




DILAPIDATIONS – DIMINUTION IN VALUE


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DIMINUTION

- S.18(1) loss + common law loss
- S.18(1) covers repairs plus poss decorations
- Common Law loss covers the remainder
- Known as “Diminution Valuations”
- No direct link between schedule which lists breaches and diminution which evaluates loss



WHEN ARE THEY USED?

- By the LL when the work has not been carried out or only partly carried out and is not likely to be completed
- By the T either in response to a LL dim val or as a diminution defence (the T must advise LL of such) where the LL has carried out the “work” but the T does not accept it was necessary

THE STARTING POINT



- What would the hypothetical purchaser do?
- Actual LL's intentions not particularly relevant
- Assess all potential uses and development options

DEVELOPMENT IS AN OPTION



- Conversion to residential – external disrepair likely to be the only valid claim
- Total redevelopment – little or no loss except for removal of T's alterations/fittings if they increase demolition costs

DEVELOPMENT NOT OPTION



- What does the market expect?
- What will the hypothetical purchaser do?
- To what extent will supersession be tripped out?

USING THE SCHEDULE



- What work survives supersession?
- What is the minimum amount of work necessary to re-let or sell the property without additional loss, delay or expense?
- LL cannot recover costs incurred which by acting reasonably he could have avoided

SUPERSESSION



- T only liable to leave "in repair"
- Incoming T will expect a higher standard if required to sign FR lease
- EG T could patch an old flat roof, if not leaking then "in repair". Incoming T would expect new roof if asked to sign FR lease

MARKET DRIVEN SUPERSESSION



- Market expects higher standard than existing
- Disrepair of existing therefore irrelevant as hypothetical purchaser would follow the market and replace with new
- Actual LL's intentions not relevant

T'S DIMINUTION DEFENCE



- In response to LL valuation or where the LL has carried out the work
- Argument as to whether all work necessary in valuation terms
- Onus on T – default position assumes LL acted reasonably in carrying out the work

THE VALUATIONS



- Diminution = "In repair" less "In disrepair"
- "In repair" less costs to put into repair = "In disrepair"
- Redevelopment loss calculated using development appraisal (and common sense)

EXAMPLE 1



Central London Offices – Acting for T



EXAMPLE 1



- Central London Offices – Acting for T
- LL carried out work - £1,200,000
- Single glazed windows replaced with double glazing
- Power and data points increased
- Supersession the main argument
- Claim settled at £375,000

EXAMPLE 2



Edge of Town retail – acting for T



EXAMPLE 2



- Edge of Town retail – acting for T
- Former DIY store
- Poor retail location but good residential area
- Figures best value part demolition/new build and part conversion – to residential
- Claim for £600,000 settled at £35,00

EXAMPLE 3



Home Counties Offices – Acting for T



EXAMPLE 3



Home Counties Offices – Acting for T

- Modern offices but little demand due to town centre location
- Feasibility study showed conversion to residential best value
- External repairs still required
- £350,000 claim settled at £110,000

QUESTION TIME



Q & A

