

AGENT OF CHANGE – PLUS CA CHANGE?



It sometimes happens that a phrase is adopted into the legal lexicon and then worked so hard that it loses all useful meaning. One such phrase is “public nuisance”. Already doing hard labour in the civil and common law jurisdictions, the same phrase was chosen again to serve in the Licensing Act 2003 as a licensing objective, and now “public nuisance” means at least three different things, depending upon when and how we employ it.

A new victim of the same servitude is “Agent of Change”. This is a term, currently in high fashion, used to describe various approaches to the relationship between new built development (typically residential), and extant noise sources (typically, music venues). The “Agent of Change principle” is often discussed as if it were one single, concrete concept, but it is not. The principle appears in a number of different forms throughout planning policy and guidance, but it does not have any definition within statutory law. It is sometimes described as a rule which requires incoming developers building new residential properties near existing music venues to install sound insulation into their new buildings, but this is a very narrow interpretation. The term itself has been used to cover any requirement from insulating new build, to insulating the music source, to reaching agreements concerning tenancies, financial exchanges, or a multitude of other notions that seek to secure the harmonious co-existence of noise sources and noise receptors.

NPPF & NPPG

The National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) are Government policy, and not law. Versions of the Agent of Change principle have always been present in this policy, and the current vogue for the latest iteration doesn't make it new. Old NPPF at paragraph 123 always required attention to be paid to impacts of new

development upon existing businesses. The NPPG currently provides further information on how to mitigate the adverse impacts of noise, and a future version is anticipated. Both sets of guidance have existed since 2012.

In 2013, the Agent of Change principle was filleted specifically to apply to new permitted development regulations, exclusively upon the conversion of office buildings to residential units. This was enshrined in 2016.

In December 2015, there was some suggestion that an Agent of Change principle would go into law in the forthcoming Housing and Planning Bill. In April 2016, when the Housing and Planning Act was passed, it wasn't there.

In November 2016, the Mayor of London announced that he would be introducing an 'Agent of Change' rule into the next London Plan. The Draft Plan was in consultation between December 2017 and March 2018, but there is still no word on what will become of draft Agent of Change Policy D12. This, in any event, is another individual furrow being ploughed.

On 7 February 2017, the Government published the Housing White Paper - "Fixing our broken housing market". The Annex of the Paper, at A.140 and A.141 confirmed the current status of the Agent of Change principle in the existing NPPF and set out the intention to amend it: "to emphasise that planning policies and decisions should take account of existing businesses and other organisations, such as churches, community pubs, music venues and sports clubs, when locating new development nearby and, where necessary, to mitigate the impact of noise and other potential nuisances arising from existing development."

This was publicised at the time as being a "major breakthrough", but then everyone forgot about it.

In May 2017, the Welsh Assembly announced the intention to adopt the Agent of Change principle into future editions of Planning Policy Wales, (the equivalent of the NPPF).

On 5 December 2017, a ministerial statement on Planning was made with regard to the implementation of the Agent of Change principle in Scotland. Work on the legislation (as opposed to policy) there is ongoing.

In November 2017, John Spellar MP announced a Private Members' Bill to introduce the Agent of Change principle into law. It received its first reading on 10 January 2018 under the ten minute rule as the Planning (Agent of Change) Bill. It received significant support and no objections. Further readings of the Bill were timetabled for May, and then October, but they did not happen, because the Government offered, as an "alternative", amendments to the NPPF that, as seen above, were always proposed in any event.

The Bill would have imposed upon planning decision makers a duty, akin to that arising where heritage assets are affected, to take particular care before granting planning permission that might have a negative impact. This would have worked, in the context of the Agent of Change by applying extra pressure on developers and decision-makers to get the equilibrium right whenever new development would be likely to upset the status quo for existing music venues and other noisy businesses, who were there first and not causing a problem in their environment to date. The introduction of new noise sensitive receptors, and then giving them precedence in future proceedings when they come into conflict with the noise sources is the very issue that the Agent of Change principle is trying to cure.

The Bill was not to be: there was no political appetite for it, and policy was long ago selected as the preferred vehicle to try and deliver the perceived Agent of Change benefits. Whether it actually has the potential to do so is expertly examined elsewhere in the Journal by Freddie Humphries: **"Agent of Change: It's here but what is it?"**

The euphoric reception of the adoption of Paragraph 182 of the NPPF 2018, in the press and elsewhere, betrays a misunderstanding as to what has actually occurred with Agent of Change of the ground. In this context, it might be concluded that all change is good change, but Agent of Change remains a scattergun concept that achieves, to date, so much less than it is capable of.

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