



DILAPIDATION DIMINUTION VALUATIONS

Diminution valuations are a key part of any Dilapidations Claim and have become even more important to both Landlords and Tenants with the adoption by the RICS, and the impending adoption by the courts, of the PLA Pre-Action Protocol.

What used to be almost exclusively a tenant defence to a dilapidation claim is now required of a landlord as part of their service of claim and failure to comply could have significant implications for cost liability in any dispute.

Furthermore, the PLA Protocol now makes a Diminution Valuation a piece of Expert Witness Evidence which needs to comply with the requirements of CPR Part 35 from the outset of instructions.

The 'dark art' of the Dilapidation Valuer is finally being drawn into the light, but if anything this is actually highlighting the shortcomings of many who undertake these valuations.

The valuer needs to be able to critically assess the dilaps schedule, its contended liabilities and the proposed repairs. They must have a firm understanding of the law surrounding these issues and of the impact of the two limb limit imposed by S18(1) Landlord & Tenant Act 1927. They must be able to place these issues into the context of the Open Market for the premises reflecting the realistic expectations for the actions of the hypothetical Purchaser / Landlord / Tenant at Term Date in both repair and disrepair.

Finally, they must fulfil their role as an Expert Witness, fully complying with the requirements and procedures of CPR Part 35 and presenting their evidence in a format ready for court and for Cross Examination.

A key part of this Expert Witness role is the presentation of technical valuation evidence in a transparent report which is easily understood by legal professionals. However, the traditional All Risk Yield (ARY) approach to these valuations is anything but transparent. To Legal Professionals it all too often appears abstract, vague and to involve wholly subjective adjustments which implicitly reflect issues without reasoning.

A surveyor's experience alone is not enough to support such valuations or to give them weight as evidence in Dilapidation Claims. Subjective and implicit adjustments are ample ammunition for any lawyer to so fundamentally undermine a Diminution Valuation that a whole claim can fall as a result.

The ARY approach has also been shown to be completely inadequate to reflect either how loss of value in the market actually arises, from issues of disrepair, or how a landlord's actions can mitigate loss without actually extinguishing it.

John Williams has been at the forefront of developing and refining Diminution Valuation methodology using Discounted Cash Flow techniques. His approach reflects how loss actually arises in relation to issues of disrepair and follows a logical, detailed assessment, which is easy to follow and flexible enough to properly reflect mitigation. As a result a fully reasoned Expert Witness Report can be provided in support of a detailed and easy to follow valuation.

No implicit or subjective adjustments are made meaning that the Expert Evidence has a firm foundation from which to be Cross Examined.

John's background as a former Asset Manager,

combined with extensive experience of Dilapidation Valuations, provide a solid background against which these valuations can be prepared. Having acted for both landlords and tenants he is also able to take a balanced and impartial viewpoint of the issues that arise; essential of any Expert Witness.

His involvement in the early assessment of potential claims has ensured that parties are able to take a proportional approach to pursuing action, rather than spending good money pursuing an inflated claim or resisting a realistic claim.

He is also at the forefront of Developing Alternative Dispute Resolution options in Dilapidation Claims through the role of a Single Joint Expert. Once building surveyors have agreed a Scott Schedule for a Dilapidation Claim, a Single Joint Expert can provide a single Diminution Valuation to both parties. This is a highly cost effective option, it is non-binding on the parties and it has proved extremely effective in resolving disputes by introducing an impartial voice which can break through entrenched negotiating positions and result in an amicable settlement at substantially less cost than formal court action.

As well as being a Fellow of the RICS and an Associate of the Chartered Institute of Arbitrators, John is a certified Expert Witness through the Cardiff University Law School/Bond Solon program.

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