

Dilapidations One

Overview and

Schedules of Condition

Dilapidations in Six Lectures - Overview

1. Dilapidations Overview and Schedules of Condition
2. Schedules of Condition, Dilapidations and Scotts schedules
3. Leases and RICS Guidance and Protocol
4. The Legal Framework
5. Clients and Terms & Conditions - Everything together
6. More Dilapidations

My Goals

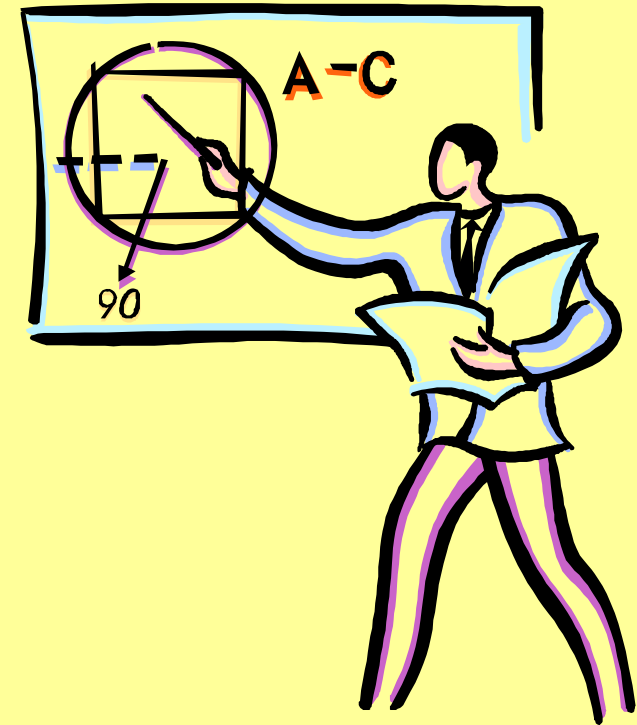
To share my surveying experiences, and develop your knowledge of dilapidations.

To develop our problem solving skills and our negotiation skills, together with increasing our property knowledge, and to make you useful to a property investor / Business owner or become one!



Format

- The first part will be my presentation (but it will need some participation from you!).
- The second part will be a tutorial – active learning.



Today - Now

- Dilapidations overview
- Leases and Legal framework
- Controllable assets
- 360 photos and DVD
- Schedules of Condition

Question: Anyone with experience of Dilapidations or Schedules of Conditions?

Today - Now

- ❖ Schedules of Condition property visit
- ❖ Course work assignment, oral presentation on dilapidations topic

Resources available to you:

- RICS Dilapidations guidance notes, www.DilapsHelp.com.
- And everything in the library - see reading list

For Next Week

1. Research good websites on Dilapidations and Schedules of Condition

OR

2. Bring any Dilapidations or Schedules of Conditions that you have been involved with or know of

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Dilapidations Overview



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Dilapidations Defined

- Dilapidations are all about leases,
- the rights and responsibilities the landlord and tenant have relating to these
- and how they then settle any disagreement.



Leases and Dilapidations



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Leases

You probably already have one!

Ownership or Contract / Leases



Mobile phones – (is it switched off! And do you know how to use the photo and record function?)



Leasing Residential or Commercial



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Would you rent this?



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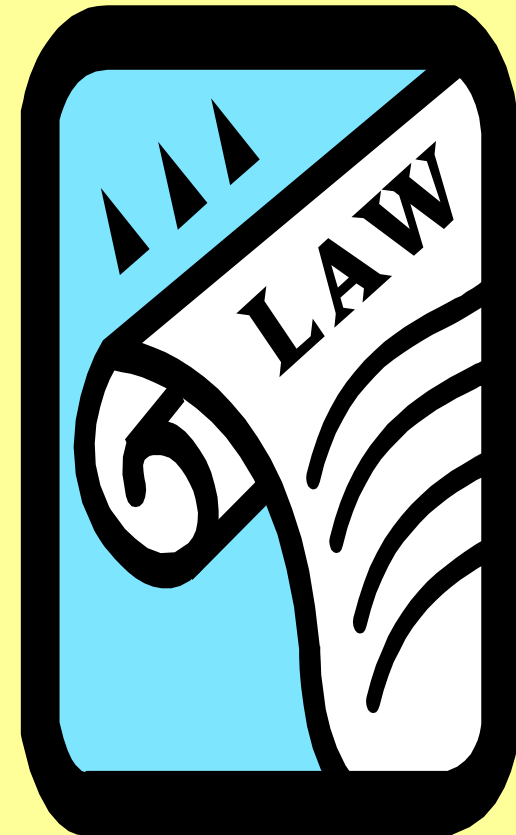
Residential

