



Using Agent of Change to protect theatres

Summary

This advice note provides guidance on the 'Agent of Change' principle. This principle has been included in national policy in England and law within Scotland, but it is likely to be extended across the UK and can be used now by everyone. The principle strengthens efforts to protect theatres and other venues. It also sets out how decision-makers can use this principle in determining planning applications. Theatres and communities can use it as a tool to obtain mitigation and safeguards or strengthen objections to proposed developments that may compromise the future of their venues.

This is one of a series of advice notes – others can be found on our website at theatrust.org.uk/how-we-help/advice/advice-notes and we'll be adding more over the coming months.

Who is this note for?

This advice note is aimed at anyone involved with new development which may cause conflict with existing uses, in this case specifically theatres, arts centres and other performance venues. This includes venue owners and operators, communities with an interest in particular venues, planners and other local authority managers and officers with responsibility for development and cultural uses, elected politicians and developers.

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What is the Agent of Change principle?

Agent of Change refers to the principle that the party introducing a change of use to a site (for example a developer attempting to convert an office block to residential apartments) must be responsible for preventing any harm to the operations of existing neighbouring uses, and must take on any costs associated with making the new development acceptable. If circumstances are such that harm to existing neighbouring uses cannot be prevented, the new development should not be permitted to take place.

This issue has gained attention and action due to a number of high-profile instances of venues closing, being undermined or being threatened because of complaints from new neighbours largely in relation to noise. This has resulted in restrictions being placed on venues, such as earlier closing times and a reduction in permitted sound levels. This has particularly affected music venues, nightclubs and pubs although there have been conflicts with theatres. Theatres Trust has been successful in supporting councils to resist applications that threaten theatres, and those decisions have been upheld at appeal.

Why is the Agent of Change principle important?

The Agent of Change principle helps prevent threats to theatres primarily as a result of complaints from occupants of neighbouring developments due to:

- Noise from performances reaching neighbouring properties
- Noise from audiences and traffic leaving the theatre
- Noise from get-ins and get-outs (servicing), particularly if carried out late at night or early in the morning

Potentially it can also be used to prevent development which would itself affect a theatre, such as a use which could produce noise and vibrations which may impact performances.

It is important that these threats are eliminated or reduced as far as is practical because they can result in loss of income or additional costs, which affect viability, an inability to effectively function, which deters audiences and/or shows, and in worst cases complete closure. If theatres and other cultural venues close it has a negative impact on the local community. In terms of positive, good planning, it does not constitute sustainable development if a new development undermines an existing one and the health and wellbeing of the wider community.

What status does the Agent of Change principle have in law?

In Scotland legislation was passed in June 2019 which brought the Agent of Change principle into law by amending Section 41 of The Town and Country Planning (Scotland) Act 1997. In England and Wales legislation is being progressed but as yet has not been passed.

In 2018 the Agent of Change principle was introduced into English planning policy through the National Planning Policy Framework. This means the principle is now a material consideration in the determination of any relevant planning application, so conflicts that could undermine existing uses must be addressed before applications can be permitted.

Some local authorities also have Agent of Change policies within their Local Plans which build on national policy to reflect the local context, including authorities in Northern Ireland, Scotland and Wales. Theatres Trust frequently makes representations on local planning policy documents supporting or encouraging Agent of Change policies.

If you are faced with a proposed neighbouring development which causes concern, the presence of national and possibly additional local policy will strengthen any objections you have.

What should I do when faced with potential new development that could negatively impact on a venue?

If you are a planner within a local authority, please ensure the Theatres Trust is notified of the application even if it falls outside of our statutory remit (engagement at pre-application stage is even more welcome). We can provide advice on how the proposal could be made acceptable, for example what mitigation measures might be explored and what conditions should be attached to any planning permission. We have experience in applications of this nature, so are able to provide case studies and case law, which can reinforce the robustness of your decisions.

