

## **Written evidence - Institute of Licensing (PTC0017)**

The Institute of Licensing (IoL) is the professional body for licensing practitioners, representing regulators (local authority and police), private practice and industry practitioners across the UK. Our interests concern public regulatory licensing and associated legislative regimes.

The IoL welcomes the opportunity to respond to the call for evidence, and our submission pulls together the results of previous work in relation to licensing and licensed premises with which we have been involved, which is relevant to this inquiry.

Town and city centres, and particularly high streets were evolving at a rapid rate even prior to the COVID-19 pandemic. This rate of change has escalated dramatically as a result of the pandemic and subsequent lockdowns, which have amplified changes that were already underway, and which have spurred unforeseen changes as well. The altered relationships that have resulted between communities and their urban centres are very likely to continue, to a significant degree, even after the worst effects of the pandemic have subsided. It seems futile now to work towards anything that might be called a "return to normality", and the appropriate approach now appears to be assessing and reacting effectively to what has already happened. This will build upon the analysis and understanding that was already accruing.

The pandemic lockdowns have obviously affected footfall, as working from home and restrictions on travel have enforced the desertion of high streets. This has accelerated habits that were already well underway, particularly in terms of internet shopping, remote working and home entertainment. It remains to be seen to what extent these trends become established, but it seems highly unlikely that activity in urban centres will return exactly to what it was prior to the pandemic.

What is difficult about the changes currently being analysed is that they happened quickly, as an emergency response, and allowed no time for designed implementation. People have been reacting to their enforced circumstances. This makes it very difficult to predict or prepare for what comes after those circumstances. Urban centre businesses are, to a very large extent, having to discover in real time what impact the pandemic has had on their trade, and coping with what they find. Many of these businesses had to repurpose during the pandemic to attempt to retain as much revenue as possible. This phenomenon of "repurposing" applies to individual businesses, and entire high streets and town centres, and it is inherently organic, if not chaotic in nature. It is therefore extremely difficult to curate.

It is not yet clear if medium to long term trends for these centre spaces are emerging, or what interventions or regeneration is required or will be successful. All parties to date – whether businesses on the ground, Local Authorities or their partners, or national politicians and policy makers have predominantly been reacting to changing circumstances, and largely in emergency mode, which is not conducive to detailed or thoughtful planning.

Urban centres have been the focus for regeneration for some time, particularly in planning terms, because of the sustainability advantages of locating people close to their centres of work, education and leisure. This has advantages in environmental terms, not least in reducing the pollution of travel, and improving air quality.

Traditional planning models of placing residential areas outside town and city centres, in suburban locations, to facilitate peaceful residential living, and requiring commuting to places of work and education are no longer regarded as sustainable. Planning policy has for some time been focussed upon minimising travel and placing residential resources in accessible and sustainable locations.

Town and city centres are regarded as highly sustainable locations, and “vibrant city living” has become fashionable as Local Planning Authorities attempt to maximise their brownfield land to protect greenfield, and boost the housing supply that they require, whilst meeting their environmental targets. City living meets many of these aspirations. The trend for urbanization means that over half of the population now live in urban centres, projected to rise to three quarters by 2050.

This type of planning, and the policy that supports it has been predicated upon a town / city centre that performs traditional urban centre roles, including the retail high street and night time economy offer. This has, for at least the last decade, thrown up problems of its own, long prior to COVID-19. Some, but by no means all of these issues are being considered in the radical planning reforms that are currently being developed<sup>1</sup>. These issues have also been considered before, and they are the remit of several Government departments: Home Office; Ministry of Housing, Communities and Local Government; Department for Environment, Food and Rural Affairs; Department for Digital, Culture, Media and Sport and the Department for Business, Energy and Industrial Strategy. The Departments are alive to the fact that these strategic urban planning issues must be understood and orchestrated, but are not yet fully cognisant of the level of coordination required across local and national Government.

Even more importantly, there is a significant opportunity at this point in time to design and develop our place making and shaping policies across all the regulatory regimes: licensing, planning and environmental protection, in a coordinated and effective way. This will take significant effort, but the alternative is disparate and unconnected; even chaotic on a national scale, and it was already happening before the pandemic, and has accelerated since.

