Neutral Citation Number: [2024] EWHC 631 (Ch)

Case No: PT-2022-000231

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)

The Rolls Building
7 Rolls Buildings
London, EC4A 1NL

Date: 22 March 2024

Before :

HHJ CAWSON KC
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between :

ROWLAND PHILIP BRATT	**Claimant**
- and -	
NIGEL LAWSON JONES	**Defendant**

- -
- -

Adam Rosenthal KC (instructed by **Gowling WLG (UK) LLP**) for the **Claimant**
Scott Allen (instructed by **DAC Beachcroft LLP**) for the **Defendant**

Hearing dates: 29-31 January 2024 and 2 February 2024

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Approved Judgment

Remote hand-down: This judgment was handed down remotely at 10.30 am on Friday 22 March 2024 by circulation to the parties or their representatives by email and by release to The National Archives.

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HHJ CAWSON KC

HHJ CAWSON KC:

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Introduction

1. In this action, the Claimant, Rowland Philip Bratt ("**Mr Bratt**"), claims damages from the Defendant, Nigel Lawson Jones ("**Mr Jones**"), in relation to Mr Jones's determination, as expert valuer, of the value of freehold development land formerly forming part of Cotefield Farm, Bodicote, Banbury, Oxfordshire ("**the Site**").

2. The Property formed the subject matter of an option agreement dated 28 May 2002 ("**the Option Agreement**") between Mr Bratt and Banner Homes Ltd[1] ("**Banner**") under which Banner was entitled to exercise an option ("**the Option**") to purchase the Site at a price representing 90% of market value, to be determined, if not agreed, by a

[1] In fact, the benefit of the Option Agreement was transferred to other companies within the same group of companies, but it is unnecessary to distinguish between them for present purposes, and the definition "Banner" is applied herein to the relevant company holding the benefit of the Option Agreement from time to time.

third party valuer. Mr Jones was appointed pursuant to the Option Agreement as such third party valuer.

3. Mr Jones valued the Site at £4,075,000. It is Mr Bratt's case that the true value thereof was between £7,000,000 and £8,600,000, representing a margin of 10% above and below £7,800,000. As Mr Jones's valuation fell well short thereof, it is Mr Bratt's case that, in consequence thereof, he has a good claim against Mr Jones for breach of contractual obligations and tortious duties of care owed by Mr Jones to Mr Bratt. Having received less from Banner than he says that he would have received had Mr Jones properly performed his obligations and duties, Mr Bratt seeks damages representing the difference between 90% of the true value of the Site and 90% of £4,075,000, less agreed costs of £138,000.

4. Apart from a number of fundamental differences of approach taken by the expert valuers called by the parties respectively, the present case raises issues between the parties as to the correct approach, as a matter of law, to questions of liability and quantum, and in particular as to whether, in a valuer's negligence case such as the present, the focus ought to be on the result or conclusion of the impugned valuation, rather than on how the valuation was arrived at, and the extent to which, if at all, it is necessary to consider whether the valuer's actions fell below the requisite standard of skill and care applying the *Bolam*[2] test, i.e., the principle that a defendant valuer or other professional conforming to a practice accepted as proper by a respectable body of professional opinion should not, ordinarily, be held liable merely because others disagree.

5. Mr Bratt did not need to give evidence, but Mr Jones did give evidence and was cross-examined.

6. Mr Bratt relied upon the evidence of two expert valuers, both from Gerald Eve LLP, namely Robert W. Fourt ("**Mr Fourt**"), who made a report dated 21 April 2023, and Robert John Lloyd Davies ("**Mr Davies**"), who made a report dated 8 November 2023. Unfortunately, Mr Fourt has become too unwell to give evidence, hence Mr Davies stepping in to give evidence at trial, adopting Mr Fourt's report as well as producing a report of his own.

7. Mr Jones has relied upon the expert evidence of Brian Buckingham of Beckland Consultancy Ltd ("**Mr Buckingham**"), who produced a report dated 3 February 2023, and gave evidence on Mr Jones's behalf.

8. Mr Bratt was represented by Adam Rosenthal KC, and Mr Jones by Scott Allen of Counsel. I am grateful to them both for their thorough and most helpful oral and written submissions.

Background

9. The Option was exercisable following the grant of planning permission for residential development in respect of the Site. The period in which the option could be exercised was initially five years, but this period was subsequently extended by successive supplemental agreements to 28 May 2016.