If you are a theatre owner or operator, or a member of the community, you may not have much experience of the planning system and are not sure how you can challenge proposals affecting theatres that are important to you. Please contact us, bearing in mind we may not actually be aware of the proposed development. We can advise you on the best way forward, help with writing comments and objections to local authorities, and even attending and supporting you at Planning Committee.

Please remember that as well as the Theatres Trust there are other organisations that might be able to assist for other uses also commonly affected by neighbouring development such as CAMRA for pubs and the Music Venues Trust. On some occasions neighbouring developments may impact more than one existing use.

How can the Agent of Change be used practically?

Where neighbouring developments are proposed that could negatively impact existing venues the following mechanisms can help make a proposal acceptable without resulting in the curtailment of activities:

- Design and layout which separates noise-sensitive uses such as housing from noise-generating uses
- High standards of noise insulation to new properties
- Installation of enclosures or other acoustic barriers to reduce noise from external activities such as servicing
- Improved insulation to the existing venue (at cost to the applicant/developer)
- Legal agreements which prevent future complaints from owners and occupiers of new uses

In all cases these measures must be secured by conditions and planning obligations (such as Section 106 / Section 75 agreements).

We would caution venue operators not to accept private or ‘gentleman’s agreements’. These have no legal force and may not be delivered upon should the site change hands.

These are examples of potential scenarios where conflict between theatres and new neighbours may occur, and how issues may be resolved:

Example 1: New residential development alongside a theatre

The development

Next door to a theatre is a former department store, which has been vacant for some time. It is proposed that the building be converted into 24 apartments.

The challenge

The two buildings will share a party wall. Some of the new apartments will be located directly alongside the auditorium. In addition, extensive construction works will be required which will certainly be audible within the auditorium.

How Agent of Change can be applied

In this instance there is clear risk that sound from performances will transfer into some of the new apartments. This risks complaints from new residents which could result in restrictions being placed on the theatre. Equally, this is not conducive to providing good living conditions for new residents.

In this case, residential use may not be appropriate at all at this site and it should be refused on the basis of compromising the operation of the theatre as a cultural facility. Indeed, the potential loss of the theatre may have further negative implications of the health and vitality of the wider area in terms of harm to town centre footfall and other businesses. For residential use to be acceptable, redesigning the scheme to provide separation between the venue and residential units would be required. The developer must undertake robust acoustic surveys and produce detailed reports clearly setting out impacts and how they can be mitigated. Any soundproofing works required must be a condition of development, and be entirely at the cost of the developer. We would also urge that a covenant is put in place which legally removes the ability of future residents to submit complaints regarding the theatre.

Additionally, it is also important that performances are not impacted by building works. A condition of development should require the submission of a construction management plan agreed with the theatre which prevents works during normal performance times.

Case study

Theatres Trust submitted a strong objection to a proposal for the conversion of the upper floor of a restaurant and ancillary storage space to three residential apartments on a site bounding the London Palladium. This was on the basis of the potential impact of the proposal on the theatre’s operations due to conflict with new residents from acoustic breakout as well as from necessary servicing and deliveries. The application was refused by Westminster City Council. The applicant appealed the decision to the Planning Inspectorate, but the appeal was also refused.

Example 2: New residential development adjacent to the rear of a theatre

The development

There is a large parcel of vacant land to the rear of a theatre, directly adjacent to its get-in (servicing access). A developer has purchased this land and is planning to construct a mixed-use development consisting of ground-floor retail/commercial units and 146 apartments above. Some of the apartments are directly above the get-in.

The challenge

The theatre receives several touring shows, as well as comedians and live bands who play for just one night. This necessitates the removal of equipment straight after shows, sometimes until 1:30am. Sometimes vehicles arrive early in the morning to unload, including at weekends. The noise from this activity is almost certain to result in complaints from new residents. If the council impose restrictions on servicing, the theatre will become unattractive for many of its existing acts. With a significant loss of income, the theatre becomes at risk of closing.