This chaos was reflected in the conclusion of the House of Lords Select Committee in 2017<sup>2</sup>. The Select Committee was conducting the ten year review into the Licensing Act 2003. In paragraph 111 of the Report, the Committee reflected upon the evidence given about the lack of engagement from some responsible authorities in the licensing process – notably, from planning officers.

The Report said this:

“Integration of licensing and planning

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<sup>1</sup> Planning for the future, MHCLG white paper August 2020)

<sup>2</sup> Select Committee on the Licensing Act 2003. Post legislative scrutiny report published April 2017

117. As our inquiry progressed, at the same time that we were receiving this evidence of problems within the licensing system, we were hearing of the difficulties caused by the separation between licensing and planning. It became clear to us that the two problems are closely related.

118. In our call for evidence we asked: "Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?" An overwhelming majority of respondents criticised the current lack of coordination between licensing and planning and thought that there should be better integration. We were given numerous examples of the absurdities caused by the separation of the systems, especially for applicants for new premises which need permission for both planning and licensing, and for whom permission for one without the other is of no use."

The conclusion of the Select Committee was radical:

"Our conclusion

152. If, as we think, it is not only permissible but logical to look at licensing as an extension of the planning process, it would have been sensible for the Licensing Act to transfer the powers of licensing justices to the planning committees of local authorities, rather than set up a new and untried system of licensing committees with a new and different procedure, new staffing, and a new appellate process. Instead the result has been that each local authority has been able to deal with all aspects of land use through a planning committee with the single exception of licensed premises, which require a separate committee and a separate mechanism. Now that the system has been in operation for 11 years, we believe that this can be seen to have been a mistake and a missed opportunity.

153. We recognise that a suggestion that licensing committees should be abolished and their work amalgamated with that of planning committees is a radical one. It is not a change which should be made without first being trialled over a small but representative sample of local authorities over perhaps two years.

154. Sections 6–10 of the Licensing Act 2003 should be amended to transfer the functions of local authority licensing committees and sub-committees to the planning committees. We recommend that this proposal should be trialled in a few pilot areas.

155. We have considered when such trials should begin. Mr Lyons said that this was "one for the future; now is not quite the time to do that".<sup>149</sup> But "now" is never the time. We have explained in the previous chapter how the current system took seven years to evolve. We believe that the debate and the consultation on transferring the functions of licensing committees and sub-committees to the planning committees must start now, and the pilots must follow as soon as possible."

The Government's Response to the Select Committee Report did not accept these recommendations in relation to licensing and planning, but the Response did agree that this was an area which required closer consideration, in order to integrate the operation of the licensing and planning regimes.

Typically, residential development proposed for vibrant (noisy) town and city centre locations collides with planning policy relating to environmental issues, urban land use and regeneration. It encounters a range of challenges and problems concerning competing land uses and interests. Typically, residents and noise sources do not mix well. This effect has been thrown into sharp relief by the pandemic, as people have worked from home, and noisy night time venues have been silenced. The re-opening of these businesses has encountered resistance from residents on the basis of noise nuisance, as never before.

There is a large volume of caselaw on the subject. The key case (Supreme Court) of *Coventry v Lawrence* – [2014] confirmed that a noise source (e.g. night time economy premises such as club or music venue) **cannot** defend a nuisance claim on the basis that

- the complainant (e.g. residents) came to the nuisance
- the noise source has planning permission for the use that is causing noise
- the noise source has a prescriptive right to cause the nuisance.

On the other hand, there are cases that say that planning authorities need to assess very carefully any development that is proposed in proximity to extant noise sources, and that the potential for nuisance is a material consideration that could result in refusing the permission.

Typically, planning permission and premises licences have been regarded as operating in "water-tight" silos in separate regimes, and there was no expectation of much scrutiny of one regime in the context of a decision in the other. Any fall out from bad decisions, placing residents and noisy night time premises too close to each other without adequate mitigation would be arbitrated in the context of noise nuisance complaints, administered by the Environmental Protection departments of Councils – a different regime again.

A working knowledge of all three regimes should be vital to anyone making applications or decisions relating to development in urban centres, where harmonious co-existence in confined spaces is key. Going into any application "blind" of the other two regimes is fraught with risk, but this, to date, has been very poorly understood or recognised - by the Regulatory Authorities concerned, never mind the lay applicants.

