

Petition: P-05-756 Live music protection in Wales

Y Pwyllgor Deisebau | 23 Mai 2016
Petitions Committee | 23 May 2016

Research Briefing:

Petition number: P-05-756

Petition title: **Live music protection in Wales**

Petition text:

We call on the National Assembly for Wales to take steps to protect live music venues in Wales. In particular, we ask that the Assembly introduces the 'agent of change' principle to make it the responsibility of the developers of any new premises, commercial or residential, to find solutions to noise from nearby pre-existing business. We further call on the National Assembly to legislate so that it is possible for local authorities to recognise an area of 'cultural significance for music' within the planning framework.

The 'agent of change' principle has been adopted in England and protects existing live music venues by stipulating that the person or business responsible for the change is also responsible for managing the impact of that change. That means if housing or a hotel, for example, are built next to a live music venue it is the developer's responsibility to mitigate the noise, rather than the existing live music venue. Without the 'agent of change' principle in Wales, there are threats to live music venues from new developments, as can be seen through the proposed building of a new hotel on Womanby Street in Cardiff. In addition, the Mayor of London is currently proposing to recognise parts of London as 'an area of cultural significance for music'. We believe this should be an option for local authorities in Wales, particularly for places like Womanby Street, where so many famous Welsh musicians have started their career.

The petition has attracted 5,383 signatures.

Background

The agent of change principle

'[Agent of change](#)' is a principle being promoted by the live music industry as a means of protecting existing music venues from closure.

It is argued that local authorities tend to favour complaints from residents in new developments over noise levels from established music venues in the vicinity. This has been cited as a major factor in a number of venues closing across the UK in recent years.

The agent of change principle requires that the person or business responsible for the change must also be responsible for managing the impact of the change. This would mean, in the case of live music, that a developer of a new residential building near an existing music venue would be required to include appropriate noise attenuation measures.

In the reverse circumstances, where a new music venue is proposed near an existing residential building, then the agent of change – the music venue – would need to ensure they include appropriate measures to reduce noise.

Proponents of agent of change state that this is different from current position which holds that whoever is reported as causing a nuisance is always responsible for that nuisance. This position is held irrespective of how long the noise considered to be a 'nuisance' has existed, historic instances of the same noise being a nuisance, or whether someone has moved into the vicinity of the noise in full knowledge of it.

The [Music Venue Trust](#) states that the agent of change approach has been trialled successfully in Australia, resulting in better planning outcomes and music venues and others giving more consideration to their neighbours.

Planning policy in Wales

National planning policy in Wales does not explicitly refer to the agent of change principle or the cultural significance of live music venues. However, it does state that noise is a material consideration in terms of deciding applications for planning permission, including for proposals to use or develop land near an existing source of noise.

[Planning Policy Wales – Edition 9, November 2016](#) (the Welsh Government's national planning policy) states:

13.15.1 Noise can be a material planning consideration, for example in proposals to use or develop land near an existing source of noise or where a proposed new development is likely to generate noise. Local planning authorities should make a careful assessment of likely noise levels and have regard to any relevant Noise Action Plan before determining such planning applications and in some circumstances it will be necessary for a technical noise assessment to be provided by the developer ...

[Technical Advice Note 11: Noise \(1997\)](#) provides further advice:

Noise-sensitive development

10. Local planning authorities should consider whether proposals for new noise-sensitive development would be incompatible with existing activities, taking into account the likely level of noise exposure at the time of the application and any increase that may reasonably be expected in the foreseeable future. Such development should not normally be permitted in areas which are, or are expected to become, subject to unacceptably high levels of noise and should not normally be permitted where high levels of noise will continue throughout the night.

The Cabinet Secretary for Economy and Infrastructure, Ken States AM, wrote to the Petitions Committee on 23 April 2017. His letter states:

Existing policy in Planning Policy Wales already has a similar approach to the agent of change principle, in saying that new uses should not be introduced into an area without consideration of the existing uses. Ensuring effective noise mitigation is implemented as part of a new development, where appropriate, is also part of this approach. It is also already open to local planning authorities to consider compatibility of uses in areas and afford appropriate protection where they consider it necessary, as part of their Local Development Plans. ...

[Cardiff's Local Development Plan \(LDP\)](#) states:

5.181. Noise can have a harmful impact on people's health and quality of life. Developments such as housing, schools and hospitals can be particularly sensitive to noise, as can areas of landscape, nature or built heritage importance. Where possible, new developments that are particularly noise-sensitive should be located away from existing or proposed sources of significant noise. This assessment can be informed by information on noise complaints being collated by the Council as part of an on-going initiative to reduce noise nuisance.

Planning Policy in England

As is the case in Wales, national planning policy in England does not explicitly refer to the agent of change principle or the cultural significance of live music venues. However it does advise that planning policies and decisions should recognise that existing businesses should not have unreasonable restrictions put on them because of changes in nearby land uses.

The [National Planning Policy Framework \(NPPF\)](#) (the UK Government's national planning policy for England) states that:

123. Planning policies and decisions should aim to: ...

- recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established; ...

The [accompanying planning practice guidance on noise](#) states that:

The potential effect of a new residential development being located close to an existing business that gives rise to noise should be carefully considered. This is because existing noise levels from the business even if intermittent (for example, a live music venue) may be regarded as unacceptable by

the new residents and subject to enforcement action. To help avoid such instances, appropriate mitigation should be considered, including optimising the sound insulation provided by the new development's building envelope. In the case of an established business, the policy set out in the third bullet of paragraph 123 of the Framework should be followed [i.e. that quoted above].

