

# A

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# Access

## Introduction

Every property occupier needs to allow access to those working at the facility – and needs to control or prevent access to others. In addition, access rights (increasingly on a forcible basis) are possessed by many regulatory bodies. Control thus needs to be exercised over all access in the interests of security, safety and confidentiality.

## Types of access

Those gaining access can be divided into five categories:

1. Those who are employed at and/or are required to visit the premises in the ordinary course of their or the occupant's business e.g. employees, suppliers, visitors. If members of the public need access (e.g. to a theatre, sports stadium, doctor's surgery etc.) this adds an additional sub-category.
2. Those who own the business (for example shareholders) who have a number of rights of access – mainly to inspect statutory records.
3. Members of the public and creditors of limited companies who have rights of inspection of statutory records.
4. Official/regulatory bodies whose representatives are entitled to gain access under authority vested by statute, contract etc.
5. Trespassers.

### 1. Employees and visitors

The most numerous of those requiring access are employees, and visitors related to the organization and/or with the goods or services being produced. Whilst few organizations would wish to unduly restrict such access, there may be occasions when general and/or particular restrictions to 'sensitive' areas of the premises may be essential. Procedures (see JANITORIAL DUTIES)

should be developed and promulgated so that employees are aware of such restrictions. This is particularly relevant to computer suites (see ELECTRONIC SECURITY) and to those organizations vulnerable and attractive to TERRORISTS, or to industrial espionage. Electronic access equipment may not only solve some of the security problems but may also provide employees' attendance records and input to payroll.

## 2. Owners

Shareholders in limited companies have a number of rights of access allowing them to inspect the following statutory registers:

- Members or shareholders \*\*
- Overseas branches \*\*
- Directors and secretary \*\*
- Directors' share interests \*\*
- Significant shareholdings \*\*
- Disclosure of holders under section 212 \*\*
- Charges \*\*
- Debenture holders
- Transactions not disclosed in the accounts under Companies Act 1985 section 330

as well as:

- minutes of general meetings, and
- directors' service contracts.

These documents and registers must be made available for a minimum of two hours each working day. A procedure similar to that devised for employees' access might be advisable.



### Procedure example: Shareholder access

1. Those wishing to inspect company records may do so only between [time e.g. 9.00am and 11.00am].
2. They must register in the same way as other visitors but in addition will be asked for evidence of their shareholding.
3. On receipt of such evidence (ideally a share certificate) the Company Secretary (or a person in his/her department) will meet the visitor.

4. Having checked with the Register of Members that the visitor does have shareholder rights, the shareholder will be escorted to [location].
5. The shareholder will be asked which document and/or registers they wish to inspect and (assuming these are subject to inspection results) these will be presented for inspection. On no account will the person dealing with them leave the item with the shareholder.
6. If the shareholder wants a copy of the item, the standard charge allowed by law will be levied.
7. Once the inspection/copying has been completed the shareholder will be escorted back to Reception.

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This procedure envisages that the records are kept in hard copy. They may, however, be computerized and indeed, since most of these records are available virtually instantly in electronic form via the duplicate records kept at Companies House, such physical inspections are likely to be very rare.

Under the Companies Act 2006 access to the Register of Members can be resisted if the company feels the reason for the inspection is not 'fit and proper'. Reasons for refusing access could include:

- unlawful purposes – e.g. to commit identify fraud.
- members could be harassed as a result.
- members could be subject to the promotion of investments and/or unrequested mailings.
- reclamation of unclaimed assets where the information required is not in the interests of the members.

### 3. Public and creditors

In the above list those registers followed by a double asterisk must also be made available to the public.

Again it may be helpful to draw up a procedure to ensure such requests (likely to be even more rare than those made by shareholders) are dealt with efficiently.

### 4. Official visitors

Many regulatory organizations have rights of access to the premises for the purpose of inspecting records and checking legal compliance. Other organizations may have similar rights derived from contractual relationships (e.g.

because the premises occupied are leased, and/or because of membership of a trade or similar organization and so on). The principal bodies having such rights are set out below. Receptionists should be briefed on the manner of dealing with such persons.

i) Government and statutory regulatory agencies

Department of Business, Innovation and Skills (DBIS), Financial Services Authority (FSA which took over the role of the Self-Regulatory Organizations SRO), Serious Fraud Office (SFO), European Union competition law inspectors (EU).

