

Dilapidations - are you prepared for the inevitable?

A dilapidations claim is more about the nuances and interpretation of law rather than just reinstating a property to its former condition. Landlords are increasingly using the dilapidations process as a means of extracting cash from unsuspecting and poorly advised tenants. As tenants tend to be reactive, clever landlords often delay making a claim until the last possible moment in order to maximise their leverage and to push the tenant into settling by cash rather than having time to defend their claim.

A number of measures have been put in place by the Property Litigation Association (PLA) and the Royal Institute of Chartered Surveyors (RICS) to firstly ensure claims are justifiable from the outset, and secondly to encourage both parties to resolve matters within a reasonable time frame. This is known as the Dilapidations Protocol. Unfortunately the Protocol is rarely adhered to, particularly in the early stages of a claim.

What is typically included in a claim?

The standard claim will typically include costs under 4 main headings and will form the starting point adopted by landlords:

1. Cost of works to repair, reinstate alterations and redecorate
2. Landlord's professional costs
3. Loss of mesne profits (rent/rates/service charge)
4. VAT (where applicable)

What should I do and when?

It is essential that tenants have a better understanding of the implications of the lease covenants from the outset as this will have a bearing on the dilapidations liabilities, during and at the end of the lease. There are several key points in the life of a lease where a proactive approach can significantly reduce the dilapidations liability. These are:

Pre-lease:

The RICS always recommends that tenants commission surveys on the building fabric and services. The report should include comment on the potential dilapidations liabilities. Only then can one make an informed decision on the acquisition of your leasehold interest and ensure that any conditions are not too onerous. In addition, adequate financial provision can be accrued for future dilapidations liabilities.

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During the lease term:

Putting in place a proper maintenance regime for the building structure, fabric and services installations will help ensure that the workplace is well maintained for operational purposes. A pro-active approach will also help mitigate any potential dilapidations claim at lease expiry. Rather like maintaining a car, failure to regularly maintain your premises is only likely to add to downstream costs.

12 to 18 months prior to lease expiry:

In the period of 12 to 18 months prior to the lease expiry, the pre-acquisition dilapidations assessment should be updated and a mitigation strategy put into place. Such a strategy will depend on many factors and will typically include one or more of the following:

- Establishing the landlord's intentions for the premises. Ideally this will culminate in the preparation of a Schedule of Dilapidations by the landlord setting out their opinion of the works required for lease compliance. This will require careful scrutiny to ensure that it is reasonable. A cash settlement in advance of a lease expiry may be beneficial to a business, particularly in programming the transition into new premises. However it may not be – so avoid being pressured into agreeing to this.
- Undertaking the work required to discharge your liabilities under the terms of your lease.
- Where there is evidence that the premises may be redeveloped or refurbished, take no action. However, this is a high risk strategy and requires careful consideration.

As the landlord's claim becomes clearer and your own requirements for a move to new premises evolve, or your desire to renew the lease, the strategy may change.

How do you protect yourself and save cash?

Due to the complexities of the above, dilapidations advice is a specialist field in its own right. Therefore, it is essential that care is taken to appoint a suitably qualified and experienced surveyor to advise on the best course of action.

The right solution is not a one size fits all approach. Each building and its associated lease is different. So seeking good advice will pay many times over, especially when choosing the claim negotiator. A first class negotiator will have the skills and understanding of the dilapidations' world which could save you anywhere between 30% and 50% of the landlord's claim, and in some instances as much as 80%. Above all prepare early and avoid being over-run by the inevitable.

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