in the Order and thus avoid the need for separate planning permission to be obtained.
- 3.8 Guidance states that they should be used by local planning authorities in response to local circumstances, to proactively facilitate the implementation of planning policy in their area.
- 3.9 An LDO must be used to implement a policy contained in one or more development plan documents and can be granted with conditions to limit or control the extent of the development permitted by the Order

The Proposal

- 3.10 The intention is to serve a Lawful Development Order to permit the placement of external tables and chairs immediately in front of premises lawfully operating as restaurants and cafes falling within Class A3 of the Town and Country Planning (Use Classes) Order 1987 (as amended). This would remove the need for a separate planning application for such development.
- 3.11 Class A3 covers restaurants and cafes where the primary purpose is the consumption of hot food on the premises. It does not include public houses, hot food takeaways, sandwich bars or coffee shops which fall in separate use class categories.
- 3.12 The grant of an LDO can be made subject to conditions which are felt necessary to safeguard material planning interests. In this instance, it is proposed that the Local Development Order would be subject to the following conditions:
- a) the lawful planning use of the premises falls within Class A3 of the Town and Country Planning (Use Classes) Order 1987 (as amended);
 - b) the premises must be within the defined areas;
 - c) the area of footway in question would be contiguous with the premises;
 - d) the external seating area shall leave a minimum footway width of 2 metres;
 - e) the external seating area shall be marked out on the highway;

- f) the external seating area shall not be used beyond 11pm
 - g) no fixed or permanent structures shall be erected (these will require separate planning permission)
 - h) temporary barriers must not exceed a height of 1 metre, must not contain any advertising, must not be illuminated and must be removed from the highway at the end of each day
 - i) no temporary barriers can be erected to premises within a Conservation Area or where the premises are a listed building.
- 3.13 Restaurants and café wishing to operate external seating areas outside of these conditions would require planning permission: an application for which would be assessed on its individual planning merits.

Making a Local Development Order

- 3.14 When preparing a Lawful Development Order, the first step is to produce a concise statement justifying why an Order should be made. This is known as a “Statement of Reasons” and must include:
- a) a clear description of the development that would be permitted and scope of the LDO;
 - b) a statement of the policies which the LDO would implement;
 - c) a plan or statement identifying the land to which the LDO would apply.
- 3.15 The “Statement of Reasons” is attached as Appendix 1.
- 3.16 Once a draft Order is produced, extensive consultation with local residents in and around the identified centres would be required for a minimum of 28 days. If necessary and depending on the nature of the comments made, a further 28 day consultation period on the revised Order would also be necessary.
- 3.17 Any representations received would be assessed as part of a report seeking approval to the grant of the Order.
- 3.18 Before adopting the Order, the local planning authority must then send a copy of the draft LDO to the Secretary of State who has 21 days in which to comment (although this period can be extended by the Direction of the Secretary of State).
- 3.19 The options available to the Secretary of State are:
- a) approval;
 - b) approval with modifications;
 - c) rejection;
- 3.20 It would be at the discretion of the local planning authority to adopt any modified LDO.
- 3.21 If agreed, the local planning authority must report to the Secretary of State each year on the extent to which the LDO is achieving its purpose.

The Resultant Process

3.22 If the LDO is agreed by the Secretary of State, the following process will be adopted:

- a) Upon receipt of an application for a Street Trading Licence, interested parties will be notified and invited to comment. These interested parties would be Development Services, Transportation, Metropolitan Police, residents and ward Councillors;
- b) In the absence of any response from the interested parties, a licence will be issued subject to the relevant conditions including those of the Local Development Order which will be set out and attached as part of any decision letter
- c) If an objection is received from an interested party, the Council's Licensing Committee will determine the application. A right of appeal against a decision of the Licensing Committee would be available to the Magistrates Court.

3.23 As a result of this revised process, it would be unnecessary to submit individual planning applications for the use of external areas for the tables and chairs. Although this would be subject to each proposal complying with the conditions of the Local Development Order, this should deliver a more efficient and coordinated service for the vast majority of proposals. In addition, having regard to the material planning considerations identified in Para 2.5, it is considered the conditions are specific and should address these concerns satisfactorily and maintain adequate planning control where necessary.

3.24 Furthermore, as public consultation forms an integral part of the process for a street trading licence, the views of local residents can still be taken into account and consideration can be given to the effect on residential amenity having regard to issues of noise and disturbance.

3.25 It is considered therefore that the Local Development Order would not harm the proper planning of the area or prejudice the material interests of local residents

4. Position Regarding A1 and A5 Uses

4.1 In its current form, the proposed Lawful Development Order is limited to premises in lawful use as restaurants and cafes within Use Class A3 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

4.2 It does not include Sandwich Bars or Coffee Shops which often fall within Use Class A1 and where the primary purpose is the sale of cold food including teas / coffees for consumption off the premises. Although a very limited number of tables and chairs can be provided in connection with such uses, the number of chairs together with the characteristics of the use, can have a bearing on the lawful status of the existing A1 use and whether a material change of use has occurred. As a result, premises within A1 have been excluded from the Order as each case needs to be assessed on its individual merits.

4.3 The Order also excludes public houses and wine bars. It is felt that such an approach is appropriate given the larger areas often involved and the sensitive nature of such proposals to local residents due to issues of noise, activity and general disturbance.

5. Conclusion

5.1 The proposed Local Development Order would simplify the consent regime applicable to the use of external area in front of restaurants and cafes for table and chairs by removing the need for separate planning permission where the proposed development complies with the conditions set out in the Local Development Order. The interest of the local community will be safeguarded by the single application for the Street Trading Licence. This will be of benefit to traders who will have a clearer consent process and will not have to navigate the separate procedures.

5.2 The consultation inherent in the street trading license process also serve to protect the interests of local residents in respect of individual proposals.

5.3 In addition, before a Local Development Order can be served, full consultation of residents adjacent to the areas concerned is also undertaken to ensure their interests are taken into account before any Order is agreed. A report to Planning Committee will form part of the process of approval.

Background Papers

None