- **DBIS** has power to investigate company affairs, ownership, dealings in shares, including insider dealing. Exact nature of investigation should be ascertained.
- **FSA** has powers under the Financial Services Act to investigate the affairs of organizations required to register under the Act.
- **SFO** has powers, wider in many cases than those available to the police or SROs, to investigate matters of fraud likely to total in excess of £2 million and to be of public concern.
- **EU** – inspectors have rights (without notice) to enter the premises of organizations of member states under EU law, although it has been stated that, in doing so they should try to act in accordance with the laws of the member state (and in concert with the domestic regulatory agency) concerned.
- **Competition Commissioner** – The Office of Fair Trading has an obligation to investigate whether supplies of goods or services breach the principles of the Fair Trading Act 1973 i.e. whether control of a market is monopolistic. Under the Competition Act as enhanced by the Enterprise Act, the CC/OFT also have rights of access and enquiry regarding suspected price fixing, operating a cartel etc.

ii) Statutory reporting agencies

HM Revenue and Customs (covering the previous and separate responsibilities of the Inland Revenue, the Contributions Agency and Customs and Excise) (HMRC), Wages Councils (WC), Rating Authorities (RA), Pensions Regulator (PR).

- **HMRC** powers of access tend to be exercised by the Audit Department of the Inland Revenue Compliance unit, which has the duty of checking the validity of the way an employer has paid and deducted tax from employees. However, the new body also has wide powers of access in respect of VAT and duty collection and it is anticipated that in future

a single inspection will cover all areas under the aegis of this ‘super-regulatory’ body.

- **WC** officials have a right of access to check the display of the current Wages Council edict and to ensure payments etc., are being made in accordance with it.
- **RA** have access rights to check the valuation for the purposes of the Uniform Business Rate (or any appeal in respect thereof).
- **PR** has a right of access to check compliance with requirements – proper deduction and paying over of pension contributions, obligation regarding the provision of access to stakeholder pension scheme etc.

### iii) Emergency and utility services

Fire, Police, Health and Safety, Environment, and Factory Inspectorates, Gas, Water and Electricity utilities:

- **Fire** – right of access to premises mainly for the purposes of checking occupier’s compliance with the requirements of the Regulatory Reform (Fire Safety) Order 2005 and any requirements regarding fire safety made by an enforcement officer.
- **Police** – unless in the belief that a crime is about to, or is being committed, or in pursuit of a suspected person, (or with a search warrant) the police have no immediate right of access to premises other than with the permission of the owner.
- **Health and Safety Executive, Environmental Health Officers, Factory Inspectors** have a range of powers depending on individual industries. In addition, operators of large (and potentially hazardous) facilities are obliged (under the Control of Industrial Major Accident Regulations 1988) to file and keep up-to-date details of plans and emergency evacuations etc. which will require an interface with the appropriate department which may well wish to check the site.
- **Utilities** – have rights of access to read meters and, if leaks/breaks are suspected, to rectify on an emergency basis, which could even entail forced entry.

### iv) Others

- **Dept of Transport** – to inspect any transport operators licence and administration.
- **Local authorities have an increasing range of obligations** – particularly under the Food Safety and Environment Protection Acts.

- **Trading Standards Officers** – to ensure compliance with the relevant trading law.
- **Landlord and agents** – to inspect condition and use of premises, assess value for insurance, prepare dilapidations reports, etc., under the provisions of lease and/or licence.

## 5. Trespassers

Whilst trespassers are not present by invitation of the occupier and/or owner, the latter have obligations under the various Occupiers Liability Acts to them, particularly for the safety of children who trespass.

### Case study

In *Margereson & Hancock v J W Roberts Ltd*, the company was held liable to the widow of a man who had contracted a disease as a result of him playing, as a child, in the asbestos-ridden dust of a loading bay – where he had no right to be. Occupiers must be proactive to ensure trespassers safety is maximized and their own liability is minimized.

