

“Finger in the air” approach to section 18(1) valuations disapproved

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In a recent dilapidations case the High Court said that a reasoned approach has to be taken to valuations under s.18(1) of the Landlord and Tenant Act 1927.

Hammersmatch Properties v Saint-Gobain Ceramics (2013) was a terminal dilapidations claim on a 1930's industrial building in Welwyn Garden City that had been held under a 25 year lease since 1984. The parties agreed the cost of dilapidations in respect of the building fabric and part of the M&E at £2.22m. A few items of M&E remained in dispute. However the major area of dispute was the measure of diminution under s.18(1).

The court undertook a review of the general principles of law in the area of repairs and then considered the items of M&E outstanding. It assessed those at just under £0.18m which brought the cost of works up to £2.4m (exclusive of fees).

The court then turned to the main question, that of diminution. The tenant relied upon the first limb of s.18(1) and said that, given the age of the building and its 1970's specification, whether the property was in or out of repair, its value was as a development site and that the value in repair but as a site would only have been marginally (£0.1m) higher than its value out of repair. The landlord argued that the building should be valued, not as a site, but on the basis of its potential for refurbishment and subdivision into units, that the difference between the value in repair and out of repair was greater than the cost of works and therefore the cost of works should be the basis of the damages calculation.

The court dismissed the tenant's assessment of diminution of £0.1m as a “*finger in the air*” figure. It said that “*whilst valuation is a question of assessment and judgment, there has to be some reasoning related to the underlying value of the property and the risks and costs involved.*” Equally, however, it did not wholly accept the landlord's assessment but took a more nuanced approach.

The court found that, in repair, the property had a value of £3.0m as potential units, compared with a site value (in or out of repair) of £2.1m. However, in disrepair, given the cost of repair, fees, financing costs and risk allowances, the site value exceeded the value of the property as potential units. Thus the court held that the diminution in value was £0.9m (£3.0m – £2.1m) and capped the landlord's damages claim at that figure.





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