How Agent of Change can be applied

In this instance there may be some low-levels of acoustic breakout from the theatre that potentially could reach the new apartments, but that is not the primary concern. Much more critical is the ability of the theatre to function, and to be able to keep receiving its long-standing programme. In fact, because theatres tend not to have performances that conclude particularly late (probably 11pm at the latest for live music) it is probably get-ins and get-outs which will result in conflict. Therefore, restrictions must be avoided.

What is required will depend upon the actual constraints or opportunities of the site. If the land parcel allows it, concern could be extinguished through a re-design of the scheme which alters the location of residential units so they are away from the get-in. If this is not possible, it might be the case that residential use is not appropriate and other uses for the land should be explored.

Other options should re-design or alternative use not be possible would be to mitigate the impacts of theatre servicing on new residents. This could include enclosure of the loading bay or other such acoustic barriers. These would need to come entirely at the cost of the developer and be included as a condition of development. A covenant as described in Example 1 may also be necessary.

Case study

Theatres Trust was consulted on a redevelopment of this nature next to the Lighthouse Arts Centre in Poole. We supported the principle of development, but had major concerns at the proximity of some apartments to the get-in. Plans were subsequently amended that removed apartments from the original location and provided greater separation between residential uses generally and the arts centre.

Example 3: New student accommodation next to a community theatre

The development

Land alongside a small community theatre is proposed to be redeveloped into student halls of residence. The theatre is within a former community hall and does not have the highest standards of insulation.

The challenge

The student halls include a large common room with windows which open directly onto a courtyard. The courtyard itself is accessible to the students and is directly outside the auditorium. There is a high risk that loud music from the common room plus talking and possible ball games within the courtyard will be audible within the auditorium, disturbing productions. The theatre already runs on a tight budget and is entirely reliant upon its members and volunteers, and provides a home for local amateur groups as well as providing work experience for students. Any loss of income will compromise the theatre and the important work it does in the community.

How Agent of Change can be applied

In this instance the objection is not to the principle of the proposed student accommodation, but of how the accommodation functions. The primary issue is the courtyard; this could be managed by a condition which prohibits use between 18:00-08:00 as well as Saturday afternoons when matinees are held although this may be difficult to satisfactorily enforce. The more effective solution is to alter the layout of the accommodation so that the common room sits on a different side of the building, and the bike store and laundry room replaces the common room as these would be less likely to be used for gatherings. The development could also be an opportunity to benefit the theatre through using Section 106 / Section 75 receipts to pay for improved soundproofing and other much-needed theatre improvements and repairs.

Case study

Theatres Trust commented on an application in Liverpool cautioning the need for appropriate acoustic protection to avoid disturbance from a new nightclub next to the Playhouse Theatre. Permission for this scheme was granted but included a condition requiring acoustic insulation and for it to be approved by the council in order to safeguard adjacent properties.

The role of the Theatres Trust

Theatres Trust is the national advisory public body for theatres and is a statutory consultee in the planning system in England, Scotland and Wales. This means that Local Planning Authorities are required to consult us on any planning application involving land where there is a theatre or that will have an impact on theatre use. This applies to all theatre buildings, old and new, whether they are in use as a theatre, in other uses or disused.

Theatres Trust works to safeguard theatre use, or the potential for such use and can help you establish the most viable and effective solution for theatre buildings or potential theatre sites. We encourage applicants, councils and developers to contact us for pre-application advice at the earliest possible stage. We engage with local authorities on the development of local development plans, Masterplans and other similar documents and can provide assistance with the drafting of content and policies. We can attend stakeholder meetings and

workshops. We can also provide advice on infrastructure planning and planning obligations. Please contact us at planning@theatretrust.org.uk for more information.

Our statutory remit currently only extends to being notified of developments on neighbouring sites in Wales. Elsewhere we rely on local authorities notifying us out of good practice or theatre owners / operators or local campaigners bringing applications to our attention.

Where developments are proposed next to theatres we encourage applicants and local planning authorities to contact us at an early stage so we can attempt to positively resolve any potential conflicts as part of pre-application discussions. This can save objections later could otherwise add delays, cause extra costs and possibly result in refusals. We also advise and assist theatres and community groups who may be concerned about developments around theatres.