# Accommodation planning

## Introduction

Commercial property is usually required for occupation – the main subject here – but sometimes it is treated as a commodity and used for speculation. When used for occupation the organization should assess its requirements and seek a facility to suit (see RELOCATION) or should mould premises to suit those requirements.

## Basics

Property occupation can be expensive and an occupier's aim should be to minimize costs whilst maximizing the use of the space, purchased or rented, not only for the present but also for the projected term of occupation. An audit of present and future requirements (a 'space audit') should be completed identifying:

- projected growth (or otherwise). 'Space and people' forecasts should be projected as far into the future as possible,
- type of work, type of employees engaged upon that work and any special needs,
- history of space occupation. What has been utilized previously can be a guide (but only that) to what is required in the future,
- workflow, employee and departmental relationships. For instance, does the organization want open plan or individual offices (which may be a philosophical decision as much as anything else),
- technological requirements. In an increasing number of organizations employees need access to computer linkage, telecommunications etc.,
- comfort of working environment. If an employer wishes to obtain and retain the 'best employees', providing well-designed and suitably comfortable premises may be essential,
- costs – see BUDGETARY CONTROL and YEARLY PROJECTIONS.

## Layout

For offices, the choice is between individual offices (which would normally be accompanied by at least some open plan areas) and 'open plan' (with a minimum of, or even a complete absence of, individual offices). However, with an increasing number of people not being based permanently in the traditional workplace – either being in the field or HOMEWORKING etc. – both 'hot desking' (where there is no specific workstation allocated to an employee – they simply use whichever is free at the time of need) and 'hostelling' or 'hoteling' (where those not permanently located in the premises, book a workstation each time they wish to work at the location) are increasingly being utilized and thus these options may also need to be catered for:

- **Open plan: advantages**
  - higher occupancy per any given area
  - better interfacing, team building etc.
  - better energy consumption
  - fewer items of equipment, since there should be increased shared use
  - potential reduction of demarcation disputes and departmental barriers
  - better communication
- **Open plan: disadvantages**
  - reduced privacy, although this can be overcome to some extent by the use of private areas for common use
  - distraction from other employees' work, movement, phones ringing etc. It may be possible to reduce this by using noise absorbent ceiling tiles, carpets and free standing partitions
  - loss of status by managers. This may be more perceived than real – not least since effective leaders should not need such status supports
  - managers, since there is no physical barrier between them and their teams, may find themselves involved in dealing with routine matters
- **Private offices: advantages**
  - privacy and security increased
  - recognition of career progression and/or status
  - ease of control by virtue of perceived status of room allocation

- **Private offices: disadvantages**
  - increased space requirement
  - can create more distance between manager (leader) and team and thus reduce rapport (although an ‘open-door’ policy may offset this)
- **Hot desking: advantages**
  - minimizes the space required
  - permits greater investment (and thus should generate better quality) in each ‘workstation’
- **Hot desking: disadvantages**
  - not having an ‘allegiance’ to a particular location may reduce the user’s rapport with the organization (perhaps generating a feeling of being an outsider)
- **Hostelling: advantages**
  - minimizes the space required
  - allows greater investment in each ‘workstation’
  - being allowed to ‘book’ a dedicated workstation may overcome the disadvantage of the lack of ‘allegiance’ common with ‘hot desking’
- **Hostelling: disadvantages**
  - such external users may also experience a feeling of not being part of the organization

## Physical factors

That employees work best when they are comfortable and well-motivated should be self-evident. The workplace provider thus needs to address:

- *Heating and ventilation.* The provision of an appropriate working temperature is essential but sadly it must be said that it seems rare to find systems that can provide what is required. Often a so-called ‘air-conditioning’ installation seems to pump cooling air **into** the area (creating unwanted draughts) rather than extracting heated air **from** the premises (this improving the quality of the air generally).
- *Lighting.* Care must be given not only to the provision of an appropriate level of lighting but also to ensuring it does not create unwanted

reflections (for example, on VDU screens). To avoid the waste of electricity because lights are left on unnecessarily, convenient (or 'time-delay') switches should be provided.

