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'Agent of change' rides in to rescue The Stables

I WROTE about Abbey Development Ltd last month and its plans to build housing next door to The Stables Theatre, that live music entertainment jewel in Wavendon, and to make The Stables deal with any ensuing noise complaints; probably by being forced to close.

The Stables fought for a deed of easement of noise and won. The existence of the easement appeared to mean that should a claim for nuisance be brought by a future occupier of Abbey's land, that claim would be expected to fail as the occupier is bound by the deed and was cognisant of its existence when it acquired the residential unit.

Abbey Development Ltd now refuses to accept the easement and withdrew the application. Then they submitted a second application. Abbey is now seeking a certificate which would confirm, if granted, that despite condition 14 of the reserved matters approval requiring a deed of easement of noise, non-compliance with the condition by Abbey would nevertheless be lawful.

However, I have been advised that former Prime Minister Theresa May, the unlikely champion of music venues, may be awkwardly and erratically dancing to the rescue. Her answer to the problem of so many music venues and nightclubs being forced to close after new housing developments complained about already existing noise was to invent the excellent principle that if the live music venue was there first, any adjoining developer/occupier is "the agent of change" and has to accept the situation.

It is up to the developer to mitigate

the noise - with thicker insulation and noise-deflecting bunds, for example - not the venue. Milton Keynes Council seems unaware of this new policy and did not require the development to have mitigation to protect The Stables.

Thus the easement/covenant is not the answer, apparently, as it is an unenforceable covenant trumped by the Human Rights Act which entitles each of us to be able to enjoy our house and garden. Abbey Development Ltd may know this but perhaps feels that the easement/covenant will put off buyers.

Abbey is playing it oddly, though, because if this goes to appeal the government policy is clear and the developer must lose. For he is "the agent of change" and will have to mitigate to protect The Stables.

The government announced plans to adopt "Agent of Change" into The National Planning Policy Framework on January 18 2018. The latest government guidance says this:

"How can the risk of conflict between new development and existing businesses or facilities be addressed?"

"Development proposed in the vicinity of existing businesses, community facilities or other activities may need to put suitable mitigation measures in place to avoid those activities having a significant adverse effect on residents or users of the proposed scheme. In these circumstances the applicant (or 'agent of change') will need to clearly identify the effects of existing businesses that may cause a nuisance and the likelihood that they could have a significant



Theresa May: Introduced the 'Agent of Change' principle to planning during her time as Prime Minister.

"It is up to the developer to mitigate the noise... not the venue."

adverse effect on new residents/users.

"In doing so, the agent of change will need to take into account not only the current activities that may cause a nuisance but also those activities that businesses or other facilities are permitted to carry out, even if they are not occurring at the time of the application being made.

"The agent of change will also need to define clearly the

mitigation being proposed to address any potential significant adverse effects that are identified. Adopting this approach may not prevent all complaints from the new residents/users about noise or other effects, but can help to achieve a satisfactory living or working environment, and help to mitigate the risk of a statutory nuisance being found if the new development is used as designed (for example, keeping windows closed and using alternative ventilation systems when the noise or other effects are occurring).

"It can be helpful for developers to provide information to prospective purchasers or occupants about mitigation measures that have been put in place, to raise awareness and reduce the risk of post-purchase/occupancy complaints."

Paragraph: 009,
Reference ID: 30-009-20190722
Revision date: 22 07 2019

It goes on to say:

"How can planning address the adverse effects of noise sources, including where the 'agent of change' needs to put mitigation in place?"

"This will depend on the type of development being considered the type of noise involved and the nature of the proposed location. In general, for developments that are likely to generate noise, there are four broad types of mitigation:

■ **Engineering:** reducing the noise generated at source and/or containing the noise generated;

■ **Layout:** where possible, optimising the distance between the source and noise-sensitive receptors and/or incorporating good design to minimise noise transmission through the use of screening by natural or purpose built barriers, or other buildings;

■ **Using planning conditions/obligations** to restrict activities allowed on the site at certain times and/or specifying permissible noise levels differentiating as appropriate between different times of day, such as evenings and late at night;

■ **Mitigating the impact on areas likely to be affected by noise** including through noise insulation when the impact is on a building.

"For noise sensitive developments, mitigation measures can include avoiding noisy locations in the first place; designing the development to reduce the impact of noise from adjoining activities or the local environment; incorporating noise barriers; and optimising the sound insulation provided by the building envelope. It may also be possible to work with the owners/operators of existing businesses or other activities in the vicinity, to explore whether potential adverse effects could be mitigated at source."

Paragraph: 010
Reference ID: 30-010-20190722
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So there you are then, The Stables. Looks like your problems are sorted. You're welcome. Cheerio.

Shopping centre director expects footfall to grow as lockdown eases

SHOPPERS have been spending up to four times the average transaction value as retail opened its doors at centre:mk this week.

The centre reported a significant growth in spend as average transaction values have been as much as four times higher than pre-Covid levels as footfall soared by 254 per cent week on week.

Centre director Kevin Duffy pictured said: "We have

made extensive plans for our shoppers to be able to return confidently and so far it has paid off. Queues for popular stores such as Primark and TK Maxx hit 30 minutes when stores opened but because we have such wide malls and large stores, the capacity has been absorbed quickly.

"There was a great buzz about the



centre, while feedback from shoppers was really positive."

As stores opened, shoppers were asked by the centre to "play their part" and abide by the social distancing measures that remain including using the hand sanitising stations, following a one-way system in each section of the centre and waiting to enter a store when required to do so.

Over 80 stores have reopened with more to follow,

including John Lewis, over the next few weeks.

Mr Duffy said: "We were expecting footfall to be down given the level of expectation in relation to queues nationally but with spend significantly up, our estimates were about right.

"We expect that spend and footfall will steadily grow over the coming weeks."

Andrew Gibbs