- If it's a house?
- Tenants' protection
- Landlord and Tenant Act 1985, amended in the Housing Act 1996.
- Assured short hold tenancies which limits what the landlord can do



Assured Short hold Tenancies

- 'Short hold' means less than seven years
- Landlord's responsibilities are set out in the Landlord and Tenants Act and some case law



Usually Landlords' Responsibilities Landlord and Tenant Act



- Structural and exterior repairs
- Heating and water installations
- Repairs to basins, sinks, baths
- The terms in a lease are known as covenants

Landlord Legal frame work



Landlord and Tenant Act –

is also cross referenced to other Acts

Some Examples of other Incorporated Requirements:

- Furniture and Furnishings Regulations 1988 - must meet fire safety unless made before 1950
- Gas Safety Regulations 1998 - CORGI approved
- Electrical Equipment (Safety) Regulations 1994

So, a lot for the landlord to comply with in the housing market thing are different in the commercial sector

Residential Tenants' Responsibilities



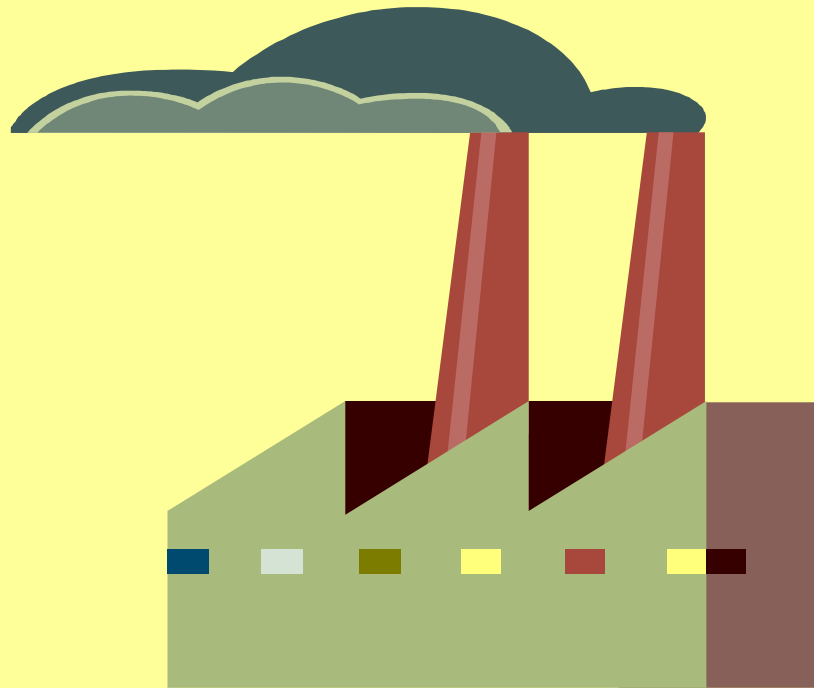
- Must use the property in a responsible way
- 'Responsible' is an interesting word!
i.e. unblock blocked sinks
- Pay Water and sewerage charges
- Pay Council Tax
- Pay Rent

Example pages from an Inventory of Contents and Condition

LOUNGE			
DECORATION			
INVENTORY	DESCRIPTION	CONDITION	COMMENTS
CEILING	White emulsion to swirl patterned artex Coving: painted white emulsion	Clean. Metal hook hanging from RHS corner. Paint marks.	
WALLS	Magnolia emulsion to lining paper at lower level and lighter shade above dado to plasterboard. Dado rail painted off-white gloss	Furniture marks behind settee. Scuff marks. Finger marks. Dirty. Paper lifting behind radiator and paint behind radiator has crazed. General marks. Paint mark to wall in window recess. Fixing nails and holes behind wall pictures. Dado is dusty and marked.	
SKIRTING	White gloss to timbers	Dirty and dusty. General marks.	
FLOORING	Oak style laminate flooring	Dirty marks and dusty. Scratch marks. Areas where laminate has chipped. Large chip on RHS in front of settee 145cm from kitchen door. Small mark about 30cm from kitchen door. Small hole by bottom step of stairs.	
DOORS	2 Cream gloss 4 panelled hollow core doors leading to hall and kitchen	Dirty. 2 small nails painted over on top frame around kitchen door. MCA.	
WINDOWS	Double glazed stained timber framed window to front aspect. Sill painted white gloss.	Dirty. No cracks. Timber frame is paint splattered where meets sill. Few marks to sill. Paint marks to timber.	