Some steps have been taken towards recognition of these problems in the planning regime, but they have no equivalent in the licensing regime.

"Agent of Change" is a term, currently in fashion, used to describe various strategic approaches to the relationship between new built development (typically residential), and extant noise sources (typically, night time / music venues), particularly in town and city centres. 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 noisy 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 noise 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.

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. The 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 reflected in new permitted development regulations, exclusively upon the conversion of office buildings to residential units, which was prolific in town and city centres. When the new permitted development (PD) right (change from office to residential) was first introduced in May 2013, the right to convert was time limited. On 13 October 2015, the Government confirmed that this PD right would be put on a permanent footing. The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 [ 2016 /No. 332] (the Amendment Order 2016) to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO 2015) was published and came into force on 6 April 2016.

Local planning authorities were given the power under the Amendment Order 2016 to consider noise impacts concerning any permitted development that was being converted in this way. At the time of the grant of the temporary PD right for the change from offices to residential prior to April 2016, Councils were not given the power to add any condition in relation to noise or noise mitigation. After April 2016, any grant of prior approval for this change of use could include any necessary additional conditions, which allowed the LPA to consider mitigation proposals in respect of any noise impacts from surrounding commercial uses on the intended residential occupiers of the development. This was envisaged to relate to any noisy businesses (including music venues) in the vicinity of the proposed residential units.

These issues relating to permitted development should be closely noted with regard to the recent changes to permitted development (July 2020), and any proposed further changes that would make it easier for developers to bring development into urban centres that could conflict with night time economy venues, without adequate scrutiny or the requirement for effective mitigation against noise. One of the issues of permitted development, by its very nature, is that it is left up to the developer to decide how town and city centres should evolve, rather than any strategic or democratic process. The developer will not necessarily have the long term good of the wider community in mind when they make their decisions. The Government's expansion of permitted development rights has potentially undermined the ability of Councils to bring about positive changes to their high streets by limiting their influence to repurpose town centre assets.

Developer choices for the high street and town centres will inevitably be influenced by changing consumer patterns and trends, which in turn have been heavily influenced by the pandemic. These patterns and trends are layered on top of those which were emerging in our relatively new urban densification agenda in any event.

The Institute of Licensing has previously conducted detailed work with the Home Office and has produced a Report setting out proposed actions to address the key issues identified above. Those actions remain pertinent to address pandemic related issues as well.

Actions can be divided into:

- High level/ long term (perhaps involving primary legislation).

This high level addresses conceptual issues, such as the role and relationship of the regulatory regimes, and the language of legislation.

- Medium term (perhaps involving secondary legislation).

This medium level addresses practicalities such as the co-ordination of Government departments on these issues, including the publication of guidance and policy, and the relationship of departments in local authorities.

- Short term (perhaps involving guidance, Ministerial Statements and training).

This short term level includes practical issues such as the infrastructure of communication, like open plan offices and joined up software; "one-stop shop" applications and training.

High Level/ Long Term.

It is time to re-examine the role of each regulatory regime, and their proper relationships to each other. In 2017, the Planning Officer's Society examined a fundamental restructure of the remits of planning and licensing. The reaction of the House of Lords Select Committee in 2017 has been set out above. The very language we use to administer our regulatory systems needs re-visiting.

Three key regulatory regimes are engaged:

- Licensing (e.g. Licensing Act 2003);
- Planning (e.g. Town & Country Planning Act 1990 as amended)
- Nuisance & Environmental Protection Regulation (e.g. Environmental Protection Act 1990).

Terms such as "nuisance" and "agent of change" are not serving consistent tests or effective goals across the different regimes and are currently incompatible without some artificial adaptation. The planning regime itself is acknowledged to be in need of fundamental reform, which is underway, but is not, to date, taking into account the issues outlined above. This reform would have a knock-on effect on the other regimes, which is not currently being coordinated. This would all require primary legislative change, which calls for a root and branch review. None of this is "quick-fix", but it

makes no sense to address more immediate goals without at least acknowledging and discussing these deeper issues. Shorter term goals need to be commensurate with longer term aspirations.