10. Clause 11 of the Option Agreement provided that the price payable by Banner to Mr Bratt for the Site on exercise of the Option would be 90% of the *"Market Value"* of the

[2] *See Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582.

Site at the *"Valuation Date"* less certain sums. By clause 11.2 of the Option Agreement, it was provided that if the parties were unable to agree the Market Value, then they were entitled to jointly instruct an independent surveyor experienced in the valuation of development land for the use specified in the relevant planning application to determine the Market Value.

11. The definition of *"Market Value"* was varied by a Third Supplemental Agreement dated 12 August 2015 **("the 2015 Deed of Variation")**. Thereby:

    i) *"Market Value"* was defined as:

    > "The open market value of the Net Developable Acreage of the Development Area as defined in the Appraisal and Valuation Manual published by the Royal Institution of Chartered Surveyors (as varied or replaced from time to time)."

    ii) *"Net Developable Acre"* was defined as:

    > "… each acre of land that is capable of being developed (and has planning permission) for the erection of a dwellinghouse or dwellinghouses (for the avoidance of doubt including dwellings comprising Affordable Housing) with or without ancillary buildings (with their respective curtilages) together with the roads and paths serving the same and areas of incidental open space but excluding land defined as public open space or recreation space for the use of the residents."

12. *"Valuation Date"* was initially defined by the Option Agreement as meaning the date of the exercise of the Option. However, this definition was subsequently varied to provide that it was the date of the service of by Banner of a *"Valuation Notice"*, which was to be served ahead of the exercise of the Option itself.

13. On 26 March 2012, outline planning permission was granted to Banner (on appeal) for the construction of 82 dwellings on the Site. A s.106 agreement, dated 27 February 2012, provided for 40 per cent of the total dwellings (i.e., 32 of the 82 permitted) to be designated for affordable housing.

14. Following reserved matters approval being granted on 10 April 2013, on 14 June 2013, Banner served a *"Valuation Notice"*. In default of agreement between the parties as to the price to be paid, the parties agreed the appointment of Mr Jones as expert valuer under clause 11.2 of the Option Agreement as confirmed by an email dated 30 August 2013. This email recorded, amongst other things, that the parties agreed that the *"Valuation Date"* was 14 June 2013.

15. Thereafter, Mr Jones met with the parties to discuss procedural directions. Directions dated 31 October 2013 issued by Mr Jones provided, amongst other things, for the provision of submissions and counter-submissions by the valuers appointed by the respective parties. Pursuant to those directions, Mr Jones received submissions from Andrew Fairbairn FRICS ("**Mr Fairbairn**") on behalf of Mr Bratt (dated 10 October and 31 October 2013) and from John Turner MRICS ("**Mr Turner**") on behalf of Banner (dated 11 October and 1 November 2013).

16. An issue arose as to whether there was a small piece of land owned by Mr Bratt, not forming part of the Site, which was required to implement the proposed development,

and which thus potentially served as a *"ransom strip"* which Mr Jones would need to take into account in valuing the Site. Disagreements between the parties in relation thereto, that it is not necessary to go into, led to a significant delay in Mr Jones being able to proceed with his determination.

17. The disagreements between the parties were not resolved until the Third Supplemental Agreement was entered into on 12 August 2015. Thereafter, the parties notified Mr Jones that he was instructed to continue with his work towards a final determination pursuant to the Option Agreement. However, given the delay occasioned by the fact that the determination had been on hold for some two years, Mr Jones explained to the parties in an email of 29 October 2015 that he had to *"start again"*. He indicated that he was aiming to produce his determination in the first two weeks of December 2015.

18. In the event, Mr Jones did not complete and provide his determination ("**the Determination**") until 20 April 2016, less than two months before the deadline for Banner to exercise the Option. On provision of the Determination, Banner exercised the Option in order to acquire the Site for development paying a price of £3,529,500, being 90% of the Market Value as determined by Mr Jones.

19. The Site has subsequently been developed with the construction of 86 dwellings (32 of which are affordable housing), an increased number of dwellings to the 82 provided for by the outline planning permission being permitted on the final grant of planning permission.

The Determination

20. In his representations on behalf of Mr Bratt, Mr Fairbairn, focused on evidence of comparable transactions relating to sites marketed for development, although also undertaking a residual valuation for the Site. He relied on seven comparables, identifying four additional comparables that he did not consider to be of assistance. Analysing the comparables, Mr Fairbairn concluded that they evidenced a value of £7,649,541, which, with an upwards adjustment of 5% for *"improved market conditions"*, meant an overall valuation of £8 million. In conducting this comparables exercise, Mr Fairbairn did so by looking at the other transactions on a net developable acre ("**NDA**") basis, which included an analysis that did not take into account the varying s. 106 costs and abnormal costs associated with the other sites used as comparables.

