it will determine whether or not the paragraph is engaged. For example, if a residential block of flats seeks planning permission to make a number of external alterations, does that engage this paragraph? Or because the flats are already in existence, does that mean it is simply development rather than new development? Given the purpose which the paragraph is aimed towards, I think it more likely that the correct interpretation will be found to be that it is concerned with the creation of something entirely new, rather than a mere modification to something that is already there. But again, the answer to this question is likely to be a fact-sensitive one that has to be determined on a case by case basis.

Planning authorities can only grant or refuse planning permission for development that requires planning permission. This may seem a statement of the obvious but it is a significant one. Some development does not require an express grant of planning permission as it benefits from permitted development rights which are conferred by a general development order. In such instances, LPAs' ability to considered the acceptability of the development by reference to policy are much more limited and, in many cases, absent altogether. For example, the change of use of certain retail and other premises under Class M of the GPDO. In such cases, LPAs will not be able to invoke agent of change because it will be beyond the scope of their powers. This is significant for licensed premises as when they are potentially effected by a development that is being carried out by permitted development rights, their ability to make representations to the LPA will be much more limited.

Next, what is meant by "existing businesses and community facilities"? The paragraph gives us a partial answer to this question by listing "places of worship, pubs, music venues and sports clubs" as examples. It is clear that this list is simply illustrative rather than exhaustive and it seems likely that most licensed premises will fall within the class of either being a business or community facility.

What the paragraph then seeks to do is prevent existing businesses and community facilities from having "unreasonable restrictions" placed on them as a result of new development. No definition of what will constitute an "unreasonable restriction" is provided. In law, an unreasonable decision is sometimes defined as a decision so unreasonable that no reasonable decision maker could have made it.[3] However, it seems likely that what amounts to an unreasonable restriction will be a question of fact and degree for the decision maker to decide on a case by case basis, having regard to the specific context of the business or community facility that is to be affected by the new development.

As well as there being no definition of what is meant by "unreasonable", there is no explanation of what is meant by a restriction. In the context of a licensed premises, does this mean an impact upon its hours of operation, which licensable activities it is able to carry out, or how the premises' customers are able to physically access the premises? Arguably, it is all of these things and more. Again, it is likely to be given a broad interpretation so that if the presence of the new development would negatively alter how an existing facility or business operates, then that could amount to a restriction.

It is perhaps in the final sentence of the paragraph that we find the crux of the principle: "Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed" (emphasis added).

It seems that what this is seeking to do is put the onus on the new development, the agent of change, to mitigate against any significant adverse effect that pre-existing businesses or community facilities might have against its future use or occupation. To ascertain whether or not the obligation to put in place mitigation is engaged, there are a number of steps to be considered.

The first step is an evidential one. The words "could have" indicate an initial threshold that there must be some evidence that the new development could be impacted by development that is already in existence. In the absence of any evidence, it is not possible to say that there could be any effect and so the existence of some evidence of potential impact must be a pre-requisite to relying on this principle. The use of the word "could" is interesting. The authors of the paragraph chose to use this rather than, say, "would". There is a difference between the two: "would" implies a greater degree of certainty than "could" and would have therefore seemingly demanded a greater degree of evidence to demonstrate that an effect "would" occur. Whereas, the use of the word "could" suggests that the evidence relied on to engage the principle does not need to be as robust as demonstrating certainty of impact, potential for impact might be sufficient. Yet again, ultimately the question of whether there "could" be an impact is going to be one of judgement.

The nature of "adverse effect" is also not defined and so there is seemingly no limit to the nature of the effect that the paragraph is concerned with. The obvious type of effect when thinking about licensed premises is noise nuisance but the

3 This is what is known as Wednesbury unreasonableness