The practice guidance also states that:

When assessing whether a statutory nuisance exists, local authorities will consider a number of relevant factors, including the noise level, its duration, how often it occurs, the time of day or night that it occurs and the 'character of the locality'. The factors influencing the 'character of the locality' may include long-established sources of noise in the vicinity – for example, church bells, industrial premises, music venues or public houses.

On planning policy in England, the Cabinet Secretary's letter states:

In England there was a commitment given in the UK Government's Housing White Paper (published 7 February 2017) to amend the National Planning Policy Framework (NPPF) in England to emphasise that account should be taken of existing businesses, such as music venues. This followed earlier changes to secondary legislation made in England to allow a number of commercial types and uses to be converted into residential properties without the need for planning permission ...

He goes on to say that this change:

... has caused problems for live music venues in England. These changes to secondary legislation were not made in Wales and planning permission is still required before the commercial uses of buildings can be changed into residential ones.

The Mayor of London, Sadiq Kahn, has previously committed to introducing an agent of change rule into the London Plan that would make developers of housing near existing leisure venues responsible for noise management.

Ahead of the publication of the new London Plan this autumn, [Draft Culture and Night Time Economy Supplementary Planning Guidance \(PDF 5.13MB\)](#) has been published for consultation. The document says that development proposals:

... should seek to manage noise without placing unreasonable restrictions on development or add unduly to the costs and administrative burdens of existing businesses.

Cultural venues should remain viable and continue in their present form, without the prospect of neighbour complaints, licensing restrictions or the threat of closure.

It also stresses that the existing London Plan policy which says that development proposals should seek to manage noise, including through:

... mitigating and minimising adverse impacts without placing unreasonable restrictions on development or adding unduly to the costs and administrative burdens of existing businesses.

Welsh Government action

Cabinet Secretary's letter

In addition to the comments above, the Cabinet Secretary's letter states that officials have met with the Music Venue Trust and others to discuss the agent of change principle. He states that officials are looking at how this can be better reflected in Planning Policy Wales, and how other non-legislative measures could be used to support music venues.

National Assembly for Wales action

The specific case relating to Womanby Street in Cardiff has been raised twice in the Assembly chamber by Neil McEvoy AM.

On [4 April 2017](#), Neil McEvoy AM said:

Cabinet Secretary, Womanby Street is a place famous for live music right across Wales, and I'm sure there are many of us in this Chamber who've had some very late nights in those venues. Many renowned musicians have started their careers in Womanby Street. Now, Wales is a musical nation and music is the heartbeat of Wales. It's also the heartbeat of this city, and we need to encourage live music in Cardiff and across Wales. But the problem is that the current planning regime just doesn't do that, because it allows developments to be built in areas sometimes just next to a live music venue, and then, when a complaint is made, the venue will have to close down. So, you can have a music venue like the one in Womanby Street, there for 35 years. There can be a development next door, a flat can be put in, and that will justify the closure of the live music venue. Now, what we need in Wales is the agent of change principle written into planning law. There's a petition, and I understand that more than 3,000 people have signed it. There's also a statement of opinion, which I've put in, and I would encourage every AM here to sign that. Now, what we need to do is designate places like Womanby Street as cultural centres, which need to be protected through the planning law. The Mayor of London is doing this, so will your Government? Over to you, Minister

The Leader of the House, Jane Hutt AM, responded:

The Member has drawn attention to the importance of live music in Wales, which, of course, many of us have enjoyed in both public and private venues across Wales, and you draw attention to one here in the capital of Wales, in Cardiff. Indeed, you also say that there is a petition on this issue that's coming forward, and I'm sure the Petitions Committee will handle that and make sure that it is then drawn to our attention.

The [Statement of Opinion](#) referred to above was raised by Neil McEvoy AM and Simon Thomas AM and reads:

This Assembly:

Recognises the threat to live music venues across Wales.

Recognises the unique role that Womanby Street plays in the live music scene in Cardiff.

Notes the number of significant artists who have begun their career playing in Womanby Street venues.

Calls on the Welsh Government to introduce the agent of change principle to Wales so that developers must find solutions to noise from nearby pre-existing businesses.

At the time of writing the Statement of Opinion had been signed by a further seven Assembly Members.

On [5 April 2017](#), Neil McEvoy AM, made a 90 second statement:

Diolch, Llywydd. Three and a half thousand people have now signed the petition to this Assembly calling for us to protect live music venues in Wales. That petition was started by the conductor and composer, Richard Vaughan. The problem is that there are two proposals to develop in Wales's most famous live music street, Womanby Street, and the developments pose a threat to the music venues because of the weak planning laws we have in Wales. In England, there is the agent of change principle, which means that new developments need to accommodate existing live music venues and not the other way around. It's time to think about what we can do, and people from all political parties need to stand up and protect the live music venues in Wales. The proposals for Womanby Street should be rejected unless there are cast-iron guarantees that the existing live music premises will not be affected. Our Senedd needs to listen to the thousands of people who have taken the time to sign the petition, because we need a change in planning law, and I call upon everybody present to ensure that we change the law here in Wales and protect our live music venues. Diolch.

Every effort is made to ensure that the information contained in this briefing is correct at the time of publication. Readers should be aware that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.