

Right to inspect

Regardless of whether the tenant is in occupation, whenever an inspection is to be undertaken before the lease expires it is important to comply with the terms of the lease when making arrangements for access. Most modern leases contain appropriate provisions allowing access for inspection.

However, before contacting the tenant or its representatives to arrange an inspection, as noted in the [Dilapidations](#) guidance note (7th edition), the landlord's surveyor should consider with the client whether the landlord might intend to forfeit the lease. If it does, then relying on the lease to carry out the inspection might waive the landlord's right to forfeit. It is important, therefore, that the landlord's objectives are reviewed once again to identify what action should or should not be taken so as to preserve the landlord's options in relation to its objectives.

Preparing for an inspection

It is essential that the surveyor obtains as much of the [relevant documentation](#) as possible and reads this prior to the inspection. It is impractical to attempt an inspection if the lease has not been read, and the cost of repeat visits due to a lack of adequate information are unlikely to be recoverable from the tenants. Every lease is different and it is imperative that the surveyor has a thorough understanding of the specific lease provisions and any other relevant documentation before undertaking the inspection.

The surveyor should ensure that the limits of the inspection have been agreed with the client before the inspection, in the same manner as for a structural survey.

Before carrying out an inspection the surveyor should be acquainted with the RICS guidance note [Building surveys and technical due diligence of commercial property](#) (4th edition) and the guidance on [Surveying Safely](#) (the latter applying particularly when properties are empty). A good guide to the procedures to be followed during such an inspection, what tools and equipment to take and where a surveyor should look within a building is contained in [Surveying Buildings](#).

Carrying out the inspection

Having reviewed the documentation and, most importantly, fully understanding the obligations concerning the condition of the building and the elements of the building to which they relate, the building must be inspected.

When carrying out a dilapidations inspection, the surveyor will owe the client a similar level of duty of care as when conducting a building survey and, although the method and information recorded differs from a building survey, a dilapidations inspection should be no less thorough in terms of extent and detail.

Where the landlord is making a claim against a tenant it is the landlord's surveyor's responsibility to inspect the building with a view to preparing the schedule and claim. Tenants' surveyors will in due course need to respond to such claims. This will involve an inspection examining each item of the schedule – and is likely therefore to be just as thorough as the landlord's surveyor's inspection. Indeed tenants' surveyors should be alert to breaches not identified in the landlord's schedule as there may come a point when such an oversight is rectified and the claim amended accordingly. Even if a 'missed' breach is not spotted by the landlord's surveyor before the claim is settled it is always good practice to alert your tenant client to the fact that the possibility of an increased claim exists.

It is critical that the form and condition of the property is recorded at the time of the inspection in a manner that can be referred to in the event of litigation. Therefore, as with other aspects of surveying, it is important that the notes and measurements taken during the inspection are detailed enough in order to substantiate and cost the claims made in the schedule and are structured, legible and capable of interpretation by third parties. For the same reason, it is usually appropriate to take photographic evidence of the defects, especially if they are significant, unusual or likely to be contested. DVD or video records may also be useful. A record of the layout of the premises, with any notable alterations made, and any other sketches should also be kept.

The landlord's inspection is normally carried out immediately after the lease ends. Whether or not a claim has been received, surveyors acting for tenants are advised to carry out an inspection as close as possible to the date of termination of the lease (which, in terms of gaining access - obtaining keys and so on - will probably be easier just before termination). This should ensure that claims do not include items that may relate to any deterioration in the condition of the building that occurs subsequent to the determination of the lease.

It is perfectly possible, where both parties are seeking a swift resolution, for the schedule to be served and the claim settled some time prior to the end of the lease. In these situations, whether the surveyor is acting for landlord or tenant, it is crucial that the condition of the building is both accurately recorded at the time of the initial inspection and that the property is re-inspected as close as possible to lease expiry. Any deterioration in the building's condition since the initial inspections, and also such issues as whether or not the tenant has removed fixtures and fittings or reinstated any alterations, should be readily identifiable and may significantly impact on the landlord's claim. Therefore, surveyors acting for landlords must ensure that settlements made before the lease ends are agreed with the proviso that the tenant will remain liable for further deterioration or other changes.

The purpose of the inspection is to determine whether or not the terms of the lease(s) or licence(s) have been adhered to and, if they have not, to identify what remedy is required and at what cost. The inspection is basically an exercise in identifying breaches of covenant and preparing evidence relating to those breaches. In the first instance a non-destructive visual inspection is required and every area, room and void where access can be reasonably effected should be inspected.

Whether acting for a landlord or a tenant client, as well as inspecting the demised premises the surveyor should also make a general assessment of the surrounding buildings in the locality. It may be that the standard of the locality has gone into decline since the commencement of the lease, in which case the standard of repair expected should reflect this (see [Key dilapidations issues](#)). If everything else has been redeveloped there's a good chance that the landlord may have similar plans – which would have an impact on the claim (see [Section 18 and diminution](#)). This may be an important defence for tenants and clearly their surveyors will need to make the appropriate enquiries.

Landlords' surveyors must not ignore the possibility that there may be a 'diminution' or 'damage to the reversion' issue. This is because the [Dilapidations Protocol](#) (sections 3.5 and 3.6) requires the author of the schedule to provide a written endorsement to the effect that the claim they have prepared represents a fair assessment of the landlord's loss. Therefore, landlords' surveyors must make all reasonable enquiries of their clients as to their future plans for the building and, where there are settled intentions (which may impact on the claim), to ensure that the claim for the cost of the works is adjusted accordingly. Section 8.4 of the RICS [Dilapidations](#) guidance note (7th edition) provides guidance on the surveyor's endorsement.

Specialist reports and testing

The surveyor may find that, in the light of the initial inspection, it is apparent that further investigation is needed, requiring input from other professionals such as services or structural engineers, or perhaps specialist testing such as asbestos analysis, possibly including exploratory work. When this is justified, the agreement of the client and, where appropriate, the tenant should be obtained and the surveyor should liaise as necessary between the various parties involved. Importantly, it is incumbent on the surveyor to advise the client that if no defects are discovered then the cost of specialist inspections is unlikely to be recoverable from the tenant.

It is the landlord's surveyor's responsibility to ensure that any specialist information that is provided is capable of inclusion in the schedule in a manner that is capable of interpretation by the recipient.

Further guidance on the instruction of specialists and sub-consultants is provided in the guidance note (section 3.1) and this issue is further explored in [Quantified demand](#).