



Agent of Change Working Group

The Conflict Between Planning & Licensing

**1st Report
June 2020**



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Background

On 4 March 2019, representatives of the Institute of Licensing met with the team at the Drugs and Alcohol Unit at the Home Office to discuss the recommendations of the House of Lords Select Committee after their ten year review of the Licensing Act 2003¹. In the Report, the Lords' Committee had made several recommendations concerning the relationship between licensing and planning. Their conclusions were radical, and sparked a debate.

The way in which the licensing and planning regimes operate is changing, in an organic and uncontrolled way, as they are developed, ad hoc, by decision-makers around the country. This is because “real-life” factors do not match with the assumptions that each regulatory regime makes. For example: the licensing regime works on the assumption that noise sources (like night time music venues) and noise receptors (like residents) will be located far apart from each other. The planning regime, on the other hand, works on the assumption that brown-field land must be exploited, especially in urban regeneration schemes, to bring land uses closer together, to minimise travel and environmental damage. The trend for urbanization means that over half of the population now live in urban centres, projected to rise to three quarters by 2050². The regulatory regimes do not talk to each other. The result is that the consequences of conflicting decisions are played out, often years later, in an enforcement context: typically action for noise nuisance and licence breaches. The cost to local government and the economy, the environment and people are unacceptable, and sustainable outcomes are not being achieved.

Notwithstanding our relatively small island status, Britain is something of a late-comer to the concept of dense, intense town and city living. Some of our European neighbours are much further advanced in this regard, and they approach their land use regulatory issues very differently. The way we use our urban and suburban spaces is changing dramatically. The effects are felt on the high street, as the means of obtaining goods and services are altered by our digital capabilities; and it is felt in our residential areas too, wherever they may be. The

¹ Select Committee Report published 4 April 2017

² Urban population growth, Global Health Observatory (2010)

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changes are happening so fast that our tools and resources to control and mediate them have not kept up.

The issues engaged 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 regulatory developments 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 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 is already happening.

This was the conclusion of the House of Lords Select Committee in 2017. 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

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.”

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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”.¹⁴⁹ 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.***

This section of the Select Committee Report is reproduced in full as Appendix A to this Report.

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.

Workshops

As a result of the Select Committee Report and its recommendations, the meeting between the Home Office and the Institute of Licensing resulted in an agreement to hold Workshops on these topics on 4 March and 28 June 2019. These Workshops were conducted very successfully. They were well attended by key representatives of most organisations, including Government departments, with an interest in this field.

The full Agendas and Minutes for these Workshops are reproduced as Appendix B to this Report.

Other Research

Significant work has already been undertaken by a number of bodies, to analyse the issues mentioned above. In November 2018, the Town and Country Planning Association published: "Planning 2020 - Raynsford Review of Planning in England Final Report." The "headlines" were the extensive and troubling evidence of widespread disenchantment with the planning system as currently operating, and its perceived failure to deliver the outcomes the country needs and deserves. That evidence led to three conclusions:

- 1 First, a period of near-continuous change in the planning system over the past decade has compounded rather than resolved the problems these so-called reforms were designed to remedy.
- 2 Second, in place of short-term tinkering we need to take a long, hard look at the fundamentals – the purpose of planning, how it can best be structured, and how all parties can engage most constructively in the planning process.

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- 3 Third, a further period of conversation was required, focusing on ten propositions which could form the basis of a robust and effective planning system fit for purpose in the third decade of the 21st century.

In January 2019, the London Night Time Commission published their Report: “Think Night: London’s Neighbourhoods From 6pm to 6am”; the stated aim of which was to “develop and help realise an ambitious vision for the life of our city, and those who live in it, between 6pm and 6am”.

In July 2018, an Expert Panel chaired by Sir John Timpson was commissioned by the High Streets Minister, Jake Berry MP, to “diagnose the issues facing our high streets and town centres”, which they did in “The High Street Report”.

In February 2019, the Committee Housing, Communities and Local Government Committee³ published their Report: “High streets and town centres in 2030”.

A number of other organisations have also conducted and published relevant studies.

The Agent of Change principle, developed⁴ in the National Planning Policy Framework in July 2018 has potentially significant ramifications for Licensing Authorities and practitioners, which are barely understood by stakeholders on the ground. The legal mechanisms which could capture mitigation packages for new development (the so-called “agent of change”) have not yet evolved to support robust implementation of such a principle.