- *Noise.* Performance can be impaired by excessive noise and thus noise absorbing ceilings, panels, flooring etc. may be needed to reduce noise to an acceptable level.
- *Colour.* Research indicates that output can be impaired by strident or 'clashing' colours. Neutral colours may be preferable.
- *Furniture.* Whilst expensive furniture may be unnecessary (unless a prestige environment is sought) a reasonable level of attractive, well-designed and ergonomically appropriate desks, chairs, filing and other cupboards and equipment should be utilized. Whilst many may be able to work well even in poor surroundings and with poor equipment and support, most will work more effectively and willingly with good surroundings and decent equipment.
- *Toilets and cloakroom areas.* To minimize unproductive time as well as for employees' convenience, such facilities (including facilities for the disabled) should be adjacent to each work area.
- *Refreshment areas.* To minimize unproductive time, (good quality) vending machines (or alternative facilities) should be located adjacent to each work area.
- *Access.* Increasingly employers are required to 'make reasonable adjustments' to allow the disabled to work productively, and thus consideration should be given to means of access – width of doorways, avoiding or circumventing stairs, lifts, hearing loops, notices in Braille, etc.

# Acquisition

## Introduction

Rights to property occupation, other than under licence, often entail a long-term commitment. Failing to appreciate the implications of such a commitment can come as an expensive surprise. The aspects and implications of the various types of occupation, covered in FREEHOLD, LEASEHOLD and LICENCE sections – should be referred to. Whilst the choice between the accommodation types may be predominantly a financial one there are a number of other considerations which need to be borne in mind.

## Types of occupation

### a) Freehold

The acquisition of freehold property entails a capital outlay which must be sourced and financed. However, investing in a freehold property may strengthen the organization's balance sheet since, in the long-term, property values tend to rise at around the level of inflation. Thus suppliers or creditors inspecting the balance sheet may derive some comfort from seeing such assets which, unlike most others, should appreciate. A freehold acquisition retains flexibility since:

- the business could raise capital on the property by means of a 'sale and lease-back' arrangement whereby, owning the freehold, the business sells that interest to a third party subject to the simultaneous grant of a lease to them of the premises (so that they retain occupation rights),
- subject to PLANNING restrictions and any restrictive covenants in the conveyance the owner can do with the property what it wishes.
- businesses operating an occupational pension scheme can reduce their levy to the Pension Protection Fund if they pledge property/ies to that scheme.

All aspects of the investment need to be identified and costed.

## ACQUISITION JUSTIFICATION FORM – FREEHOLD

ORGANIZATION \_\_\_\_\_

FREEHOLD ACQUISITION ASSESSMENT

Property address \_\_\_\_\_

Purpose \_\_\_\_\_

### A. RATIONALE

Is acquisition in plan? YES/NO\* \_\_\_\_\_

If NO provide complete rationale and explain effect on plan \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

If YES – is timing in accordance with plan? YES/NO\* If not provide explanation

\_\_\_\_\_  
\_\_\_\_\_

### B. COST

Purchase price £ \_\_\_\_\_

Purchase costs £ (fees for agents, surveyors, solicitors; stamp duty)

Fitting out costs £ (confirmed estimate)

Total acquisition costs £ \_\_\_\_\_

=====

Estimated annual charge £ per square metre/yard (so that an occupation cost per department can be calculated (see INTERNAL RENTS))

### C. LOCATION

Explain rationale for selecting this site. \_\_\_\_\_

\_\_\_\_\_

What is the planning authority's designated use for the area? \_\_\_\_\_

\_\_\_\_\_

What are prospects for disposal in long-term? \_\_\_\_\_

Any capital growth anticipated? YES/NO \_\_\_\_\_

If YES explain type of growth/period etc. \_\_\_\_\_

#### **D. USAGE**

Is whole property to be used YES/NO \_\_\_\_\_

If Yes – state annual income from purpose of occupation \_\_\_\_\_

If No – explain approach regarding surplus \_\_\_\_\_

Subletting – expected income (etc.) \_\_\_\_\_

#### **E. RUNNING COSTS**

Annual operating costs \_\_\_\_\_

(Provide analysis for duration of plan span of [specify]) \_\_\_\_\_

(Note: This could include the 'annual charge' (see B above), internal rent, cost of money or depreciation, statutory imposition reserve, etc.)

