

Ear to the grounds

23 February 2017

Christopher Sullivan examines the grounds on which surveyors will be called in to help contest lease renewals

Contested lease renewals all but disappeared during the last recession, as landlords were avoiding the kinds of redevelopment that would necessitate tenants leaving at lease expiry or renewal and thus prompt disputes. However, with today's tenants eager to remain in situ at a below-market rent and landlords seeking to extract greater value, contested renewals are now on the increase.

Dealing with contested lease renewals is a highly specialised area, but there are clear avenues of work for building surveyors with dilapidations expertise and project management skills.

Statutory framework

Under section 30(1) of [the Landlord and Tenant Act 1954](#), there are a number of grounds on which a landlord may oppose a request for a new lease by a tenant:

- a. failure to repair;
- b. persistent arrears;
- c. other reasons or breaches;
- d. suitable alternative accommodation;
- e. current tenancy created by subletting;
- f. demolition and reconstruction;
- g. own occupation.

It is fairly unusual for building surveyors to become involved other than when grounds a or f are invoked, but there are of course exceptions.

Failure to repair

If this is the ground for a contest, building surveyors are required to appraise the physical condition of the holding, setting out remedies and their associated costs. This ground is broadly akin to a form of interim dilapidations claim, or forfeiture, though it is not governed in the same way because there is no guidance note to follow. In interim dilapidations claims, the surveyor would simply prepare a list of defects and wants of repair: essentially, they have to produce a fully populated and costed [Scott Schedule](#).

There is little point in contesting a lease renewal on trivial defects, as the focus should only be on very significant breaches of covenant. Major faults with mechanical and engineering services, water penetration or structural damage, for instance, are very difficult to ignore or defend.

The key is to record the best available evidence and present it in a logical manner, so thorough site notes and quality photographs are essential. Specialist testing – for example, mechanical and engineering validation – may also be required.

Most claims are settled well in advance of court proceedings, but if the dispute remains then the surveyor must be prepared for that possibility. Disrepair issues and arguments will be at the forefront here – the domain of the dilapidations specialist. It is always possible that, before a hearing, the tenant finally complies and brings the property back into a state of repair, so while the landlord will not then get their building back it will at least be brought up to a decent standard.

Demolition and reconstruction

Under section 30(1)(f) of the 1954 act, a landlord may oppose an application for a new tenancy on the ground – that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and [they] could not reasonably do so without having obtained possession of the holding.

Where it is clear that the whole or a substantial part of the premises are to be demolished and/or rebuilt, there is usually little argument to be had: the difficulties lie where the landlord's plans are perceived as being more marginal.

The building surveyor is responsible for preparing an expert report, advising on:

- the extent of the proposed works – commenting on how substantial they are and whether the works amount to construction or demolition;
- whether possession is reasonably necessary to undertake the works.

In the absence of statutory definitions of – construction? or reconstruction?, – demolition?, – substantial? and – intent?, the surveyor must turn to case law. The works need not be structural to qualify, however, although it often helps in demonstrating that they are significant.

There are typically sensitivities about the extent of the holding, what works are to be assessed as relevant, bearing in mind that obligatory repair works are not to be assessed; and the landlord's motives and intentions, which will require the involvement of a legal advisor.

Caution

A major difficulty for surveyors will be the stage at which they are brought into the process. Often it is well under way, with planning permission in place and a precise of work and financials

gn-off agreed. Conversely, detailed specifications are rarely drawn up at the time of appointment, which can lead to a lack of clarity.

Surveyors taking on contested lease renewal instructions must therefore ensure they are well briefed and thoroughly understand the legal nuances. Otherwise, they will run the risk of an embarrassing grilling in the witness box.

Christopher Sullivan is a partner at [Malcolm Hollis](#)

Further information

- Related competencies include [Legal/regulatory compliance](#).
- This feature is taken from the RICS *Building surveying journal* (December 2016/January 2017).