



## **The problem with Dilapidations – by Simon Kennish**

Dilapidations is an area of Building Surveying that needs a good level of competence to be effective, however these days some people seem to be 'practising' in the literal sense of the word, generally with disastrous results.

I often see Schedules of Dilapidation that are ridiculous, these have been prepared by surveyors who are supposed to be competent, yet they get the basics wrong from the start, here are a few examples I have come across:

- Fail to consider a Schedule of Condition (SoC) if one exists. On a lease with a SoC attached and with a 'no worse condition than' clause, they still go ahead and list out every possible 'defect' they can find and totally over exaggerate the claim. Occasionally nearly 80% of the items are covered by the SoC and are struck out. However the tenant has still has to incur fees to consider this irrelevant detail, and the landlord thinks he is in line for big cash settlement only to feel disappointed when 80% of the items get struck out and the resultant loss of rent element massively reduces too.
- Schedules out items which are not in disrepair. Just because a component is old does not mean it's in disrepair. The landlord may want his property back in pristine condition up to a modern spec to enable reletting, but that isn't what dilapidations are about. So again, listing out page after page of items not in disrepair is time consuming, costly in fees and pointless.
- Fail to link the item in disrepair to the lease obligation. Sometimes surveyors think sending a refurbishment specification will justify the claim, with no attempt to link the item to the breach of the lease. Its basic but they just don't get it.
- Fail to consider a repair solution instead of a replacement solution. A component may be in disrepair, but can be brought out of disrepair with a simple fix, yet the surveyor has included full replacement. It could be a lack of understanding on what can be repaired, or a desire to have new for the landlord, either way it's not what is required under the lease.
- Ignores supersession or the landlords future plans for the property. A quick check of the planning portal will reveal any planning application, which could render most if not all as superseded.



- Fail to understand basic Health & Safety legislation or statutory requirements. Time and again I see items that ask for an NICEIC Certificate for electrical installations, however the legal obligation is the Electricity at Work Act which is a very different thing altogether. Another one that regularly appears is for a Fire Risk Assessment, whilst we have them whilst the tenant is in occupation, there is no obligation once they are not in occupation, yet surveyors feel compelled to ask for one, which shows how little they know about H&S issues.
- Inflated Costs – these are just annoying, really basic surveying skills go out of the window as the cost for an item doubles or triples what it should be worth. Easily challenged, yet it takes time and fees to remove these over inflations.
- Finally, there is the difficult position where an inexperienced surveyor has got it wrong but does not seem to know this and will not accept that fact when it is highlighted by a more competent and experienced surveyor. They fail to listen and reflect on the advice given, or even go and check themselves, which then results in them taking an entrenched position. The result is further protracted discussions until someone with more experience, understanding and competence instructs them what to do. The same can also be said of some legal representatives, who just do not seem to understand how dilapidations work and appear to be providing poor advice to landlords.

The result of all the above issues is that tenants and the professional advisers have to spend time and fees to remove these silly errors before the real negotiation begins.

One thing to note is that the RICS Dilapidations Protocol was supposed to have removed all these issues from the process, maybe the surveyors should read carefully the Statement of Truth they sign at the end of the Schedule. It would be interesting to see a few surveyors before the court on a perjury charge or before a Professional Conduct Hearing to focus the mind.

Overall, submitting a Schedule of Dilapidation that is clearly wrong in many areas makes the surveyor look incompetent, whether it's a lack of skills, knowledge or experience is hard to tell. Or perhaps it's a more sinister effort to defraud the tenant.

So please, if you are a landlord, pick a good dilapidations surveyor, one who knows his subject well, and produces a realistic schedule. If your surveyors schedules are being reduced by 80% from service to resolution, then something is very wrong indeed.



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