#### **F. ALTERNATIVE RATIONALE**

(That is provide an explanation of how the situation will be addressed if this purchase does not happen.)

#### **NOTES**

- i) Unless the proposal has been previously addressed within the planning process the whole rationale needs to be examined.
- ii) The means by which the operating department/unit etc. is charged for the occupation needs to be determined either by means of a proportion of the original cost price, or by an internal rent or depreciation charge etc.
- iii) The question of ultimate use or disposal should be addressed.

iv) The 'statutory imposition' reserve addresses the fact that increasingly commercial occupiers of property are required under legislation to carry out alterations etc., to their properties. For example:

- since October 2004, occupiers have been required to make reasonable adjustments to their premises to allow disabled access to members of the public;
- since November 2005, occupiers have been required to carry out an 'asbestos containing materials' survey of their premises and to protect any asbestos discovered from being disturbed;
- since April 2006 occupiers have been required to be pro-active regarding assessing FIRE risks in their premises.

All such requirements could, depending on the state of the building, be expensive.

## **b) Leasehold**

A lease grants a right of occupation in return for which the occupier must pay rent and other outgoings for the premises and keep them in a state of good repair and decoration for the lease term. A lease is a binding contract with many clauses including a number of COVENANTS which can be onerous and restrictive. The implications of all covenants should be fully appreciated, particularly as failure to comply may mean that the lessee can be in breach of the lease which could lead to loss of occupation, and the payment of compensation in respect of the unexpired term. A lease usually also grants a right to the lessee to a new lease when the old expires unless:

- the landlord wishes to occupy the premises himself or to redevelop them, or
- the lessee has failed to comply with the covenants, or
- the lease is agreed (with Court approval) to be outside the Landlord and Tenant Act (the legislation which protects the interests of lessees).

Subject to some provisions a lease may be able to be sold (assigned).

**ACQUISITION JUSTIFICATION FORM – LEASEHOLD**

ORGANIZATION \_\_\_\_\_

LEASEHOLD ACQUISITION ASSESSMENT

Property address \_\_\_\_\_

Purpose \_\_\_\_\_

**A. COMMITMENT RATIONALE**

Is commitment in plan? YES/NO\* \_\_\_\_\_

If NO provide complete rationale and explain effect on plan \_\_\_\_\_

If YES is timing in accordance with plan? YES/NO\* \_\_\_\_\_

If NO – provide an explanation \_\_\_\_\_

**B. TOTAL EXPENDITURE COMMITMENT**Expenditure: multiply commencing annual rent plus service charge (if any)  
by term of lease or term to option date (if any) \_\_\_\_\_

Projected additional rent and service charge from reviews \_\_\_\_\_

Total commitment (i.e. figure to be justified) \_\_\_\_\_

What alternatives are there to the lease commitment? \_\_\_\_\_

Can lease term be shortened and is this appropriate? \_\_\_\_\_

If there is no option to break, can one be introduced? \_\_\_\_\_

Possibilities of assignment (i.e. is lease marketable)? \_\_\_\_\_

Any possibility of acquiring freehold? YES/NO

If YES, what price?

### **C. ANNUAL RUNNING COSTS**

(Total annual expenditure inc. rent, rates, heating, lighting, statutory imposition reserve, maintenance, redecoration, dilapidation reserve.)

### **D. USAGE**

Is whole property to be used? YES/NO \_\_\_\_\_

If NO, can surplus be sublet? YES/NO \_\_\_\_\_

If YES what is expected income to offset annual costs? \_\_\_\_\_

If NO – explain rationale re. surplus \_\_\_\_\_

### **NOTES**

- i) The requirement for prospective occupiers to state alternatives should approval for occupation not be granted is used widely in the USA. Such alternatives could, for example, include:
  - a) a bought-in service
  - b) short-term licensing
  - c) outsourcing
  - d) outworking, and so on.
- ii) The requirement to consider the implications of commitment to a long-term lease is mainly to underline that very point i.e. it is a long term commitment and any method of achieving flexibility should be considered.
- iii) See the notes to the Freehold acquisition form for other guidance to the questions asked above.