21. Although cautioning against the reliability of a residual valuation, Mr Fairbairn did carry out a residual valuation that was included in his representations. For the purposes of the latter, he used a gross development value ("**GDV**") of £3.15 million for the 32 units of affordable housing units (albeit referring to a GDV of £3.85 million in his rebuttal report), and a GDV of £21,422,520 for the 50 units of market housing. In doing so, he used a price of £315 per sq ft for the market accommodation. Mr Fairbairn referred to a report dated 29 August 2013 produced by a firm of local estate agents, Stanbra Powell, which he maintained supported his figure of £315 per ft sq. It will be necessary to return to this latter report as it is maintained on behalf of Mr Jones that, properly analysed, it only supports a figure of £265 per sq ft at most, which is said to be consistent with Mr Jones's own analysis.

22. Mr Turner adopted a residual appraisal as his primary means of valuation, albeit cross-referencing the conclusions of his residual analysis to an analysis of four of the comparables that had been identified by Mr Fairbairn. For the purposes of his residual

analysis, and the GDV applied for the purposes thereof, Mr Turner worked on the basis of an average sales value of £248.03 per sq ft per market unit, having taken independent advice from four local estate agents, including Stanbra Powell. By his residual appraisal, Mr Turner arrived at a *"Market Value"* for the Site of £1,766,000.

23. In the Determination, Mr Jones followed Mr Fairbairn, and produced a valuation by reference to comparables, whilst also preparing valuation by reference to a residual appraisal.

24. So far as the valuation by reference to comparables is concerned, Mr Jones dealt with the comparable evidence in paragraphs 3.39 to 3.63 of the Determination where he made reference to most, but not all, of the comparables identified by Mr Fairbairn in his submissions. Appendix L to the Determination provides details of some of these comparables. However, on returning to work on the Determination after the gap of some two years, Mr Jones, as he was entitled to do as independent expert as opposed to arbitrator, carried out his own research and identified two transactions in respect of development land which had not been referred to by either Mr Fairbairn or Mr Turner, namely:

    i) A site at Bloxham Road, Banbury ("**Bloxham Road**"), that had been sold in April 2014 to Morris Homes;

    ii) A site on Aynho Road, Addersbury ("**Aynho Road**"), that had been sold in August 2014 to Bloor Homes.

25. Although he gave consideration to the other comparables, and referred to them in the Determination, as he accepted in the course of giving evidence, Mr Jones, to all intents and purposes, rejected the others as not providing any real assistance in favour of his Bloxham Road comparable. As he put it in paragraph 3.62 of the Determination:

> "I am drawn back to the primary comparable in this matter, namely the sale at Bloxham Road, Banbury in 2014. It is so similar to the Land the greatest weight must be given to its sale details."

26. Mr Jones has explained his reasons for effectively placing sole reliance upon the Bloxham Road comparable as being that he regarded Bloxham Road as being so similar to the Site, because both were greenfield sites on arterial roads out to the south of Banbury, adjacent to existing housing. Mr Jones rejected other comparables such as Aynho Road as helpful comparables because he regarded the development sites in question as being located in village settings which he regarded as commanding a premium in price, and therefore as not representing useful comparables. There is an issue between the parties as to whether the position of the Site, on the edge of the village of Bodicote, is properly to be regarded as a village location more akin to a development such as Aynho Road, rather than Bloxham Road.

27. Mr Jones did not ask either Mr Fairbairn or Mr Turner for any comments on the additional comparable evidence that he had obtained, as he might have done.

28. Further departing from the approach taken by Mr Fairbairn in respect of his comparables, in comparing Bloxham Road with the Site, Mr Jones did so not by reference to NDA, but rather by reference to value per market plot, i.e. the £ per plot in respect of the units on the respective developments that were not allocated for affordable housing. Mr Jones did so as follows:

i) Mr Jones first arrived at a headline figure for the comparable, Bloxham Road, before arriving at a *"Market Value"* therefrom. The headline figure derived from the price paid for Bloxham Road by Morris Homes - £13 million. This was then adjusted to reflect the benefit provided to the purchaser from the fact that deferment terms were agreed with regard to the price, which were treated as reducing the effective price to £12,389,758 applying an interest rate of 9% per annum. Mr Jones then added on the s. 106 costs of Bloxham Road (£1,680,638), and the known site abnormal costs for Bloxham Road (£795,000) obtained from Savills, the agents who acted on the sale to Morris Homes, so as to arrive at a headline figure of £14,865,396.96.

