

DILAPIDATIONS

Which way is the wind blowing?

Seven Sticking Points in Commercial Property Dilapidations

Andrew Walker KC

Seven Sticking Points

- 1. Standard of repair.**
- 2. Scope of the repairing obligation (and separate covenants).**
- 3. Schedules of Condition.**
- 4. Successive leases.**
- 5. Services.**
- 6. Statutory obligations.**
- 7. Supersession.**



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1. Standard of Repair

Key factors:

1. Age, character and locality of the property.
2. What would make it reasonable for for occupation by a reasonably-minded tenant of the sort likely to take a lease of it.
 - > All elements are fixed at the date of the lease.
 - > But on the known basis that the building will age further during the term.
 - > Affected by general condition at date of grant.



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2. Scope of the obligations

1. What building elements are covered?
2. What words are in the repairing covenant?
3. What works are within the scope of the repairing covenant?
 - > What a reasonable surveyor would advise in the circumstances.
 - > What did the parties contemplate as “repairs”?

2a. Scope of the repairing covenant – relevant factors

- > Nature of the building.
- > Terms and length of the lease.
- > Initial condition.
- > Nature and extent of defect.
- > Nature, extent and cost of remedial works.
- > Who is paying?
- > Value of building; building lifespan; effect of works on value/lifespan.
- > Current building practice.
- > Likelihood of recurrence if one remedy is chosen over another.
- > Comparative cost of different remedial works and impact on use/enjoyment.

2b. Scope of the overall obligations

4. Separate/wider covenants: e.g.

- > Good condition obligations.
- > Specific elements, e.g. roof, balconies, plant.
- > Additional obligations in licences.
- > Differences in yielding up and break clause situations.

Essendi UK Hotels 2 Ltd v London Property Company Ltd [2026] EWHC 1354 (TCC)

3. Schedules of Condition

May limit obligations, but:

- > Did it ever exist?
- > Can it be found?
- > When was it produced?
- > What is/was on it?
- > What does the lease actually say about its effect?

4. Successive leases

- > Does the later lease address repairs, including disrepair, at renewal?
- > What is the initial condition of the building for the purposes of the standard of repair under the renewal lease?

5. Services

- > Same principles apply.
- > May be a ‘good working order’ covenant as well.
- > Focus is usually on physical condition, unless there is a specific covenant of a different nature.
- > Life expectancy or performance are not usually relevant if in repair and working order.

6. Statutory obligations

- > **What if like-for-like repair is no longer lawful, and the tenant has to make some improvements or betterment in order to repair?**

Answer: The tenant must do the work.

- > **What if there is a covenant to comply with statutory obligations?**

Answer: What does it say?

It could apply separately/in addition, apply to repairs, or both.

- > **What if the building is not lettable without further work?**

Answer: Irrelevant if work is not required to comply with covenants.

7. Supersession

Essentially a valuation issue: have the breaches caused loss?

- > Would the notional buyer refurbish/develop, even if in repair? (Is it ‘ripe for development’?)
- > Would that render repairs otiose? To what extent?
- > Likely to need expert input.

May depend in practice on:

- > Nature and location of building.
- > Likely occupier market for current or alternative uses.
- > Likely approach of buyers for current or alternative uses.
- > Availability of market evidence (given that the building is not in repair).

Does not depend on the actual landlord’s intentions, except under LTA 1927 s.18(1) limb 2: but those intentions may have evidential value as regards what the notional buyer would do.



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