

JCAS LEADER
PARTNER
CHARTERED BUILDING SURVEY



Dilapidations

For many, Dilapidations are a most divisive subject, embroiled in centuries of English Case Law and statute, that often leaves one of the protagonists in a substantially worse financial position and feeling that they have been wronged. This is no longer the case

Following the Wolf Reforms, Lawyers and Surveyors have revolutionised the Dilapidations process with the introduction of the Property Litigation Association's pre-action protocol for claims for damages in relation to the physical state of commercial property at the termination of a Tenancy. Whilst the Landlord and Tenant has no legal obligation to follow the Property Litigation Association's protocol it is widely received as being an appropriate way to resolve any Dilapidations dispute which occurs during or at the termination of a Lease.

Lucas Lee & Partners are well versed in the protocol which is used to determine the facts of each case and we are members of the RICS Dilapidations Forum. This, in turn, ensures compliance with the Civil Procedure rules resulting from the above mentioned Wolf Reforms. Whether acting on behalf of a Landlord or Tenant, our primary aim is to ensure a fair and amicable settlement to avoid the need for Litigation. Whilst we recognise the benefits and strict adherence to appropriate protocol in dealing with Dilapidation strategies, Lucas Lee & Partners do not lose sight of the fact that a commercial view is of paramount importance.

For more information on dilapidations see the following fact sheets:-

The Key to Successful Resolution of Dilapidations - Tenant

The Key to Successful Resolution of Dilapidations - Landlord

Dilapidations - The Key to Successful Resolution of Dilapidations - Tenant

The most beneficial thing that a Tenant can do to mitigate a Dilapidations liability is forward planning. This can be addressed at acquisition stage when considering a Lease and assessing the potential short and long term Dilapidations liabilities with a Building Survey Report, or by planning for costs of building maintenance which will be required during the term of a Lease to ensure that breaches of covenant are prevented with a strategic planned maintenance programme. We can ensure that you receive the best possible advice to ensure that Dilapidations liability is either mitigated or appropriately managed.

Despite the introduction of the pre-action protocol, there are still many Landlord's submitting inappropriate claims. Once a schedule has been served we will ensure that the claim is fair, reasonable and above all legally valid. We would then go on to negotiate between Landlord and Tenant to ensure just settlement.

In the case of an Interim Schedule, rather than a Terminal Schedule, the Tenant may seek relief under the Leasehold Property (Repairs) Act 1938 if the overall term is longer than seven years and there is more than three years left to run before determination. By using this Act, relief can often be sought from all items other than those which affect the Landlord's reversionary interest.

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Dilapidations
License for Alteration
Building Reinstatement Valuation

Dilapidations - The Key to Successful Resolution of Dilapidations - Landlord

Being well versed in Dilapidations means that Lucas Lee & Partners can effectively represent a Landlord whether it be for drafting an Interim Schedule of Dilapidations to ensure that an investment is managed and protected in the long term. Or, in the alternative, at the end of the term when a Tenant, as so often is the case, has simply ignored their covenant, leaving no option other than to recover the cost of any breach as damages.

Our primary advice is to forward plan, ensuring that an appropriate Terminal Schedule of Dilapidations is served within the last three years of the term with an appropriate timescale for a Tenant to undertake the works. Should the Tenant fail to adhere to this Schedule, then the case against them is significantly bolstered should any breaches remain at the termination of the Lease. In either case, we will ensure that a detailed survey is undertaken to cover all breaches in covenant together with consequential losses, such as loss of rent, fees for implementation of the works (depending on Lease terms) and mesne profits.

In the rare event that we are unable amicably resolve a Dilapidation claim, we work closely with a number of Property Litigation Association Lawyers, specialising in this area to ensure that a claim is effectively resolved and that a Landlord is not left out of pocket as a result of a tenant failing to adhere to the terms of their Lease.

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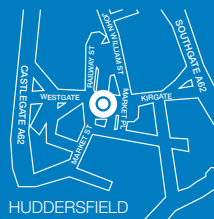
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CHARTERED BUILDING SURVEYORS

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