

# **SURVEY REPORT**

**Dilapidations - review of the options  
XXXX Industrial Estate,  
Bedfordshire,  
SG18**



**FOR**

**Mr D**

**Prepared by:**

**INDEPENDENT CHARTERED SURVEYORS**

**Marketing by:**

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**0800 298 5424**

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## **INTRODUCTION AND INSTRUCTION**

We have been instructed by Mr D to prepare an independent report on the options available following the serving of a Dilapidations on XXXX Industrial Estate, Bedfordshire, SG18.

We have carried out a visual inspection (non evasive) of the property.

We are Independent Chartered Building Surveyors and professional members of:-

The Royal Institution of Chartered Surveyors (RICS)  
and  
The Independent Surveyors and Valuers Association (ISVA).

Report prepared by:

Chartered Building Surveyor

The work has been carried out as per our standard Terms and Conditions of Contract which have been emailed to you as part of the confirmation of our instructions. If you would like further clarification please do not hesitate to contact us.

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## **SYNOPSIS**

The lease has now ended on XXXX Industrial Estate, Bedfordshire, SG18 and you have had a Dilapidations served upon you. Dilapidations should be a list of all the things that the landlords/landlords surveyors believe are not to the standard set out within the lease.

The following report reviews your options. We offer common sense/business advice rather than legal advice and as such you will need to take further advice from your solicitors/legal advisors.

## **SITUATION AND DESCRIPTION**

This is a detached 14,500 sq ft unit which is partly warehouse and partly offices and associated facilities (toilets, shower and canteen).

We would estimate this property was originally constructed in the 1960's/1970's and updated with underlining of the asbestos roof.

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# **BACKGROUND**

## **1.0 Condition of Property**

From what we understand you have been in the property since March 2007. The property was taken on a full repairing and insuring lease (FRI). You advised the original condition of the property was poor but having investigated unfortunately there is no photographic record or a schedule of condition with regard to the properties original condition. This unfortunately leaves you open to a claim based upon the standards set out within the lease.

## **2.0 Alterations and improvements**

You advised that you have made various alterations and improvements over the years which we would be more than happy to discuss with the landlord/landlords surveyor such as:

1. New fire doors
2. A new roller shutter entrance



Tenant added fire exit doors



Tenant added roller shutter door

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**ACTION REQUIRED:** You do need to obtain any receipts and invoices that you have in relation to any work. From memory you advised that some of the work had been carried out by your own staff. You may well have time sheets that we could show as well. You need to advise how easy it is to find this information.

## **2.1 Maintenance**

Any evidence that you have that can show that maintenance has been carried out on the property such as receipts, invoices and timesheets would help discussions with regard to your lease liabilities. From our general discussions you advised that you carried out maintenance on:

1. Replacing the undercladding to the ceiling
2. Carrying out repair work to the walls.
3. Clearing gutters
4. Clearing flat roofs
5. Any redecoration work
6. Repairs to the car park

## **2.2 Landlords work**

You also mentioned that the landlords have carried out work to the property over the years in which case we could discuss that the standard of the work was set by the landlord. An example of this is:

1. Repair of the back wall and associated windows.

However equally the landlord/landlords surveyor would argue that you should have maintained from this point in time.

## **2.3 Work carried out following serving of final Schedule of Condition**

You advised that following the serving of the Final Schedule of Condition and the previous Terminal Schedule of Condition, general redecoration has been carried out throughout the property and cleaning, removal of vegetation and some cleaning of roof gutters.

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**ACTION REQUIRED:** Again, any receipts you have, invoices, time sheets, etc that we can prove this will be of benefit.

## **2.4 Quality of work**

One of the classic arguments with regards to a final Schedule of Condition is that the work required/carried out is not to the standard set out within the lease. Typically we find that most outgoing tenants are for obvious reasons carrying out work to what we would term as “Reliant Robin” standards whereas most landlords/landlords surveyors want work carrying out to “Rolls Royce” standards. The lease normally requires something in between this.