FIXTURES		
INVENTORY	CONDITION	COMMENTS
1 Double panelled radiator painted white gloss with TRV	Chips. MCA.	
Centre ceiling light point	Working	
FITTINGS		
2 white china twist door knob with gold coloured ring pattern on brass plate to hall and kitchen	Paint splattered hall	
1 Single light switch	Working	
1 low level fused switch	Not Tested	
1 FM and TV aerial point	Not Tested. Paint splatters.	
1 BT telephone point	Not Tested. Paint splatters.	
1 flush fitting circular ceiling light with wooden back and plastic opal plastic shade and 3 bulbs.	Working	
1 plastic slide curtain track and pelmet rail	Both paint splattered and dirty. No pelmet attached to pelmet rail. Curtain track is missing a stop on one end, therefore curtain hooks can slide off and curtain has pulled away from track on end.	
1 pair of orange mottled lined curtains with lettering pattern.	Copyright of 1stAssociated.co.uk not to be used in any format without express written permission MCA.	

If it's a Commercial Building



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Legal Frame work for Commercial Property



- Law of Property Act 1925
- Landlord and Tenant Act 1927
- Leasehold Property (Repairs) Act 1938
- Occupiers Liability Acts (1957 and 1984)

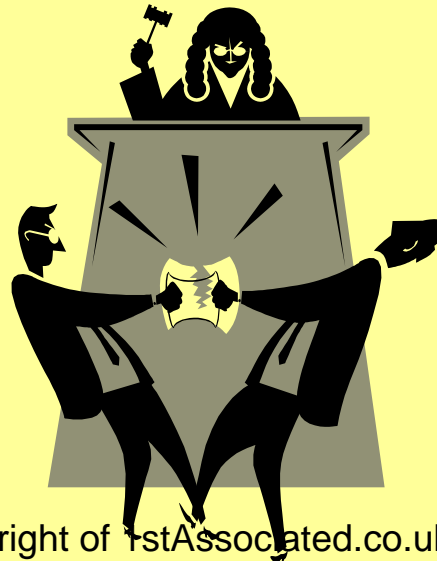
Leases Summary

- **Residential**
 - House
 - Flats
- Standardised lease known on an ASTs limited building styles of design and construction
- **Commercial Buildings**
 - Leisure
 - Industrial
 - Retail
 - Offices
 - Care Sector
- Modern leases typically FRI leases but can be negotiated sometimes



Dilapidations Defined

Dilapidations are all about leases, the rights and responsibilities the landlord and tenant have relating to these, and how they settle any disagreement.



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Dilapidations Claim



- It occurs when a landlord has leased a property to a tenant and the Landlord feels the tenant has broken (breached) the lease agreement / covenants.
- The Landlord will try and recover the costs of putting the property into the condition set out in the lease by a Dilapidations claim

Tenant / Business Owner Protection



Negotiate using a Survey and a Schedule of Condition.



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Controllable Assets



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Understanding your clients



- Why do landlords invest in property?
- Why do tenants take leases?

Controllable Assets

- Landlords / Property Investors



and

- Tenants / Business owners



- aim to buy / build or grow controllable assets

Landlords' Controllable Property Assets



RENT

- Landlord / property investor buys a property asset, it should offer a positive income,

CAPITAL GROWTH

- and potential to increase in value
- An Increase in capital value is partly a function of the market and partly a function of control via rental values

CONTROL

- The positive income / rent is controllable and manageable under the associated property Acts and case law and lease and Dilapidations are the controls the landlord has.

How Surveyors can help the Tenants



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Tenants are Business Owners



- Tenants aim to build / grow controllable business assets
- Business owner / tenant looks to develop a controllable income generating business

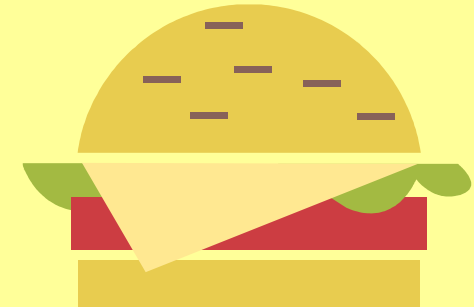
What is a Business Asset?