### **c) Licence**

This is simply a ‘right to occupy’, usually only for a short period. Similar covenants to those in a lease may be contained but without any right to renewal of occupation at the end of the term. Occupying premises under licence provides little security, although usually it does have the advantage of low cost. It is very unlikely that the rights under a licence could be transferred.



## Pre-commitment checklist

1. **Location:** Ideal locations are rare, but unless the required parameters are identified it will certainly be unlikely to find the ideal (see RELOCATION).

There are a number of initiatives operated either by the State (DTI Enterprise initiative, Urban Regeneration), by local authorities (Enterprise Zones) and the European Union (Special Assistance Areas) giving financial assistance to businesses prepared to move to certain areas where employment is required. The Department of the Environment has issued over 20 guides giving information about development policies in various areas.

2. **Area:** Before making a decision, the long-term future of the area should be considered. Is it likely that, should the organization wish to dispose of the premises in the medium future, that there will be a market for such premises in such a location? If not, the possibility that disposal may be costly (or at a discount) needs to be borne in mind as part of the acquisition cost assessment. The position regarding Registration of Land on which the building stands should also be investigated. Although an increasing proportion of land in the UK is now registered (i.e. details of position, history, ownership, restrictive covenants etc., are on record with the Land Registry and allocated a Title Number) sizable areas (including much of London) are not yet registered which may make the investigation of title more difficult.
3. **Type of property:** Whilst using a property that fits the exact requirements of the organization is ideal, if such requirements are very unusual and the property is customized it may be difficult to dispose of it. Using a listed building may add to an organization's image, but there are severe restrictions regarding use and alteration of such a property – and its value on disposal may be reduced accordingly.
4. **Pre-acquisition survey:** Since failing to establish the true state of the property could prove costly, a full structural survey should be commissioned, despite the cost. This is especially the case with property subject to a full repairing lease. Under the terms of such a lease the landlord can force the lessee to rectify repairs etc., but if the clause states 'put and keep repaired', the lessee's obligation is extended, and

requires the lessee to bring the property to a fair state of repair no matter how dilapidated it may have been initially (and how blameless the current lessee is for its state). Establishing the state of the building enables the purchaser to take a commercial decision in recognition of such potential obligations. Indeed, the existence (and results!) of a professionally compiled and costed survey may be a valuable negotiating factor in arriving at the determination of price, rent and/or premium.

5. **Inherent defects.** Another advantage of the survey is that it may disclose any inherent defects in the building which, through negotiation, may be taken out of any commitment as far as rectification and/or repair.
6. **CONDITION SCHEDULE:** Such a schedule may also be negotiated to minimize onerous repairing/rectification obligations in a lease. An agreed schedule of the state of the property should minimize the lessee's obligations to repair to that state (and no better).
7. **COVENANTS:** The full effect of all the covenants required to be included in the lease should be explained to those who will actually operate in the building in case any (for example, unduly restrictive opening hours) would inhibit the required use of the building. Someone fully aware of the effect of covenants on the practical aspects of operating in the premises should review ALL covenants before commitment.
8. **PRIVITY OF CONTRACT:** If these requirements or their equivalent are included in the lease, permission for the lessee to sublet or underlet as an option to assignment should be insisted upon. In this way, should the premises become surplus to requirements, and an alternative occupier be found, the lessee can sublet or underlet (rather than assign), knowing that should the new occupier fail, they retain rights (usually lost in the event of assignment) to re-occupy and/or to re-let.
9. **PLANNING:** Any restrictions placed on occupation by planning consents and/or conditions, and/or covenants contained in the conveyance need to be fully appreciated (and costed).
10. **Acquisition costs:** As well as the actual purchase price, all solicitors' and agents' costs, stamp duty, land tax, insurance etc. should be built into the budget. For leasehold premises, some organizations require justification of the total rental exposure for the term of the lease (ignoring or including reviews) because this is the total commitment being entered into.
11. **Acquisition concerns:** When an organization acquires land or buildings, enquiry regarding pollution should be made. Land may previously

have been used by organizations that contaminated the land and under the Environment Protection legislation if the polluter cannot be found then the occupier is responsible for an expensive cleansing of the land. Since knowledge that the land is polluted may not be realized for some time it may be advisable to insure against this risk. Alternatively it may be possible to obtain an undertaking from the vendor to hold the purchaser harmless from such costs.

