



Managing empty properties

Watts Group Limited

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Introduction

- Setting the scene
- The Law
- Security measures – metal theft, legal pitfalls – Property Guardians.
- Insurance
- Squatting
- Fire precautions
- Mechanisms of decay – the need for urgent repairs and protection
- Building Services
- Maximising potential



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Setting the Scene

- **Reasons for vacancy** – lack of demand, lack of funding, redevelopment, economic life expiry, lack of consents.
- **Asset management** – vacancy comes at a cost; insurance, security, fire risk, need to maintain to avoid more expensive repairs later, maintaining services in operable condition
- **Objectives** – keep period of vacancy to a minimum; use mothballing as a last resort; be imaginative about new uses
- **Issues** – Dilapidations, squatters, safety, rates, insurance



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The life of the building



Taken from the BIFM Guide to Vacant Property Management

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Reasons for vacancy



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Reasons for vacancy



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The Law



- Occupiers Liability Act 1984
- Harris v Birkenhead Corp. [1976] CA (1)
- Tomlinson v Congleton BC [2003] HL (2)



1) Julie Harris was 4 when she wandered off from a children's play park and entered an unsecured derelict house. Julie sustained serious injury when she fell from a window. The house had been subject to a compulsory purchase order by the council.

Held: The Council had the legal right to take possession to secure the property, actual physical occupation was not required to incur liability as an occupier. The council were therefore liable.

2) Sand quarry transformed in to a country park open for public use. Claimant broke his neck diving into the lake. HOL held that no risk arose from the state of the premises as required under s.1(1)(a) Occupiers Liability Act 1984. The risk arose from the claimant's own action.

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Regulations



- Managing an empty property does not mean you can ignore occupational and safety legislation - for example Asbestos Management Plans and Fire Risk Assessments
- Remember that failing to comply can bring criminal proceedings, not just civil liabilities



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Consider appropriate security



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BUILDING RELATIONSHIPS

Adequate security



However if they are determined to get in you're not going to stop them.



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BUILDING RELATIONSHIPS

Security



- **Empty buildings** are vulnerable to break-ins, vandalism, fly tipping, arson, graffiti and metal theft.
- Damage to fabric can also create liabilities under the Defective Premises Act and Occupiers Liability Act.
- Consider mains-fed alarms, CCTV, manned guarding, dog patrols and physical security measures depending upon risk assessment



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BUILDING RELATIONSHIPS

Security



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Permanent guarding?



- Property Guardians
- Camelot Property Management Limited and Camelot Guardian Management Limited v Greg Roynon [2017]



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Bristol City Council engaged Camelot Property Management who placed 'guardians' in a disused former care home in order to secure it. One such guardian, Mr Roynon, occupied two specific rooms to which only he had access.

Mr Roynon entered into a written agreement stating that it created a licence and not a tenancy. However, when the management company served notice to quit upon Mr Roynon he refused to leave the property.

Effectively, the agreement constituted an AST.

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Insurance



- Involve insurers at an early date and ensure that all facts are disclosed.
- Ensure cover for public liability – legal duty to care for visitors
- Cover on restricted perils basis
- A programme of regular maintenance and inspections may help mitigate the restrictions.
- Simply allowing the property to decay could have unexpected and uninsured consequences



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Insurance - protecting empty properties - and their owners



- Check Insured's warranties
- Comply with Insurer's requirements
- Inspect, record and secure



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Maritsave v NFU Mutual Insurance Society Limited [2011]

- Fire damage to vacant property. The property had been unoccupied for some time and as a result certain warranties applied, including an obligation requiring the claimant to ensure that outside doors were kept securely locked and windows firmly fastened. The express effect of a breach was that the insurer may not have to pay a claim if the breach contributed to the damage claimed under the policy
- The court preferred the evidence of the claimant's managing director who said that he had personally undertaken weekly security checks

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Squatting



Squatting is when someone deliberately enters property without permission and lives there, or intends to live there. This is sometimes known as 'adverse possession'.