## **3.0 Considering your lease in more detail**

As stated, you have a Full Repairing and Insuring lease which basically means that you are liable for everything within the property including keeping it to the standard that is set out in the covenants. The covenants are legal terms and requirements within the lease. We have divided the lease into the following sections:

- Repairing covenant
- Redecoration covenant
- Reinstatement covenant
- Statutory Regulations covenant
- Fee covenant
- Yield up covenant

## **3.1 Repairing covenant**

The lease requires you to keep the property in “good and tenantable order”. As such this is above, from what we understand it, the standard that you took the property on at, nevertheless it is a requirement of the Full Repairing and Insuring Lease. The only way to have avoided carrying out work to this standard would have been to have had a Schedule of Condition of the property when you originally moved in in

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2007 that identified the standard of the property and this then became part of your Full Repairing and Insuring lease.

**ACTION REQUIRED:** Your legal adviser to confirm the standard of work required by the FRI lease that uses the term good and tenantable order.

### **3.2 Redecoration covenant**

Whilst there is the usual redecoration covenant requiring you to redecorate, unusually we cannot see any specific clauses with regard to timescale which we believe is helpful when discussing the standard of redecoration in the property.

### **3.3 Reinstatement covenant**

There is a reinstatement covenant within the lease which advises that you have to have an agreement with regard to the alterations. This would be for things such as the roller shutter door and possibly fire doors.

**ACTION REQUIRED:** Do you have any correspondence with your Landlord with regard to carrying out alterations such as the roller shutter door or adding of the fire doors, etc.

### **3.4 Statutory Regulations covenant**

This normally includes such things as providing an asbestos register at the end of the lease (it was noted that you have an asbestos roof). The property was originally built in an era when asbestos was commonly used; there may well be other examples of its use throughout the property.

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Typical Certificates that we would expect to be provided on the end of a Full Repairing Lease and which the landlord and the landlord surveyors would expect to see would be:

3.4.1 Electric certificate

3.4.2 Asbestos certificate

3.4.3 Anything with regard to maintenance of heaters, we are aware that you advised the heaters have never been used.

3.4.4 Likewise anything in relation to gas or oil, again, we are aware that you advised the gas is present but not been used.

### **3.5 Fee covenant**

From what we can see, as usual all fees will be paid for by the tenant including fees for the landlord's solicitors and the landlords surveyors, etc.

It is most important to remember that you are paying the fees for the landlords professionals as you can see the run up a large bill discussing costs.

### **3.6 Yield up covenant**

As far as we can see this is in line with the above covenants however it may be prudent in the future to take legal advice on this.

**ACTION REQUIRED:** Your legal adviser to confirm your yield up covenant is the same as the covenants within the lease, particularly as you are looking to ultimately take legal action with regard to this.

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## **EXECUTIVE SUMMARY**

Summaries are not ideal as they try to précis often quite complex subjects into a few paragraphs. Here we give a summary of the problem and our various suggestions on how to solve it and all costs it relates to.

### **1.0 The lease has ended**

As the FRI lease has ended the only solution legally is a monetary agreement. Re-entering the property to carry out any work is not usually allowed by the landlord. They normally give such reasons as insurance, etc, etc. At the end of the day most landlords, particularly in today's current climate, would like a monetary settlement.

### **2.0 Loss by the Landlord**

Loss by the Landlord has to be shown to be realistic under the Civil Procedure Rules Protocol (known as CPR Protocol) and the Landlord shouldn't be seen to be profiting from work that is carried out. However historically we feel it is fair to say that landlords have profited from dilapidations claims, particularly for example where they made a claim and got a monetary settlement from the outgoing tenant and then the new tenant going in carries out the work therefore this becomes pure profit to the landlord.