12. **Occupation costs:** The full costs of occupying and running the facility need to be assessed and justified. In a relocation, the current costs of heating and lighting may be extrapolated (to take account of buildings of different sizes and/or configurations). If an existing building is being acquired, enquiry of the previous occupier may also provide a guide to these costs. Obviously the effect of building costs as well as the investment, depreciation etc. must also be taken into account. If the use of the building – or its configuration in terms of occupation – is to be changed, the question of the RATING valuation – and any appeal – should also be considered. It may also be necessary to check whether there is any breach of user or PLANNING requirements.
13. **Access,** car parking and relationships with NEIGHBOURS should be investigated: Where access could be denied e.g. because of (for example) fire of a neighbouring building, insurance against ‘denial of access’ (a particular consideration if a unit is for example in shared facilities such as a tower block, retail centre or park) should be considered and costed.
14. **Personnel:** Staffing costs and employees’ travelling conditions may need consideration.



## Commitment checklist

1. **Customizing:** Rarely will any building be ideal for immediate occupation and most will require some customizing. Such works need to be approved under building regulations and comply with the requirements issued in accordance with the latest fire precautions regulations. Where the occupation is leasehold the approval of the landlord must also be sought prior to any works being effected whilst the obligations under any REINSTATEMENT requirements should be assessed.
2. **Works approval:** Landlord’s approval can be obtained either formally (under a LICENCE to carry out works or a Deed of VARIATION) or

informally (by the landlord signing copies of the plans and specification setting out the work to be conducted). Usually the formal route is required which will not only require a deed to be drawn up, but will also set out conditions regarding the works and an obligation on the lessee to REINSTATE the premises on lease termination. This requirement can have a triple cost: payment for the works, payment for them to be removed at lease termination and, since the premises must be left in a good state of repair, payment to make good.

3. **Funding the works:** Such costs can be met by either party. If the landlord pays, the costs could be recovered by the rent being increased. Although this makes the relationship somewhat 'tidier' since the lessee is simply occupying a facility, the entire cost of which has been met by the landlord, if the rent itself is increased it may have repercussions at times of RENT REVIEW when the occupier needs to relate its rent to rents commanded by similar properties in the immediate area. The 'rentalised' costs may be better dealt with as a charge entirely separate to the rent (even if collected at the same time). If the lessee funds the works, then not only should the triple cost effect referred to above be borne in mind but also the lease should stipulate that the effect of the works should be ignored when the rent is reviewed. If not, the lessee, having paid for works which have increased the value of the premises, be asked to pay rent enhanced by the value of the same works. If the landlord resists this 'ignore the effect of the works at rent review' argument and requires the full value to be reflected at review either the landlord should fund the works, or some dilution of other covenants (e.g. repairing and/or reinstatement obligations) should be negotiated.
4. **Accountability:** Ideally completion of the acquisition phase should take place in sufficient time for customizing and setting up work to be completed before occupation. Rarely does this occur and usually there needs to be some compromise – often with employees trying to commence working whilst builders are still finishing. Usually the terms of a building contract will require the builder to take responsibility for the property during the works (and to effect insurance related to this). If staff from the employing organization occupy the premises before the builder has 'handed over', responsibility, in the event of any loss or damage, may be blurred. In addition, the builder may be able to disclaim any attempt to enforce any penalties for late completion by virtue of his staff being 'hampered' by the occupation.

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**WARNING:** When Henry VIII established the Church of England the obligation to contribute to the maintenance of 5,200 churches in England and Wales was passed to occupiers of land sold off as part of his Reformation. Properties built on such land have a potentially expensive liability (which can be insured against). This liability was confirmed by the Chancel Repairs Act 1932, although attempts have recently been made to abolish it. The exposure lasts until 2013 (when any charge not registered with the Land Registry will be extinguished), until when the point should be raised on acquiring a property. The Register of Ascertainments (kept at the Public Record Office) prepared for the 1936 Tithe Act could be searched for any liability.