

Property law and criminal offences, or, what does Japanese Knotweed look like, anyway??¹

The proliferation of red tape and regulations in modern times has affected those working in the property field as much as anyone. This article, whilst far from an exhaustive list of all possible offences, will remind readers of one or two of the more well-known property-related criminal offences. It then moves on to highlight some of the areas where less obvious crimes that can be committed, and new areas where regulations have created criminal offences. Finally it highlights one area where most landowners wish a criminal offence had been caused, but generally hasn't.

General Knowledge and Common Sense

Some offences are familiar even to those with no connection with the property business. Generally, it is a criminal offence under the Protection from Eviction Act 1977 to evict an occupier of residential premises without a court order. There are exceptions, but generally the starting point for any recovery of residential premises will usually require court proceedings. Similarly, it is an offence for a landlord to 'harass' a residential tenant. In both cases, punishment is by way of a fine and potential imprisonment of up to two years.

Health and safety related offences are also generally well understood. Residential landlords must ensure that in properties serviced by gas, the appliances have valid CORGI gas safety certificates. Landlords and managing agents have been prosecuted for manslaughter in respect of breaches of such regulations.

Further pieces of legislation that most people would regard as "common sense" cover such provisions as public health, and liability for letting infected premises.

Residential pitfalls

There has been a worrying (for landlords) recent trend of creating criminal sanctions for breaches of otherwise relatively 'innocuous' property management requirements. It is where the landlord's sin is one of omission, that the question of criminal sanctions becomes more disproportionate.

The idea of a criminal sanction for a landlord is nothing new. For example, the Landlord and Tenant Act 1987 makes it an offence for a landlord of residential premises to dispose of those premises (or even parts of those premises) in certain circumstances without first giving the tenants a 'right of first refusal'. When it comes into force, section 42A of the same Act, will require that a landlord must hold service charge monies in designated accounts, and information must be provided to contributing tenants (punishment= a fine of up to £2000.00).

The Landlord and Tenant Act 1985, as amended, contains more subtle traps a-plenty. Under the 1985 Act, the failure by a landlord to provide a response to a request for a summary of information, or to allow an inspection of documents within a limited time, or to provide details of insurance, could lead to a punishment of a fine of up to £2000.00 (the latter offence is, in fact, tucked away in the schedule to the Act).

The obvious tension here is that, increasingly, tenants are stepping into the shoes of the landlord, either by enfranchising their landlord's interest, or acquiring a right to manage their building. But, the legislation recognises no distinction between a landlord with an estate of acres of prime London real estate, and an owner-occupier landlord of a two-flat converted house; both ignore statutory requirements at their peril.

A licence to print money?

A further area where criminal sanctions have crept onto the scene is the increasing drive towards licensing activities. As of 3rd May 2005, it is a criminal offence to employ unlicensed clampers on your land (licences are required under the Security Industry Act). More worryingly, under the Housing Act 2004, by 3rd July 2006 landlords and property managing agents, who let large houses in multiple occupation (HMOs), must be licensed, or face a fine of up to £20,000.00. By way of further punishment, if a landlord has been letting out property on an unlicensed basis, an occupier can apply, within 12 months, to a residential property tribunal for a rent repayment order, and/or a Court can refuse to make an otherwise enforceable order for possession.

It goes (almost) without saying that a local authority can set a fee for the granting of a licence, and that the Government has refused to set a 'cap' on that fee.

...and forgive those that trespass against us...

The ironic thing is that for many landowners, on the one occasion that they sincerely want the police to intervene and make an arrest or two – when their land/shop/home/car park has been invaded by trespassers or travellers – they are faced with a double whammy. In general, trespass is a civil, not a criminal offence, except in limited circumstances, so the police have no powers; and, even if the trespass might be of a type which could be regarded as criminal – so-called aggravated trespass, such as a large scale invasion of travellers – more often than not the police are reluctant to exercise their discretion to intervene.

Whilst there are, in some instances, defences on which a person can look to, well advised landlords, landowners and property managers are increasingly taking a pro-active role in seeking advice as to their rights and liabilities before it is too late.

ⁱ Those who manage or are responsible for areas of undeveloped land need to be alert to the possible presence of Japanese Knotweed, or face a potentially unlimited fine and/or imprisonment for up to two years. The plant spreads relentlessly, overwhelming other garden plants. Where established as a wayside weed, native plants are also aggressively over-run.