- A true business asset will run itself.
- Property is an element within the business that needs to be controlled, a Schedule of Condition is a way of controlling Dilapidations for a tenant.

What's McDonald's?

Is McDonald's a business or a property company, or is it both?



❖ A Burger Company

➤ Makes a Percentage on sales

❖ A Property Company

➤ Leases buildings for rent income

❖ Roy Crocs left millions to charity

Tenants and Buying Leases



- The Tenant is after somewhere to run his business from.
- Typically they will make an initial offer based on a **Heads of Terms**.

HEADS OF TERMS OF PROPOSED LETTING

Address of Property to be leased

Landlord: Landlord's name and
address details

Landlord's Solicitor: Landlord's solicitor's
name and address details

Tenant: Tenant's name and address
details

Tenant's Solicitor: Tenant's Solicitor's name
and address details.

Terms:

1. **Subject to Contract.**
2. **Demise**
All those premises known as **Address of Property**
3. **Lease**
For a term of 12 years on full repairing and insuring terms with rent reviews at 4 yearly intervals.
4. **Tenants' Break Option**
The tenants to have break options at the end of Year 4 and Year 8 on not less than 3 months' written notice.
5. **Rent**
£32,000 per annum exclusive with 3 months rent free at the commencement of the term.
6. **Rates**
Rateable Value £17,750.
Rates payable £ - £8,200.50.
7. **References**
 to obtain the usual references.
 Solicitor
8. **Sureties/Rent Deposit**
As part of the negotiations it has been agreed that the Landlord will require a rent deposit.

In order to take the property off the market, the proposed tenants have paid a non-returnable reservation fee of £5,000 to the landlord's solicitor. This £5,000 will be used as part payment of the rent deposit should the transaction proceed to a satisfactory conclusion.
9. **VAT**
The Landlord has elected to waive its exemption and VAT at the standard rate is payable by the occupiers on the rent and all other costs where applicable.

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Offer



- If the offer is accepted
- They may have a survey done and a Schedule of Condition

Tenant – Schedule of Condition

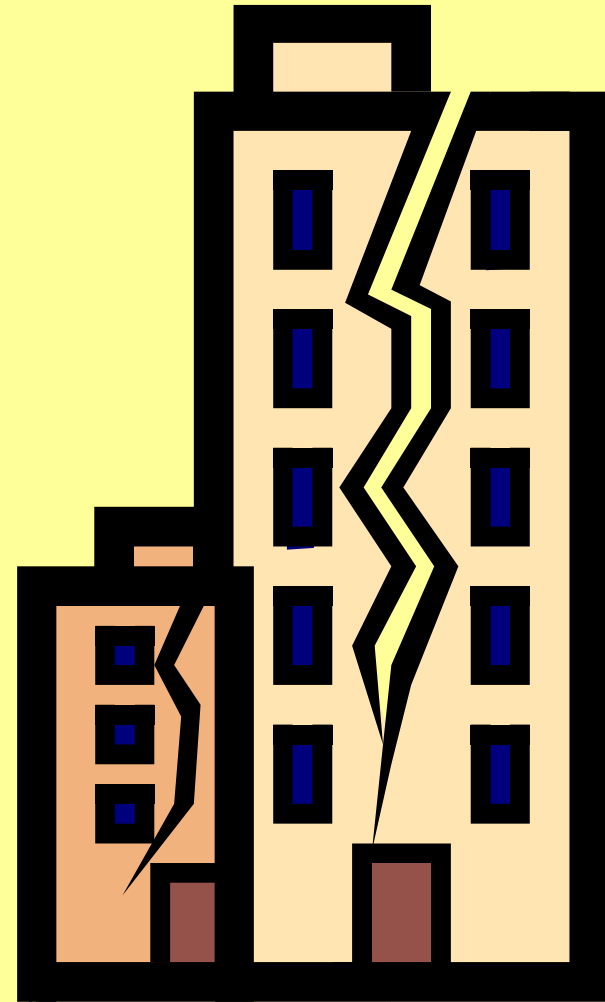


- Tenants / business owners protect themselves by having a Schedule of Condition prepared.
- A Schedule of Condition is a record of what the property is like at the time the lease is taken on.

Schedule of Condition

A Schedule of Condition is a record of how the property looks at a set date.

Or is it?



360 Photos



Example of what to look for on a property

👁️ What would a Landlord's surveyor see?

