

# Dilaps “pound-for-pound” (*Shortlands?*) approach rejected

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**A recent High Court decision on dilapidations provides some useful additional guidance on diminution assessment, reinstatement and loss of rent**

*Consortium Commercial Developments -v- ABB* (2015) concerned dilapidations on a B1 business unit in Milton Keynes that had been held on a full repairing lease. The unit had been left vacant for the final four years of the term and suffered significant deterioration. The agreed cost of repairs was £295,000. At the date of the lease expiry, the local lettings market was weak and the property had little prospect of letting while out of repair.

The landlord’s dilapidations claim came to court, and the issues between the parties included: (1) the diminution under s.18(1) of the Landlord and Tenant Act 1927; (2) whether the correct measure of damages for reinstatement was remedial costs or diminution; and (3) the extent to which the landlord could recover loss of rent and rates.

On diminution, the court received evidence from the parties’ valuers. The landlord’s in-repair and in actual condition valuations were £1.15m and £0.6m, respectively, while the tenant’s figures were £0.775m and £0.7m. The court assessed the in-repair value at £0.9m. As for the actual condition valuation, the court accepted the tenant’s view that “*especially in the market as it was at the relevant time, one cannot simply take a pound-for-pound approach, so as to deduct from the in-repair value the full cost of repairs in order to arrive at the out-of-repair value.*” It noted that the cost of repairs were £20 psf, concluded that a purchaser would require a reduction of about £15 psf and assessed the actual condition valuation at £0.675m. The s.18(1) diminution cap was thus £225,000.

With regards reinstatement, the court said that the question was what, in all the circumstances, was the landlord’s loss and that it was necessary to consider whether reinstatement was reasonable. Where the landlord had not carried out the work and did not intend to do so, the measure was likely to be diminution, but where the landlord reasonably intended to carry out the works, the measure would be the cost of works. On the facts, the court found that reinstatement was likely and awarded the cost of works.

Finally, on the question of loss of rent and rates, the court noted the poor local lettings market and said that “*in poor market conditions it might take a year or even several years to find a suitable and willing tenant. When such a tenant is found, it will probably make no difference to the timing of the transaction with that tenant whether the property has been on the market for, say, 18 months ... or for, say, 15 months.*” It therefore dismissed the landlord’s claim for loss of rent and rates.

[Thanks to Beckett & Kay ([www.beckettkey.co.uk](http://www.beckettkey.co.uk)) for supplying a transcript of this case.]





**Milton McIntosh** MRICS MCI Arb Solicitor, Barrister (not in practice)

*Tel:* 0845 257 9449

*Mobile:* 07891 901 686

*Fax:* 020 3043 8889

*E-mail:* [mmcintosh@excellolaw.co.uk](mailto:mmcintosh@excellolaw.co.uk)

**[www.excellolaw.co.uk](http://www.excellolaw.co.uk)**



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