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The Significance in UK Nuisance Law of the Introduction of the “Agents of Change” Principle

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The National Planning Policy Framework (NPPF) was first published in March 2012. The [original NPPF \(NPPF1\)](#) consolidated various other Planning Policy documents into one overarching framework. The purpose of the NPPF is set out in the introduction which states that “It provides a framework within which locally-prepared plans for housing and other



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development can be produced... [and that] the National Planning Policy Framework must be taken into account in preparing [a] development plan, and is a material consideration in planning decisions”.

The [Revised National Planning Policy Framework \(NPPF2\)](#) published in July 2018 introduced the “Agents of Change” principle into the legislative framework (paragraph 182). This is the first revision of the NPPF since the NPPF1 was published in March 2012. The purpose of the NPPF2 remains the same as that in the NPPF1. Both the NPPF1 and NPPF2 focus on issues such as: sustainable development, building a strong economy, ensuring the vitality of town centres, promoting healthy communities and protecting green belt land. However, the NPPF2 introduces around 85 reforms and amendments to the NPPF1, with the inclusion of the “Agents of Change” principle one of the key differences between the two documents.

Essentially the “Agents of Change” principle is that the person or group responsible for the change (to the local/surrounding area) are responsible for the effects this change may cause. So, for example, if a new housing development was built in close proximity to a major airport then even though the nuisance (noise pollution) would be produced by the airport and not by the residents of the housing development, it is the new residents who would be responsible for e.g. soundproofing their homes.

One argument that has been made in favour of the “Agents of Change” principle is that, as in the example of a new residential development built near an airport, both the developers and the people that decided to move into the residential properties near the airport, would as a matter of common sense, be aware of the fact that there will be a lot of loud noise due to aeroplanes taking off and landing. Therefore, as they chose to develop near the airport, and to live near the airport it is up to the developers to include measures to reduce the nuisance caused by the noise pollution, and it is up to the residents to either use measures to soundproof their homes, or to simply accept that there will be noise pollution. The “Agents of Change” principle would not impose any burden on the party making the nuisance, in this example, the airport. However, this principle is at odds with the traditional principles of common law nuisance.

With the “Agents of Change” principle now gaining government support, as evidenced by its inclusion in NPPF2,

this could have a major impact on common law nuisance in the future.

[Paragraph 182 of NPPF2](#) makes it clear that existing businesses, venues and community facilities such as sports clubs, music venues (including bars and nightclubs) and places of worship, “should not have unreasonable restrictions placed on them as a result of development permitted after they were established”. The paragraph then makes a direct reference to an “agent of change”, highlighting the incorporation, to some extent, of the “Agents of Change” principle in NPPF2, “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”.

Those listed in the preceding paragraph are the main businesses, venues and community facilities included in the new NPPF2, however it is not an exhaustive list. Therefore, at present various other organisations and groups could argue that they come within the wording of the policy. This demonstrates the potentially very wide-reach of the principle in the context of development projects and planning policy in the future.

The fact that paragraph 182 clearly states that the applicant or “agent of change” would be required to provide suitable mitigation, despite the significant adverse effect being caused by the existing business or community facility, is an indication of how the law in this area is moving away from the traditional principles of common law nuisance.

Although the “Agents of Change” principle is likely to be relevant to a broader range of venues in the future, so far, in the UK the focus has primarily been on music venues and new developments built in the vicinity of these venues.

In Australia, the “Agents of Change” principle has been used in the context of music venues and the planning of new developments for some time now and with a relative degree of success. If the new NPPF2 is any indication, English law seems to be heading in a similar direction, but to what extent the “Agents of Change” principle will be used, and exactly how it will affect the traditional principles of common law nuisance remains unclear.

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