👁️ What would a tenant's surveyor see?



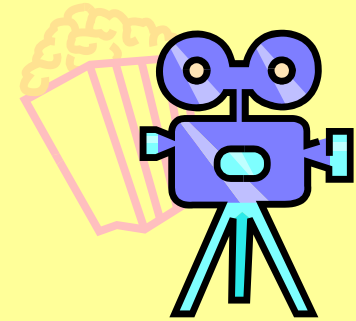
Schedule of Condition

Your turn, what the tenant sees



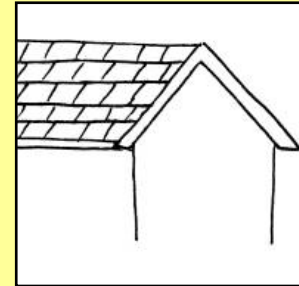
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DVD Time

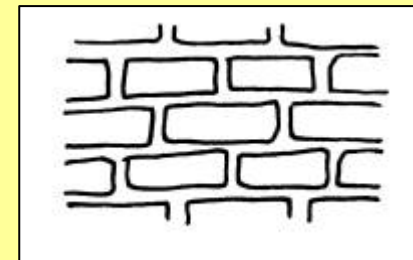


- Write down what you see in a structured format
- Working from the top to the bottom
- Think about implied covenants and express covenants

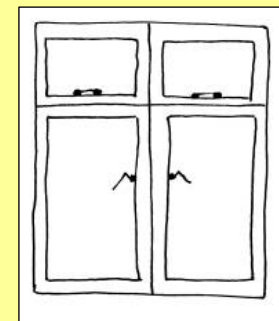
- Top - Roof



- Walls – Sides

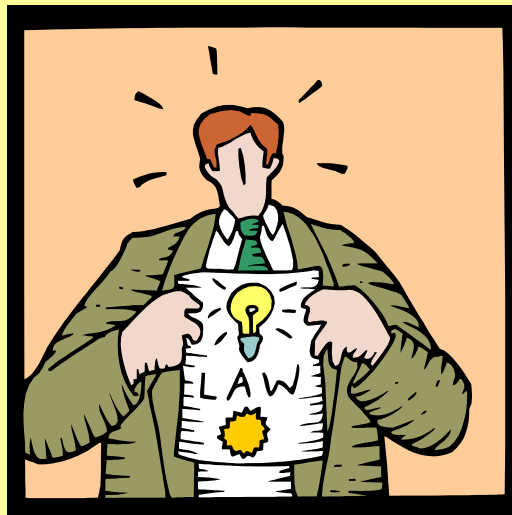


- Windows - Windows



So you need some rules!

The rules are called covenants



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Covenants

Express covenants – are contained in the lease, for example 'Redecorate the building every three years', and are a contractual obligation. Which is what Dilapidations relate to.



Implied covenants – are outside the lease and are implied

Let's look at a real building



Working for the tenant / business owner

We prepare a Schedule of Condition

Write down what you see

- Write down what you see
- Work from top to bottom
 - Top – Chimneys and roofs
 - Elevations – walls
 - Windows – joinery
 - Inside – inside!



Example of an External Section of a Schedule of Condition

<u>Name the ELEVATION</u>		
DESCRIPTION	CONDITION	ACTION REQUIRED
Chimneys:		
Roofs:		
Gutters and Downpipes:		
Walls:		
External Joinery:		
General Comments:		

Example of an Internal Section of a Schedule of Condition

<u>Room</u>		
DESCRIPTION	CONDITION	ACTION REQUIRED
Ceilings:		
Walls:		
Floors:		
Joinery:		
Services:		

Dilapidations Example

Schedule of condition for you to review

Schedule of Condition

Example of a few External Pages from a Schedule of Condition

FRONT ELEVATION



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FRONT ELEVATION		
DESCRIPTION	CONDITION	ACTION REQUIRED
Chimneys: Two chimneys (stone clad one to right hand side and brickwork one to left hand side)	Average condition	
Roof: Shallow pitched roof We can also see the flat roof.	Some tiles missing and also from our investigations there is rotten timber beneath.	Re-apply reflective paint and check for ad-hoc repairs.
Gutters and Downpipes: Box guttering, downpipes and Fascias and soffits	Leak to left hand side	Repair
Walls: Cavity brickwork Vertical tiling	Marks and old fixing works Some tiles missing	Clean and repair Replace
External Joinery: Front entrance door Casement windows	Marked and sill worn	Repair and redecorate Clean, repair and redecorate
Paved Area: Hexagonal concrete paved area with smokers tent	Damaged and dirty	In need of repair, replacement and cleaning
Signage and Lighting:	Copyright of 1stAssociated.co.uk Average, some marks. not to be used in any format without express written permission	General clean and touch up.