ii) Mr Jones then converted this figure into a figure per unit so that it could be applied to the Site. In doing so, Mr Jones, on the basis of what he described as his *"direct experience of sales of sites for solely affordable housing"*, applied a rate of £20,000 per unit for affordable housing, of which there were 44 such units at Bloxham Road, resulting in a total amount of £888,000 for affordable housing units (44 x £20,000). Deducted from the £14,865,396.96, this resulted in a figure of £13,985,397 in respect of market units, of which there were 101. Dividing £13,985,397 by 101, Mr Jones arrived at a figure per market unit of £138,469.

iii) Mr Jones considered that this latter figure of £138,469 required slight adjustment (using Savill's index) to account for an increase in prices between the Valuation Date and the date of sale of Bloxham Road (9%) - £138,469, less 9% thereof = £125,250.

iv) Mr Jones then applied the above figures to the Site, i.e.: (£125,250 x 50 = £6,262,500 (for market units)) + £20,000 x 32 = £640,000 (for affordable housing units)) = £6,902,500.

v) Mr Jones then deducted the s.106 costs of the Site (£964,440), and the abnormal costs of the Site (£1,870,502), to arrive at a final *"Market Value"* figure of £4,067,558, which he rounded up to £4,075,000.

29. Mr Jones explained the methodology behind his residual calculation in paragraphs 3.5 to 3.38 of the Determination. In essence:

i) In respect of the total number of dwellings to be built, Mr Jones took the number permitted by the outline planning permission in place, i.e. 82 units in total, comprising 50 market dwellings and 32 affordable housing units. Neither Mr Fairbairn nor Mr Turner had suggested any different approach.

ii) In respect of the market and affordable housing square footage, Mr Jones adopted the same figures as those suggested by Mr Fairbairn (68,008 sq ft and 25,673 sq ft respectively).

iii) Mr Jones adopted the s.106 costs sum which had been agreed between the parties (£964,440), and also adopted the % rates for finance costs, stamp duty, and legal and agents' fees which had been agreed between the parties.

iv) In respect of the GDV for the market housing, Mr Jones carried out a valuation exercise by considering each type of proposed dwelling for which planning permission had been granted within the Reserved Matters permission, identifying what he considered to be local comparables for sales of similar

dwellings in each relevant category, and deriving their values from a pricing exercise for each market unit as explained and set out in paragraphs 3.7 to 3.14 of the Determination, and Appendices C and D thereto. He thereby arrived as a figure of £263.57 per sq ft for the market housing. He explained at paragraphs 3.15 to 3.17 of the Determination that he then cross-checked this figure as against the Stanbra Powell report dated 29 August 2013 and noted that the figures that he had arrived at were very close to those suggested in Stanbra Powell report, i.e., £263.57 per sq ft as against Stanbra Powell's £265 per sq ft, giving a market unit GDV of £17,925,000.

v) Mr Jones explained his approach in respect of the GDV of affordable housing units in paragraphs 3.19 to 3.20 of the Determination. He identified the highest market offer which had been considered for the affordable housing units, namely £3.15m, being a figure which had appeared in both Mr Turner's and Mr Fairbairn's residual calculations based on a market housing rate of £235 per sq ft. Mr Jones then adjusted that figure upwards in order to reflect his own view of the market housing rate, so as to arrive at a figure of £3.54m.