As explained earlier we normally find that the dilapidations discussions relate to landlords requiring what we would term Rolls Royce work whilst tenants carrying out, if anything at all, what the landlords would term as Reliant Robin work. We thought a car analogy would work well in this instance.

The truth is normally somewhere between, negotiations are normally carried out between the landlords surveyor and the tenants surveyor based upon case law and evidence such as original Schedules of Conditions, photographic records, etc, etc. However it should be remembered that these negotiations are carried out based normally

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upon any fees that are attributed to such negotiations being paid for ultimately by the tenant.

### **3.0 Key things with regard to this Dilapidations case**

- 3.1 There isn't a photographic record or a schedule of condition of what the property looked like when you moved in on day one which usually makes negotiations more difficult and more protracted.
- 3.2 If the property is rented relatively quickly you can argue that there was next to no loss by the landlord and the property was in a rentable and tenantable condition.
- 3.3 A one off cash settlement is often best for both the landlord and the tenant as it means from the tenant's point of view there is no further possible claim against them. We believe that the landlord can claim up to twelve years after the end of the lease with regard to how current law is. This is why our recommendation would be to proceed and obtain a one off cash settlement.

### **3.4 Exaggerated claims by landlords**

Often we would say that claims by landlords are exaggerated. There is a well known case known as the Proudfoot v Hart case where an exaggerated claim was eventually awarded in the tenants favour following a legal case albeit that the situation was different to this case. From memory the claim went from being several hundreds of thousands to practically nothing. Having said that, every case is specific and legal arguments are specific to the property and the lease.

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#### **4.0 Legal Technicality to limit dilapidations claim**

There is also what is known as a Section 18 Valuation which means in simple terms that the maximum value or loss that a landlord can obtain is the difference between what the property's condition would rent at as is and as should be in the lease.

#### **5.0 Every Business Transaction has a Risk**

As with many things in life, there are no black and white answers in this particular situation, just shades of grey. Every business transaction has a risk, only you can assess whether that risk is acceptable to you and your circumstances.

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## **REQUEST FOR INFORMATION FROM CLIENT**

Below is our original request for information, we have been advised by Mr D that no correspondence was available from the landlord as all communication was verbal. We have left our list in this report for the record.

1. Any original drawings, photographs or schedule of condition that you have of the property
2. Any letters that you have in relation to asking for approval to amend or alter anything with the landlord from yourselves
3. Any letters from the landlord
4. Any Interim Schedules of Condition that have been served on you by the landlord (electronic format please)
5. You verbally advised us during the course of our inspection of explaining about the property today that you have various receipts and time sheets in relation to work that has been carried out at the property that you would be able to provide.

## **REQUEST FOR INFORMATION FROM LANDLORDS SURVEYOR**

We have requested a copy of the Final Schedule of Dilapidations in electronic format from the landlords surveyors YYY. We have not received a copy as yet.

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## **SUMMARY UPON REFLECTION**

The Summary Upon Reflection is a second summary so to speak, which is carried out when we are doing the second or third draft a few days after the initial survey when we have had time to reflect upon our thoughts on the property. We would add the following in this instance:

We have requested an electronic Final Schedule of Dilapidations from the landlord's surveyors but as yet have not received it.

If you would like any further advice on any of the issues discussed or indeed any that have not been discussed! Please do not hesitate to contact us on 0800 298 5424.

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# APPENDICES

EXTERNAL PHOTOGRAPHS - ELEVATIONS

ACCOMMODATION AND FACILITIES

INTERNAL PHOTOGRAPHS

CONSTRUCTION SUMMARY

INSPECTION

PHOTOGRAPHIC RECORD

TIME LINE

LIMITATIONS

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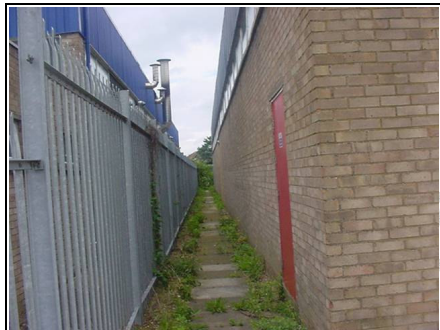
## EXTERNAL PHOTOGRAPHS - ELEVATIONS



