

## **New offence of squatting**

As those in the property industry will be aware, a new criminal offence of squatting comes into force on 1 September 2012. But there are misconceptions about the state of the law and doubts about how the new law will operate in practice.

### **What is the current law?**

The current law, which remains unchanged by the new offence, has several strands and can be summarised as follows:

- Where someone has broken into a property, a criminal offence may have been committed such as criminal damage or burglary. But it may be difficult to prove if there is no evidence of a break in.
- Broadly summarised, section 6 of the Criminal Law Act 1977 makes it a criminal offence to secure entry to a property by force where someone (even a squatter) is there at the time who is opposed to that entry.
- So unless the police are willing to make an arrest, the owner must usually start court proceedings to evict the squatters. Proceedings can take as much as three months to conclude.
- Contrary to popular belief, an exception has existed in one form or another since 1977. Where a “displaced residential occupier” or “protected intending occupier” requests the squatters to leave, the squatters commit a criminal offence by remaining in the property. Since 1995 the law has allowed a displaced residential occupier or protected intending occupier to use force to secure entry, i.e. section 6 does not apply. Broadly, a displaced residential occupier is someone who occupied the property as a residence but has been excluded by squatters and a protected intending occupier is someone who intends to occupy a property as a residence, has a signed certificate to that effect, and is prevented from moving in by squatters.

There is a perception that the current law does not adequately protect property owners, hence the new offence.

### **How will the new offence work?**

Grant Shapps, the housing minister, told The Daily Telegraph “This is one of those things where, for too long, hard-working people have faced an eternal battle just to get their home back” and “What it means, the event of stepping over the threshold of your house, going into your house when you go away for the weekend or whatever... the moment they walk in with the intention of squatting, that is when they commit the criminal offence.”

But as is discussed above, squatting in someone's home has been a criminal offence for a long time. Squatters tend to seek out vacant and abandoned properties rather than breaking into people's homes whilst they are out.

What the new offence does is extend the criminal offence to include all residential properties, not just those that are currently, or about to be, occupied.

The new offence applies where:

- a person enters a property designed or adapted for use as a place to live without the owner's permission,
- the person knows he is doing so without permission, and
- he lives there or intends to live there for any period.

It does not apply where the person has at some point in the past had the owner's permission to be there (i.e. he is holding over after the end of a tenancy or licence).

Where the offence applies, the police have a right to enter and search the property for the purposes of making an arrest where they have reasonable grounds for believing the offence has been committed.

It can therefore be seen that the offence ought to make it much more straightforward for property owners to recover possession from squatters. One need only call the police, give them evidence that the offence has taken place, and then re-secure the property once all those inside have been arrested. But will it really be that simple?

### **Potential problems**

Ministry of Justice Circular 2012/04 was produced to provide guidance to those being asked to enforce the new offence. It states that guidance for prosecutors would be made available on the CPS website. At the time of writing (31 August 2012) we could not find any such guidance.

The new offence comes at a time of widespread cuts to public spending and might cause an additional burden on the police's already limited resources. Our experience of similar situations, for example where a police presence is required to prevent a breach of the peace during an eviction by a County Court bailiff or where an offence has been committed under an Interim Possession Order, is that the police sometimes decline to assist perhaps because they prioritise more serious offences.

The new offence has, however, been widely publicised and squatting is such a highly charged issue that land owners will be hopeful that the police will divert appropriate resources to squatting cases.

Even if the police are willing and able to attend the property, how are they to assess whether an offence has been committed? They will only have the right to enter and search the property if they have reasonable grounds for believing that an offence has been committed. When faced with an occupier who claims to have a tenancy (and may even have something that looks like a tenancy agreement to wave around) the property owner will need the police officer to determine who is telling the truth. How are the police to determine whether the occupiers are living there or just visiting?

Exactly what circumstances are sufficient to give the police officer reasonable grounds to believe the offence has been committed are not clear without further guidance. Perhaps it is the famous elephant test: you know it when you see it. Squatters are a determined group, and will no doubt develop a means of avoiding arrest.

A further problem is the requirement that the property be designed or adapted for use as a place to live for the offence to apply. Although it may seem obvious, there are other areas of law where a great amount of judicial consideration has been given to what is, for example, a house and the position is still not clear. The new offence simply does not address the question of mixed use property.

Having said all this, perhaps the police will consider that the owner's complaint gives them reasonable grounds for suspicion and so the difficult questions are ones to be resolved at the local police station. If that is right, the property owner's goal will already have been achieved.

### **Commercial property**

As is stated above, the offence applies only to residential properties. If, as is intended, the offence will act as a deterrent to squatters intending to occupy residential properties, one would expect those squatters to seek out vacant commercial properties. The current economic climate has led to an increasing number of businesses failing and leaving empty premises across the country.

Liz Peace, chief executive of the British Property Federation told Property Week that the increased threat of squatting in commercial properties will leave some land owners with no choice but to demolish their buildings. That is perhaps a slight exaggeration but all land owners should nonetheless give further thought to whether their empty properties are secure enough. One novel way for landlords to do that is to allow a charity to temporarily occupy their empty property whilst they try to find a permanent tenant. Organisations like 3Space (<http://www.3space.org/>) help to bring landlords of empty properties together with charities who need them.

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