Local Government and Communities Committee

Planning (Scotland) Bill

Submission from Coopers Bar Aberdeen

Subject: Call for evidence supporting the inclusion of the “Agent of Change” Principle within the proposed new Planning Act - Plus evidence and arguments supporting related legislation changes to how Noise Abatement Notices are handled, issued and reviewed.

4. Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?

Coopers Bar Aberdeen Limited- Noise Abatement Notice – Our situation

Background

We were served with a Noise Complaint letter in January 2015. We were only allowed 21 days to appeal this but because we were more than happy to cooperate with The Council and endeavour to resolve the noise issue with our new neighbour, we didn’t appeal, assuming that the situation would be resolved.

Approximately 20 months later, we were served with a Noise Abatement Notice.

My issues with the current Planning and Environmental legislation around NANs is as follows;

1. 21 days is not nearly enough time to research and cost noise egress solutions and have any work arranged and completed BEFORE you know if an appeal is going to be necessary. In my opinion, it should be at least 60 – 90 days.

We "lost" the right of appeal because we engaged and complied with Aberdeen City Council from the very outset. No one from The Council ever advised us that we should appeal regardless .. or forever lose that basic right.

We engaged Napier University, renowned experts in Noise Egress and how to apply effective noise reduction measures. We carried out over 80% of their recommendations at a cost of well over £25,000. Yet the feedback was that there had been NO improvement. The feedback appears to have carried more weight in the decision process than the evidence of experts at Napier University or our own findings.

Phase 1 and 2 of the Napier University recommended sound proofing measures were all applied to the supporting pillars and the rear wall of the venue.

In addition:
- The rear facing doors had additional airtight sound-proofing installed.
- The vent above the rear fire door was sealed.
- Heavy duty curtains were purchased and installed at the street facing windows.
- Every air conditioning vent (18) was removed, filled with sound proofing material and sealed.
- The original air conditioning metalwork which might have been acting as "sound tunnels" was all removed.
  - During this work, we discovered two large holes (30” square) in the roof space going straight through to a local shop’s store area. Bricking these up will have had a positive effect. For the record, these holes were not caused by any works on our part.
- We installed a professional active sound limiter in-line and using the industry-standard defaults.

2. The existing legislation calls for an “inaudible” reading. This is simply impossible to achieve without lining the existing venue entirely with air-tight lead, steel or similar, which is clearly not practical. One Scottish Council has already agreed that the use of the term inaudible is unlawful. They now use a defined dB measurement over the ambient dB.

3. The existing Noise Abatement Notice has NO appeal process after the initial 21 days and NO review process, ever!

It also has NO end date. Note: Even serial murderers are given a defined sentence to serve, as well as basic human rights to an appeal and parole reviews.

4. The existing Noise Abatement Notice is issued against the complainant’s property and not on behalf of the complainant themselves. This means that the complainant could move away and the new tenant could actually like live entertainment and wish to enjoy this, but the relevant NAN would still be in force.

5. In our case, we had CCTV footage which proved there was no entertainment at times when diarised notes stated otherwise. These anomalies were not investigated by the EHO. If they had been, or more importantly, if the EHO had some flexibility within the current legislation to review such evidence, then I believe that there would have been reasonable grounds for an appeal.

6. With regards to the much needed Agent of Change principle hopefully being adopted by the UK and Scottish Parliaments, will this be applied retrospectively? Or at least open up the option of an appeal based on a new private tenant or homeowner moving in to a property and complaining about a long-standing or well established venue hosting live entertainment? In our case, we clearly advertised that we regularly hosted karaoke and other entertainment at the weekends. In fact, the venue had done so for well over a decade.

7. I appreciate that every citizen has rights, but in our case, one individual raised the first and only noise complaint we had ever had in our 7 years of operations, yet the rights of my customers to popular entertainment were ignored. The rights of my
employees to job security were ignored. And my rights as a licensee, business owner and Business Rates payer have also been ignored.

8. The cost to my small business is approximately £50,000 in lost revenue per annum. Please note that every other bar in the area provides entertainment at the weekend. I am the ONLY bar in Aberdeen’s City Centre who can’t. To be fair, I technically can still provide entertainment, but I’m also at risk of receiving a huge fine if the noise egress is deemed to be in breach of as yet, an undefined level.

During the long mediation phase, we ceased all music, karaoke and music tracks at 10:45pm sharp. Note: The karaoke level was now so low that we lost some of our regular contributors. They simply didn’t appreciate these very low sound levels, citing "no atmosphere" as their main reason for going elsewhere.

We were closing all windows and doors from early evening, even in high summer, so I then received complaints from customers and staff about the heat. Measurements taken at the time showed recorded temperatures upwards of 84F in the venue.

Moving forward:

Remaining Options. The following options are realistically dependent upon getting regular access to the flat or at the very least, immediate feedback as and when any improvements are made. It’s clear that we now need a more efficient route for this type of communication. Complainants can often take months to respond to The Council at each stage and this is not helpful or fair.

a. Move the sound equipment to different locations within the bar in an attempt to further reduce the noise egress.

b. Placing the speakers on heavy paving slabs or similar to eliminate any physical bass transference. An option found to be not possible in the existing location. Update: This was done.

c. Assuming a better location can be been identified, we would remove the existing speakers then install and position 4 x small footprint speakers to reduce the overall bass frequencies. These can initially be hired for purposes of testing prior to us making any further large investment. Not done.

d. In tandem with this, install, configure and test a sophisticated graphic equaliser which would enable us to identify and hopefully isolate / remove most if not all of any offending bass resonance frequencies. Update: This was been done.

It is now clear that the existing legislation was poorly thought out before being written and leaves no room for local EHO’s to look at all mitigating factors or even to apply basic common sense.

At the very least, I urge you to please consider the following suggestions;

1. Introduce the Agent of Change principle, and allow it to be considered retrospectively in order to help facilitate an appeal or review.
2. Allow more time for an initial appeal - Increase from 21 days to 60 or better still, 90 days.

3. Remove and amend the word “inaudible” as the main basis of issuing a NAN – Introduce a realistic and measurable maximum dB level.

4. Introduce a finite term for a NAN to be enforceable .. subject to review.

5. Introduce at least annual reviews with the option to have the NAN renewed, modified, or lifted.

6. Introduce a standard procedure for taking these critical sound measurements. As it stands, each EHO appears to have their own method for carrying out these crucial tests. For example, some EHO’s take an ambient sound measurement first, then a second measurement once the alleged noise is being produced. Some don’t.

7. Introduce the principle that if offered, the complainant should be encouraged to allow reasonable and funded sound proofing measures to their own property to be carried out.

Yours faithfully

Robert Baxter
Director
Coopers Bar Aberdeen Ltd.