Planning issues, including concerted efforts significantly to boost national housing numbers on brownfield land are very high on the Government’s agenda. In July 2019, Boris Johnson (pre-election) announced the Government’s intention to conduct a review into the planning system.

On 30 January 2020, there was a further announcement that the Government will commission a White Paper on Planning and Property. The briefing note published in conjunction with the

³ A departmental select committee

⁴ A version of the same principle has been in the NPPF since its inception in 2012.

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Queen's Speech made reference to the delivery of homes; the funding of infrastructure; planning conditions and the performance of planning departments.

The need to coordinate these studies and conclusions to inform the White Paper is obvious, and there is a case for a meta-analysis of all of them for that purpose.

Action

Effective intervention in this arena is a huge endeavour. 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 soft-ware; "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 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 (eg: Licensing Act 2003);
- Planning (eg: Town & Country Planning Act 1990 as amended)

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- Nuisance & Environmental Protection Regulation (eg: 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 has been identified in more than one study as being unfit for purpose, and in need of fundamental reform. This would have a knock-on effect on the other regimes. 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. A meta-analysis of all the reports is now required, to distil the results and galvanise clear points for action that align with sustainable development principles that benefit “The Four P’s”: Planet, People, Prosperity and Place. Many expert groups have spent valuable time in analysing these issues, and they have reached different, but related conclusions. It makes sense to draw from that collective wisdom and apply all the relevant recommendations in a joined up way.

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. The Workshops identified the concept of the “Infrastructure of Communication”. This can be addressed at all levels.

More coordinated communication between Government departments on these issues is vital. Local Government looks to all the 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 departments⁵, and consolidation of application processes⁶. 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.

⁵ Software operating in “silos” has been cited many times by local authorities as a problem for them.

⁶ See for example: Local Government Association “Open for Business – Re-wiring Licensing” 2014: <https://www.local.gov.uk/sites/default/files/documents/rewiring-licensing-525.pdf>

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All local policies and plans need to take account of another key national strategic aim which is for the UK to become net carbon zero by 2050.

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

Much local authority decision making in licensing, planning and environmental regulation is driven by those who object and oppose applications. There are clear social and economic reasons for this, but the effect on local authority decision-makers is disproportionate. Balanced decisions require balanced information to secure sustainable outcomes along a national strategic direction of travel.

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 can be examined. 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. Residents who are excluded from strategic policy exercises can react to proposed changes in their environment with ignorance and fear, which can tip the decision making process inappropriately. Expectation management also needs to be studied. People do not typically move to be under aircraft flight paths, and then try to ground the aeroplanes. The complex psychology concerning relationships with the night time economy needs to be understood; including features such as morality based reactions to alcohol, music entertainment, anti-social behaviour, and sexual entertainment.

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.

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Specific solutions are already in play, in different local authority areas. Case studies involving deeds of easement, “agent of change agreements”, private contracts, planning and licensing conditions and s.106 agreements need examining, to distil best and worst, practice.

All stages in the decision making chain need to be examined. There are relevant considerations for decision makers granting licences and permissions; for those varying or revoking those authorisations, and for those enforcing those authorisations further down the line. Those considerations need to be co-ordinated in a way in which, currently, they are not.

Training on all of the above will be required.

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; 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.

Conclusion

From reform of the night time economy to seaside regeneration, the national topic of the relationship between licensing and planning is burning, but this has not yet been understood as an important area for reform. National and local Government departments are becoming increasingly aware of the problems, but there is no coordination of solutions. For Councillors and Officers on a day to day basis, planning and licensing are regarded as water-tight compartments that should never be mixed with each other. There is even case law that suggests that this should be so. This is no longer an appropriate outlook, and a continuation of this attitude in local government decision-making will not result in sustainable land use.

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

Working Group

in Alphabetical Order

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Short Term Action Points

1. Meta-analysis of studies to collate conclusions and recommendations.
2. Study and financial analysis of the local night time economy.
3. Night Czar or Champion.
4. Re-structure of the “infrastructure of communication” – office space; computer software; application processing protocols etc.
5. Coordinated study of relevant local policies: planning, licensing, enforcement, climate change planning etc.
6. Assessment of “Agent of Change” solutions for efficacy.
7. Designing new stakeholder engagement exercises.
8. Compiling and sharing case studies and identifying best practice.
9. Guidance.
10. Training.