

Future cities

LEGAL VIEW Helen Edwards

Check the lease to avoid fizz being taken out of pop-up reuse

The economy is recovering and with it the property market. While this is great news for investors and developers, it has had a less favourable effect on many creative occupiers in the capital. Artists in particular are finding themselves evicted from studios as rents rise and redevelopment begins.

The mayor of London has launched an investigation into the issue after it was reported that a former biscuit factory in Bermondsey, which contained nearly 400 artists' studios, had been sold to Grosvenor Estates for £51m to be converted into an 800-home development. Although the artists knew their studio arrangement was temporary, they claimed they expected to be able to stay for longer.

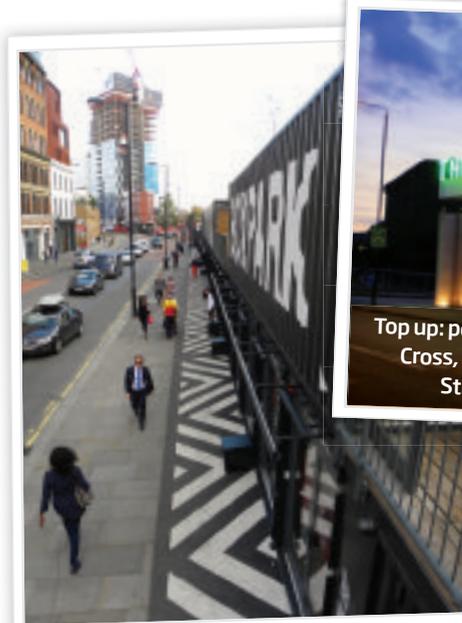
In this instance, the situation was straightforward. The artists occupied via a short-term lease that arts organisation V22 has in place with Workspace Group – which owned the building before Grosvenor – and it was specified their occupations were short-term.

However, with the property market recovering at a much quicker pace than many expected, issues are emerging with commercial spaces that had been let out or gifted to non-commercial or other temporary tenants to stop them from standing empty.

Just months ago, headlines were awash with the pop-up phenomenon but now, as investors increasingly look towards commercial property for opportunities, the trend looks set to reverse, leaving pop-up retailers, artists and other creatives struggling to find space and sometimes without the legal protection they might gain from a longer-term lease.

Much has been written about the legal issues around a pop-up or similar opening in an empty

property. Yet little advice exists for property owners and landlords when the time comes to utilise the space for its original, commercial purpose.



Top up: pop-ups such as The Filling Station in King's Cross, Shoreditch's Boxpark (left) and in Carnaby Street (below) model a new form of tenancy

Technically, if the original lease was drafted correctly, it shouldn't be a problem to end the occupational relationship and ensure the pop-up occupier moves out relatively quickly. After all, one of the key benefits of the pop-up revolution is the flexibility it

gives to tenants and landlords. However, problems could arise if the occupation agreement was drafted quickly or without sound legal advice.

For example, if property owners use a "cookie-cutter" lease without excluding provisions contained in the Landlord and Tenant Act 1954, pop-ups could acquire security of tenure. This is included in most commercial leases unless specifically omitted, and serves to protect tenants of six months or more from being evicted without good reason. It also gives them a general right of first refusal to a new lease. If they take this option the landlord must serve notice, detailing why they wish not to renew the lease, and the exit will only be available at expiry of the lease term unless there is an earlier break clause for the landlord.

A planned redevelopment of the site can be given as a valid reason to remove a pop-up tenant, providing it can be fully evidenced.

So, while this protection should not stop a landlord from claiming back the property from a temporary tenant, it could slow down the process and in some situations give the occupier a right to claim compensation.

For many landlords the pop-up revolution has been a blessing and, with many high street properties still standing empty, it is unlikely to end. However, owners looking to reclaim property from temporary tenants – whether they're artists or retailers – must check the lease beforehand.



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