

The death of *Joyner v Weeks* and the rise of *Ruxley*?

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The High Court has recently given judgment in the case of *Sunlife Europe Properties v Tiger Aspect* in which it reviewed a number of the leading dilapidations cases and the principles that they set out. *Ruxley* features prominently amongst the cases discussed. However, there is no specific mention of the historic “cost of works” case of *Joyner v Weeks*.

Sunlife concerned a terminal dilapidations claim on a 1970s office building in Soho Square. The landlord’s claim was for £2.172 million in damages. In contrast, the tenant asserted that the remedial works were no more than £700,000, but said that damages were capped by the diminution in the value of the landlord’s reversion at £240,000.

The Court, in discussing the measure of damages for the dilapidations, made a number of references to the House of Lords decision in *Ruxley v Forsyth* (1996) but it made no express reference to *Joyner v Weeks* (1891) and seemed to limit the applicability of its rule. It said that *Ruxley* “shows us that the general rule that the cost of reinstatement is the appropriate measure of damage [the rule in *Joyner*?] does not apply if the expenditure would be out of all proportion to the benefit to be obtained.”

The Court went on to formulate the following general rules:

1. The tenant is entitled to perform his covenants in the manner that is least onerous to him. In general, therefore, such performance should be the starting point for any assessment of damages.
2. The tenant is obliged to return the premises in good and tenantable condition and with the M&E systems in satisfactory working order: he is not required to deliver up the premises with new equipment or with equipment that has any particular remaining life expectancy. The standard to which the building is to be repaired or kept in repair is to be judged by reference to the condition of its fabric, equipment and fittings at the time of the demise, not the condition that would be expected of an equivalent building at the expiry of the lease



3. Where there are covenants against making alterations to the premises, the tenant is not entitled, let alone obliged, to deliver up the premises in a condition that involves any material alteration to the building or the fixtures as demised: the fact that the landlord can consent to any such alteration does not affect the basic obligation.
4. Accordingly, where the requirement to put and keep the premises and fixtures in good and tenantable condition involves the replacement of plant that is beyond economic repair, the tenant is required to replace it on a like for like or nearest equivalent basis: he is not required to upgrade it in order to bring it into line with current standards (unless required to do so by law or to comply with any necessary regulations).
5. Any claim by the landlord for the cost of repairs is subject to the general rules that: (a) he cannot recover for a loss which, by acting reasonably, he could have avoided; and (b) he cannot recover the cost of remedial work that is disproportionate to the benefit obtained.
6. By contrast, where there is a need to carry out remedial work as a result of the tenant's breach of his repairing covenants, the fact that the landlord has carried out more extensive work than was caused by the breach does not of itself prevent him from recovering the cost of such work as would have been necessary to remedy the breach.
7. Where market conditions at the expiry of the lease require upgrading or refurbishment works to be carried out in order to enable the building to be let to the appropriate type of tenant, a tenant in breach of a repairing covenant is not liable for the costs of any work to remedy the breach to the extent that such work would be rendered abortive by the need to upgrade or refurbish the building (i.e. where there is supersession).
8. Where the tenant is in breach of his covenant, in the absence of any evidence to the contrary the court is entitled to infer that remedial work is necessary to remedy the breach unless the tenant demonstrates to the contrary.

The Court found that the claimable dilapidations items amounted to £1.35 million. As regards diminution, it said that the valuation evidence it had received had gaps in it but that the Court had to do the best with what it had. It found that the diminution was in excess of the cost of works, or otherwise could be inferred from the costs, and it awarded the landlord £1.35 million in damages.





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