### Medium Term

A fresh approach to our towns and cities is required if we are to create sustainable cities that succeed for those living, working and playing in them. This issue has been analysed several times recently across different studies and reports. We can map and analyse our urban spaces in ways which mirror our approach to our countryside and use the results for regulatory purposes. Places have "soundscapes", as they have "landscapes", which can be of high or low quality and which can add to the character and identity of a place. There are possibly other analogous ways of measuring the character of places.

Addressing and mapping the changing characters of our living and working spaces can help to reform and co-ordinate the regulatory regimes that we use to control them. The regulatory regimes need to defer to and serve positive and appropriate societal objectives. Currently, we have a situation where those objectives are being dictated by the way the regulatory regimes work, and this is counter-productive. These medium term goals are likely to require secondary legislation and guidance.

### Short Term

Much can be done in the short term to improve the immediate operation of the regulatory systems that we already have. The greatest failures of the systems concern their lack of communication and coordination with each other, at local and national level. A new "Infrastructure of Communication" is required within local government, to address these issues. Furthermore, more coordinated communication between Government departments on these issues is vital. Local Government looks to all the Government departments to advise them and ensure that their decisions are appropriate. Any guidance that is issued will need to be consistent across departments and is likely to engage at least all the departments listed above.

Local Government needs to implement the infrastructure of communication into their own operations. This can be done through the re-organisation of the local authority departments delivering those operations: particularly licensing, planning and environmental protection, so that they are integrated in knowledge, overarching policy and implementation. Specific ideas, (already implemented in some areas) include open plan / joined up departmental working; coordinated software serving multiple departments, and consolidation of application processes. Local authorities are able to implement their own guidance and training, which also needs national coordination to maintain a degree of strategic delivery for the population, with local priorities emphasised. Case studies and best practice need to be collated and shared nationally.

Analysis of urban spaces and night time economies is important as a baseline, before strategic plans are implemented to achieve sustainable urbanisation, and the protection of areas of vibrancy for the benefit of future generations. Without a detailed understanding and financial analysis of the benefits and challenges that these spaces present, decision-making will be unbalanced and ill-informed. This kind of "mapping" is done routinely for countryside and landscape. It is equally apposite in urban arenas. It

is going to be particularly important in the context of planning reform that is predicated upon "zoning", and pushing residential development into brownfield, urban areas, which is also where the licensed premises are.

A National Noise Policy already exists, but it has little weight as it is not implemented across the regimes, as it could be.

Czars, Champions and Managers can be effective. Bespoke roles have been introduced in several cities in this country, and abroad. The effectiveness of these roles in focussing attention and addressing the issues can be examined and, if positive, the roles can be extended.

Roles for stakeholders are being examined in the context of the current planning reform. Early involvement from residents, local businesses and others in shaping their key spaces gives rise to positive involvement and ownership. Examples of this can be studied in Neighbourhood planning, and successful models can be extended appropriately. This front-loaded engagement should preclude the need for (and current culture of) objection on a case by case basis, commonly by a limited representative sector of society, who typically resist change. This is being reflected in the proposed planning reform.

The involvement of all relevant stakeholders can inform strategic visions and local policy. This can be more joined up and nuanced than development plan policies in planning; statements of licensing policy in licensing, and enforcement policies, which seem to operate in silos, and often conflict with each other. Coordinated policy, clearly promoted to stakeholders is very important. All stages in the decision making chain need to be examined. There are relevant considerations for decision makers granting licences and planning permissions; for decision makers varying or revoking those authorisations, and for regulators enforcing those authorisations further down the line. Those considerations need to be co-ordinated up front in a way in which, currently, they are not.

Society benefits significantly from multiple land uses which conflict with each other. Everyone wants a thriving local and national economy; a vibrant, dynamic local area with good options for socialising; efficient infrastructure; a comfortable home and a good night's sleep. Overarching all of these issues are the wider and urgent concerns for the climate and the planet. The communal goods are ones upon which we can all easily agree. The ways in which we should balance them when they compete with each other are harder to agree. Understanding the nature of the exercise that we should be engaged with, and all the factors involved is an important start. This exercise has been accelerated by the COVID-19 pandemic, but is essentially the same as it previously was, with added nuances.

Now is the time to examine afresh the proper approach to the planning, licensing and environmental protection regimes, separately and together, and to understand and therefore shape their appropriate connection and differentiation as land use control tools into the future.

*6 July 2021*