LEFT HAND GABLE END



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LEFT HAND GABLE END		
DESCRIPTION	CONDITION	ACTION REQUIRED
Chimneys: One brick chimney with two pots	Average condition	
Roof: Shallow pitched roof. Able to see flat roof.	Some repair work required to perimeter tiles and some minor moss.	Repair
Gutters and Downpipes: Metal	Leak to downpipe, causing moss staining	Repair
Walls: Cavity brickwork Extract fan	Average condition	Clean and make good Clean
External Joinery: Casement windows		Clean, repair and redecorate
Parking Area: Concrete parking with centrally placed drain.	General vegetation	Clean
Garage Garage with flat roof	Brickwork has a vertical crack from the ground to the roof and over garage door. Some decorate brickwork. To the side of the gates is brickwork that has spalled. and a movement crack between the brickwork of the gate and the main building	Replace
Boundaries: The boundary is surrounded by a wall, approx 2 metres in height.	Copyright of 1stAssociated.co.uk not to be used in any format	Repoint and general clean.

RIGHT HAND SIDE



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RIGHT HAND SIDE		
DESCRIPTION	CONDITION	ACTION REQUIRED
Chimneys: Large stone clad chimney with two chimney pots	Average	
Roof: Shallow pitched roof. Able to see flat roof.	Some repair work required to perimeter tiles and some minor moss.	Repair
Flat Roof: Asphalt	Some repairs visible	On-going maintenance
Gutters and Downpipes: Metal	Average	Repair and redecorate
Walls: Cavity brickwork	Some marks	General clean
External Joinery: Timber and metal windows at low level	Below average	Clean, repair and redecorate.

Schedule of Condition

Examples of some Internal Pages from a Schedule of Condition

**Front of House
Public Bar**



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Front of House - Public Bar		
DESCRIPTION	CONDITION	ACTION REQUIRED
Ceilings: Painted embossed and painted decked area	Average, some marks and scuffs	Repair and redecorate
Walls: Painted brickwork and painted plaster. Timber dado Bricks around bar and timber trim	Some marks Average General ingrained dirt	Repair and redecorate Repair and redecorate Repair, clean and redecorate
Floors: Vinyl wood look floor	Some marks and cigarette burns	Repair or replace

Back of House Catering / Domestic Kitchen



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Catering/Domestic Kitchen		
DESCRIPTION	CONDITION	ACTION REQUIRED
Ceilings: Painted panels, one roof light	Average. Some light fittings missing.	Repair and redecorate
Walls: Extract fan	Heavily marked	Repair and redecorate Clean
Floors: Vinyl	Dirty	Deep clean
Joinery: Entrance door	Damaged	Repair and redecorate
Catering Equipment: This is domestic quality catering equipment so we do not believe it will meet Local Authority approval. You and your solicitor need to carry out your own investigation..	Basic	Replace
Services: Electrics	We carried out a one off test in the kitchen and found it had an earthing point missing.	Have an Institute of Electrical Engineers (IEE) Test and Report

FIRST FLOOR – PRIVATE LIVING ACCOMMODATION

Lounge



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FIRST FLOOR – PRIVATE LIVING ACCOMMODATION

Lounge

DESCRIPTION	CONDITION	ACTION REQUIRED
Ceilings: Fibreboard	Marked	Repair and redecorate
Walls: Papered embossed	Dirty	Repair and redecorate
Floors: Carpet	Average	
Joinery: Metal style window (known as crittal windows) and French doors Entrance door	Damaged Impact damage	Repair and redecorate Replace

Divide



- Into groups of six.

Pick a Role

- Landlord
- Landlord's Surveyor
- Landlord's Solicitor

Or

- Tenant
- Tenant's Surveyor
- Tenant's Solicitor



Pick a Building



- Pick a local building, which could be a:
 - Café
 - Bar
 - Public building, such as a library, university or leisure centre etc.

It just needs to be open now and within walking distance.

Safety First

- Only go in groups
- Take advised route
- Complete Schedules of Condition
- Return via advised route
- Watch out for traffic!
Particularly when taking photos.