vi) In respect of the costs of development, Mr Jones, instructed a quantity surveyor expert, John Pillinger ("**Mr Pillinger**"), to advise on technical matters, including as to the costs of development. Based on advice provided by Mr Pillinger by reports dated May 2014 and April 2016, Mr Jones arrived at a construction cost of £12,096,920 to include in his residual calculation as described in paragraphs 3.25 to 3.27 of the Determination. It is acknowledged on behalf of Mr Jones that a mistake was made by him in doing so. In his May 2014 report, Mr Pillinger had set out his figures as to what he perceived as *"enhancement"* work to the Site, i.e., building costs over and above what would strictly be necessary to build the dwellings in question, such as more expensive chimneys than would be functionally necessary, as a separate item to the pure abnormal cost items. Mr Jones included the figures for both enhancements and abnormals in his construction cost figure of £12,096,920. However, in his April 2016 report, Mr Pillinger had again costed the enhancements, but had included them within the total £ per sq ft figure for base building costs. When inputting the various figures into the residual valuation software, Mr Jones incorrectly worked on the basis that the figure for base build costs (£108.04 per sq ft) was net of enhancements, as it had been in Mr Pillinger's 2014 report when this was not the case. This had the consequence that the enhancements figure was therefore inputted twice into Mr Jones's residual calculation. Until shortly before trial, the parties had both been working on the basis that the relevant enhancements figure was around £1,140,594, and the abnormals figure as therefore having been £729,908 given that Mr Pillinger's abnormals plus enhancements figure was £1,870,502. However, from shortly before trial, Mr Buckingham has contended that the correct figures are £1,052,031 for enhancements and £818,471 in respect of abnormals on the basis that Mr Pillinger appears to have allocated the figure for *"Contractor's Preliminaries, Overheads and Profit"* to the enhancements when the latter are not, properly, it is said, to be considered to be enhancements.

30. Mr Jones's residual valuation came out at £3,634,219. It is recognised on behalf of Mr Jones that if enhancements had been correctly dealt with and inputted by Mr Jones into his residual calculation, then the residual valuation arrived at would have been £4,646,000 if the correct enhancements figure was £1,140,594, and £4,560,000 if the correct enhancements figure was £1,052,031.

31. However, it is Mr Jones's case that even if he had correctly imported the enhancements figures, and arrived at a higher residual valuation, then based upon his comparables exercise, he would have stuck with his valuation of £4,075,000 based thereupon.

Mr Bratt's Case

Introduction

32. The essence of Mr Bratt's case is that in order to prove negligence, he has to satisfy the court that Mr Jones's valuation was outside an acceptable bracket either side of the *"correct"* valuation of the Site as at the Valuation Date, i.e. 14 June 2013. It is submitted that this involves the court first conducting its own valuation exercise in order to determining the *"correct"* valuation, and to then consider whether the valuation falls within a margin of no more than 10% thereof. It is does not then, so it is submitted, on the facts of the present case, no further enquiry is necessary. This approach is said to recognise that the authorities require that the focus of enquiry should be on the end result rather than how the valuer got to the result.

33. On behalf of Mr Bratt, Mr Rosenthal KC criticises Mr Jones for seeking to resurrect an argument, inconsistent with what is said to be the effect of the authorities, that the court has to dissect and examine the valuer's reasoning and consider whether the methodology employed by the defendant valuer contains negligent errors on the basis that only then can the latter's conduct be said to *"fall below the line"*. It was submitted by Mr Rosenthal KC that this was an argument that had been advanced and had failed in a number of cases, including *Legal & General Mortgage Services Ltd v HPC Professional Services* [1997] PNLR 567, *Goldstein v Levy Gee* [2003] PNLR 35, and *K/S Lincoln v CB Richard Ellis Hotels Ltd* [2010] PNLR 31. Mr Rosenthal KC complains that this misconceived approach on behalf of Mr Jones manifested itself in the cross-examination of Mr Davies by Mr Allen, with him being asked in respect of almost every aspect of Mr Jones's approach to his valuation whether it was a *"reasonably competent approach"*, rather than seeking to address what is said to be the correct approach to determining whether a valuation is negligent.

34. As I have already identified, it is Mr Bratt's case that the correct value of the Site as at 14 June 2013, was between £7,800,000 and £8,600,000, representing a margin of 10% above and below £7,800,000. It is his case that this valuation is supported by the expert evidence of Mr Fourt and Mr Davies, which I should prefer to that of Mr Buckingham, whose evidence is said to not even provide a proper market valuation. Consequently, it is submitted that I should therefore hold that the correct value of the Site as at 14 June 2013 was at least £7.8 million, that Mr Jones's valuation fell well below this figure or any reasonable bracket referable thereto, and that Mr Jones was negligent, and is liable to pay damages representing 90% of the difference between £7,800,000 and Mr Jones's valuation, without the need for any further consideration as to whether Mr Jones's conduct fell below the requisite standard of skill and care applying the *Bolam* test.

35. On behalf of Mr Bratt, it is argued that Mr Jones does not seek to defend the claim against him by contending that his valuation is one which a reasonably competent valuer could have reached <u>if</u> it is concluded that his valuation falls outside the bracket of a reasonable range of values.

