

Agent of change: it's here - but what is it?

The new national planning policy framework has implications for licensed premises in the vicinity of proposed developments, but exactly what those implications are will be a matter for case-by-case assessment, suggests **Freddie Humphreys**

It's here. For the first time since its initial publication in 2012 there is an updated National Planning Policy Framework (NPPF). In launching the update, Secretary of State for Communities, James Brokenshire said: "Fundamental to building the homes our country needs is ensuring that our planning system is fit for the future. This revised planning framework sets out our vision of a planning system that delivers the homes we need. I am clear that quantity must never compromise the quality of what is built, and this is reflected in the new rules."

So clearly, the focus is on housebuilding. But for those working in the licensing world, we find something of much greater interest at paragraph 182 of the NPPF: the adoption into the planning system of the "agent of change principle".

Paragraph 182 of the new NPPF states:

Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. 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.

In order to properly understand what this means for licensed premises, it is necessary to remind ourselves of a few basic principles of the planning system. When making decisions on planning applications the law dictates that decisions must be taken in accordance with the development plan for the area unless material considerations indicate otherwise.¹ The NPPF is a material consideration to which regard must be had when local planning authorities (LPAs) determine planning applications, and so too, now, is the

agent of change principle set out above. Furthermore, as paragraph 182 also states that LPAs should have regard to the agent of change principle when producing their local plans, within time we can expect to see greater refinement of this principle as LPAs adopt policies of their own which reflect / incorporate agent of change.

It is essential to note that planning policy is just that; policy: it is not law. What this means is that while regard now has to be had to agent of change in determining planning applications, it does not mean that it will always prevail as it may still be outweighed by other material considerations. How the principle is to be applied in any given case is a matter for the decision maker - ie, it involves an exercise of planning judgment.

Bearing in mind this background it is worth asking, what does paragraph 182 actually mean? Well, the correct interpretation of planning policy is a matter of law for the courts to determine and so with time, no doubt, we will see a body of case law build up which gives us guidance on this question. Nevertheless, an initial analysis of the text of the policy suggests that the interpretation of some elements are likely to be more controversial than others.

The obvious starting point is to consider what it is concerned with. The answer to this appears in terms in the first sentence of the paragraph: it is seeking to ensure "that new development can be integrated effectively with existing businesses and community facilities". The question then becomes what is meant by "new development" and "existing businesses and community facilities". New development is not defined anywhere in the NPPF, but in planning law development is generally understood to mean the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of buildings or other land². Paragraph 182 tells us explicitly that new development includes changes of use so there can be no argument about whether or not that is included. What is meant by "new development" as opposed to simply "development" is an important point as

¹ Section 23(5) of the Planning and Compulsory Purchase Act 2004.

² Section 55 of the Town and Country Planning Act 1990.