Suggestions

- McDonald's, Victoria Road
- Leisure Centre, Victoria Road
- Riverside Inn, Victoria Road
- The Wheatsheaf, Victoria Road

Victoria Road

All these are along Bishop Hill Lane
and New Road and left.

Duke Road

All these are along Bishop Hill Lane and
New road and right onto Victoria Road and
left at the end onto Duke Road

Questions you will be asked when you come back



- Where you went
- Whether you spotted any major defects
- Minor defects
- What the roof configuration is
- What the roof structure is like
- What the first floor is like (without actually going on to it)

Dilapidations Process

- ✓ Client rings for advice / quote
- ✓ Talk to client
- ✓ Confirm instruction
- ✓ Gather available information
- ✓ View property
- ✓ Prepare Schedule of Condition or Dilapidations report
- ✓ Advise and agree way forward with your client
- ✓ Meet other surveyor
- ✓ Negotiate and agree
- ✓ Negotiate and disagree and go to court

Question Sheet 1

- Why do we have leases?
- Why don't all wealthy businesses own the properties?
- Would you recommend the client leases your property?



Feedback Session



- ☐ Where you went
- ☐ Whether you spotted any major defects with the property
- ☐ Minor problems
- ☐ Problems in the next ten years
- ☐ Problems in the next twenty years
- ☐ What the roof configuration is
- ☐ What the roof structure is like
- ☐ What the first floor is like (without actually going on to it)

My Quote for the Day

‘Knowledge is Power’

or should it be

‘Applied knowledge is power’?

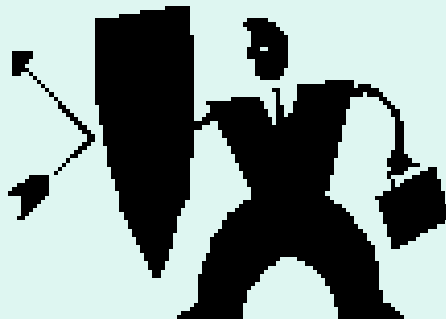
Next Week

The Dilapidations Game

It's not as simple as following the rules!



**The Dilapidations game –
OR – is it a battle?**



- ❖ Both sides can look at the same thing very differently

The Importance of Case Law and Exaggerated Claims by Landlords' Surveyors

You may be interested in the judgment in the case of *Business Environment Bow Lane Limited v. Deanwater Estates Limited [2008] EWHC 2003 (TCC)*.

The case concerns an exaggerated dilapidations claim where the claimant was a landlord successor in title with an assigned right to pursue dilapidations on a former tenant following the exercising of a break. The claim prepared by a Donaldsons surveyor (both a firm and individual named in the judgment) was originally for a little over £557k but was revised and reduced on a number of occasions to £414k by the time litigation was commenced and statements of truth accompanied the particulars of claim.

To cut a long story short the claim was based on works that were not undertaken and where alternative refurbishment works were instead implemented. After much prolonged wrangling a damages settlement was agreed at just over £1k but the parties could not then agree on the costs (£47k claimant, £36.5k defendant). The judge, His Hon Judge Toulmin CMG QC, took into account the 'reckless' and 'less than scrupulous' conduct of the claimant (and their advisers) in reaching his decision. The case determined the costs and granted indemnity costs in favour of the tenant defendant.

The salutary lessons are a) don't exaggerate in dilapidations claims and b) expect to suffer hefty costs awards against your client if you do!

Reading List

Dilapidations

West, W., Smith, P. and Huntsman, P. (2001) *West & Smith's Law of Dilapidations*, London: Estates Gazette.

RICS Guidance Note *Dilapidations*, : RICS on Isurv

Hollis, M. (2002) *Surveys for Dilapidations*, London: Estates Gazette

Dilapidations Letters Forms and Schedules. (2005). CD-Rom. RICS Publications.

Case in point Dilapidations Jason Hunter RICS book

Acts of Parliament: You will need to refer to a wide range of Acts , including

Law of Property Act 1925

Landlord and Tenant Act 1927

Leasehold Property (Repairs) Act 1938, as amended by the Landlord and Tenant Act 1954

The Housing Acts

Occupiers Liability Acts (1957 and 1984)

Legal Volumes: You will need to go to the library to look up references in the legal volumes

Sweet & Maxwell, *Handbook of Dilapidations*, with 2007 updates.

Halsbury's Law of England (Vol. 27)