Squatting in residential buildings (like a house or flat) is illegal. It can lead to 6 months in prison, a £5,000 fine or both.

Anyone who originally enters a property with the permission of the landlord is not a squatter.

Although squatting in non-residential building or land isn't in itself a crime, it's a crime to damage the property



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Hendon, North London, June 2013



Up to 40 squatters living in the demolished Hendon Football Club ground, which had lay empty in Claremont Road, Brent Cross, for several years.

Rubble and materials at the council-owned property were used to construct rows of up to 15 temporary huts occupied by the squatters, believed to be largely of Eastern European descent.



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Fire Precautions



Fire more likely to develop in an empty building

- Keep site tidy to deter arsonists
- Disconnect defective or non-essential supplies
- Beware of PV panels
- Maintain fire detection systems
- Liaise with the fire service
- Amend fire strategy
- Reduce fire load
- Note that a FRA is still required under the Regulatory Reform (Fire Safety) Order 2005



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Fire Precautions



Even if a property is vacant for a short period of time, such as school holidays, the worst can happen.

In this case the culprits were caught on CCTV but it didn't prevent the fire causing over £1,000,000.00 of damage.



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Fire Precautions



And the results can be far reaching.

In this instance it was originally thought two homeless men sheltering in the building had set a fire to keep themselves warm during freezing conditions.

It transpired however someone, yet to be identified, had set fire to the ground floor of the building, trapping to men in the upper floors.



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A means to an end



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Mechanisms of decay



Time and weather

Decay can be severe and render the building a risk to the public, or anyone working in the building.



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Mechanisms of decay



- Water leaks can go undetected causing significant damage in a short time
- Moisture content in excess of 20% creates risk of fungal decay
- Relative humidity in excess of 80% can enable mould growth
- Wind damage
- Vandalism
- Flora and Fauna



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Mechanisms of decay



Letting nature take over can bring significant risks

- Continual cycle of growth and decomposition
- Monitor and remove wood stemmed plants; roots can force masonry apart
- Keep trees and invasive plants under control – may exploit broken drains, conceal defects or cause impact damage
- Keep gutters and gullies clear of leaves certain forms of construction can be particularly vulnerable – e.g. hoppers



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Himalayan Knotweed



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General Health & Safety



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Services



Each case differs; if there is a possibility that the services will be brought back into use it is vital to maintain certain levels of caretaker maintenance.

- Draining down is not always desirable if re-use is contemplated – corrosion risk
- Risk of bacteriological infection if treatment regime is not maintained.
- Some operational service may be essential to provide suitable environmental conditions and resist deterioration. On the other hand risks from frost damage to charged services could be significant.



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Assuming there are service left to look after...



Targeted attack to remove cabling and other metal items such as pipes



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Mechanisms of decay



Whilst having potential harmful consequences, many species are also protected and may need special measures to remove:

- Mice and rats – gnawing through cables, - risk of infection from urine and droppings.
- Bird droppings- especially when they build up in layers are toxic.
- Bats and wild birds are protected species, illegal to block existing bat roosts, but discourage colonisation in vacated buildings – may need assistance from Natural England.



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Maximising potential – short-term uses



Charitable uses / meanwhile leases / pop up shops

Pros and cons

- Use a lease and exclude Landlord and Tenant Act 1954



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BUILDING RELATIONSHIPS

Maximising potential – long-term uses



BHS



▶ To SHS

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Summary



- **Squatters** – criminal in residential but not in commercial
- **Vandalism** – need for security measures
- **Theft** – sale of scrap metal now banned; electronic audit for metal sale
- **Insurance** – public liability insurance essential
- **Appearance** – advertising an empty property is asking for trouble.
- **Liabilities are not just civil matters** – they can also land you in the criminal court



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Questions?

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Thank You

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