Front view



Rear view



Left hand view



Right hand view

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## **ACCOMMODATION AND FACILITIES**

(All directions given as you face the front of the property)

The accommodation consists of:

- 1) Entrance area
- 2) Small office
- 3) Toilet
- 4) Large Office
- 5) Canteen area
- 6) Kitchenette area
- 7) Warehouse with two roller shutter doors and fire exits

### **Outside Areas**

Car park surrounding which is finished in concrete, fenced with grass and vegetation boundary.

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## INTERNAL PHOTOGRAPHS



Left hand and rear of warehouse



Warehouse



Right hand and rear of warehouse



Large office



Small office



Canteen area



Canteen area

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Kitchenette area



Link corridor



Toilets



Shower room

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# **CONSTRUCTION SUMMARY**

## **External**

Main Roof:	Shallow pitched asbestos roof with ferrous anchor bolts and GRP roof windows Flat felt and chipping covered roof
Gutters and Downpipes:	Metal gutters clad internally with a plastic lining fixed with battens Plastic downpipes
Soil and Vent Pipe:	Internal
Structural Frame:	Metal
Walls:	Profile sheet cladding with proprietary powder coat finish to upper parts Stretcher Bond Brickwork to base
External Joinery:	Metal single glazed windows
Foundations:	Not inspected



## **Internal**

Ceilings:	Plasterboard
Walls:	Mixture of solid and studwork (assumed)
Floors:	Concrete

We have used the term 'assumed' as we have not opened up the structure.

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# **INSPECTION**

## **Visual Inspection**

Our inspection has taken the format of a visual inspection:

1. External of the property of the:
  - i. Front
  - ii. Rear
  - iii. Left side
  - iv. Right side

We have had the benefit of a x 16 lens on a digital camera

2. Internal of the property

We have viewed:

- i. Entrance area
- ii. Small office
- iii. Toilet
- iv. Large office
- v. Canteen area
- vi. Kitchenette area
- vii. Warehouse

3. Surrounding areas

- i. Car park area

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# PHOTOGRAPHIC RECORD OF CONDITION OF PROPERTY

We have taken a photographic record so there is a record of what the property looked like on the day our visit.

## Roof covering



Asbestos roof



Flat felt and chipped roof over office

## Roof structure



Ceiling panels coming down,  
normally known as undercladding

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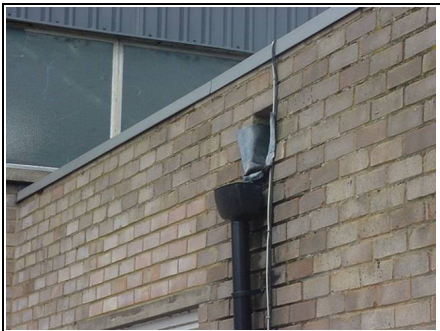
## Gutters and downpipes



Left hand gutter



View into gutters on right hand side



Leaking hopper head to office area

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## Dampness



Dampness coming in via the  
hopper head and downpipe



Dampness coming in to far left  
hand corner

## External Areas



Concrete parking area

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### **Time Line – A brief history of the structure**

This has been based upon a discussion with Mr D.

DATE	DESCRIPTION
XXXX	Approximate date of construction
XXXX	ZZZ occupied property
XXXX	Commencement of lease to tenant AAA Limited
XXXX	Terminal Schedule of Dilapidations and Wants of Repair served on AAA Limited
XXXX	Property vacated by AAA Limited

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# **LIMITATIONS**

## **Survey Report**

### **1. Conditions of Engagement**

Please note: references to the masculine include, where appropriate, the feminine.

Subject to express agreement to the contrary (which in this particular case has been none) and any agreed amendments/additions (of which in this particular case there have been none), the terms on which the Surveyor will undertake the Specific Defects Report are set out below.

Based upon a visual inspection as defined below the Surveyor will advise the Client by means of a written report as to his opinion of the visible condition and state of repair of the specific problem or problems only. In this instance in relation to the options available following the serving of a Dilapidations on the subject property.

### **2. The Inspection**

#### **a) Accessibility and Voids**

The Surveyor will base this report on a visual inspection and accordingly its scope is limited. It does not include an inspection of those areas, which are covered, unexposed or inaccessible. Our visual inspection will relate to the specific defects shown to us only.

#### **b) Floors**

We have not opened up the floor structure. We have only carried out a visual inspection and any conclusions will be based upon our best assumptions. We can open up the floor if so required at an extra fee.

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c) Roofs

We have inspected the roofs visually from the ground level and also we have been onto the flat roof. We have not inspected the pitched roof.

d) Boundaries, Grounds and Outbuildings

We have walked around the boundaries.

e) Services

Services inspected visually.

f) Areas not inspected

The Surveyor will have only inspected those areas identified within the report. His report will be based upon possible or probable defects based upon what he has seen together with his knowledge of that type of structure. If you feel that any further areas need inspection then please advise us immediately.

g) Specific Defects Report

As this is a report upon a Specific Defect we do not offer any comment or guidance upon reactive maintenance and/or planned or routine maintenance items.

h) Whilst we have used reasonable skill and care in preparing this report, it should be appreciated that the Chartered Surveyors cannot offer any guarantee that the property will be free from future defects or that existing defects will not suffer from further deterioration;

### 3. Deleterious and Hazardous materials

a) Unless otherwise expressly stated in the Report, the Surveyor will assume that no deleterious or hazardous materials or techniques have been used in the construction of the property. However the Surveyor

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will advise in the report if in his view there is a likelihood that high alumina cement (HAC) concrete has been used in the construction and that in such cases specific enquiries should be made or tests carried out by a specialist.

#### **4. Contamination**

The Surveyor will not comment upon the existence of contamination as this can only be established by appropriate specialists. Where, from his local knowledge or the inspection he considers that contamination might be a problem he should advise as to the importance of obtaining a report from an appropriate specialist.

#### **5. Consents, Approvals and Searches**

- a) The Surveyor will assume that the property is not subject to any unusual or especially onerous restrictions or covenants which apply to the structure or affect the reasonable enjoyment of the property.
- b) The Surveyor will assume that all bye-laws, Building Regulations and other consents required have been obtained. In the case of new buildings and alterations and extensions, which require statutory consents or approval the Surveyor will not verify whether, such consents have been obtained. Any enquiries should be made by the Client or his legal advisers.

Drawings and specifications will not be inspected by the Surveyor. It is the Clients responsibility to forward any drawings and specifications that he has or knows the whereabouts of to us to include information in our report. If these are not forthcoming we will make our best assumptions based upon the information available.

- c) The Surveyor will assume that the property is unaffected by any matters which would be revealed by a Local Search and replies to the usual enquiries or by a Statutory Notice and that neither the property nor its condition its use or intended use is or will be unlawful.

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## **6. Fees and Expenses**

The Client will pay the Surveyor the agreed fee for the Report and any expressly agreed disbursements in addition.

## **7. Restrictions on Disclosures**

- a) This report is for the sole use of the Client in connection with the property and is limited to the current brief. No responsibility is accepted by the Chartered Surveyors if used outside these terms.
- b) Should any disputes arise they will be dealt with and settled under English law;
- c) This report does not fall under the Third Parties Rights Act.

## **8. Safe Working Practices**

The Surveyor will follow the guidance given in Surveying Safely issued by the Royal Institution of Chartered Surveyors (RICS).

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