Negligence Claims Against Valuers - the Law

36. As to authority for the propositions outlined above, Mr Rosenthal KC began by referring to the decision of HHJ Langan QC (sitting as a Judge of the High Court) in *Legal & General v HPC Professional* (supra), a case brought by a mortgage lender against a valuer in respect of the alleged overvaluation of a straightforward residential property. At p.752, Judge Langan QC referred to the defendant having submitted that each of two separate matters required to be established, namely, that his figure fell sufficiently outside the bracket of value to be regarded as negligent, and that the defendant's approach to his task was negligent, i.e., that the wrong result had to be reached by the wrong method. Judge Langan QC dealt with this submission at p. 574C-E as follows:

> "I now turn to the defendants' formulation, with which I have two quarrels.
>
> Explicit in the first limb of that formulation, and not resiled from in the submissions which were developed by counsel, is the proposition that liability can attach only when the value produced is sufficiently outside the acceptable bracket to be castigated as negligent. I disagree. The point of the bracket is that it demarcates the area within which careful valuers may reasonably differ. A plaintiff does not, in my judgment, have to show that the valuation which is under attack lay any particular distance beyond the bracket. …
>
> My second quarrel with the defendants' formulation has to do with the second limb. In other words, I do not accept that, where the figure under attack has been shown to be outside the acceptable bracket (the wrong result) a plaintiff has the additional burden of showing why the valuer reached that result (the wrong method). …"

37. Judge Langan QC went on to refer to the decision of Tasker Watkins J in *Singer and Friedlander Ltd v. John D. Wood* & Co. (1977) 243 E.G. 212, observing at 574F-G:

> "Many, perhaps most valuation cases, can be approached on the bracket basis. Pinpoint accuracy, as Tasker Watkins J. put it, is not to be expected. As soon as it is shown that the impugned valuation falls outside the bracket-and again I quote from Tasker Watkins J. - *"the competence of the valuer and the sort of care he gave to the task"* are brought into question. Put another way, the plaintiff will by that stage have discharged an evidential burden. It will be for the defendant to show that, notwithstanding that the valuation is outside the range within which careful and competent valuers may reasonably differ, he nonetheless exercised the degree of care and skill which was appropriate in the circumstances."

38. Mr Rosenthal KC further places reliance on the approach of the Court of Appeal in *Merivale Moore PLC v Strutt & Parker* [2000] PNLR 498 at p.515G-517B, per Buxton LJ, Mr Rosenthal KC identifying that the focus in that case was, again, on the end result, and that Buxton LJ specifically approved the general approach of Judge Langan QC in *Legal & General v HPC Professional* (supra). At p.515D-F, Buxton LJ said this:

> "Various further considerations follow. First, the "bracket" is not to be determined in a mechanistic way, divorced from the facts of the instant case. We were shown a list of figures giving either the bracket determined, or the percentage divergence from the true value found nonetheless not to have been negligent, in a series of recent cases. I did not find that of assistance, save as a graphic reminder that it is not enough for a plaintiff simply to show that the valuation was different from the true value. Second, if it is shown even at the first stage that the valuer did adopt an unprofessional practice or approach, then that may be taken into account in considering whether his valuation contained an unacceptable degree of error. … Third, where the valuation is shown to be outside the acceptable limit, that may be a strong indication that negligence has in fact occurred. … Some caution at least has to be exercised in this respect, because the question must remain, in valuation as in any other professional negligence cases, whether the defendant has fallen foul of the *Bolam* principle. To find that his valuation fell outside the "bracket" is, as held by this court in *Craneheath* and also, I consider, by the House of Lords in *Banque Lambert,* a necessary condition of liability, but it cannot in itself be sufficient."

39. Mr Jones contends that it is significant that Mr Bratt has adduced no expert evidence as to the appropriate range. On the requirement for expert evidence for such purpose, at p.515G Buxton LJ went on to consider a submission by the defendant in that case that, for a plaintiff to establish that the valuation was outside the range that could be reached by any competent surveyor, it was necessary for the plaintiff to adduce expert evidence as to what the range was. Whilst observing that such evidence would often be available, Buxton LJ expressed the view that:

> … "It is still open to the judge in a suitable case to hold that the valuation is so far removed from what was the true value of the property that it must be regarded as a valuation that was outside the limits open to a competent valuer, without specific professional evidence been given of what those limits were."

40. That the focus should be on the end result is said by Mr Rosenthal KC to be further supported by the decision of Lewison J in *Goldstein v Levy Gee* (supra) at [37] et seq., a case involving an allegedly negligent share valuation. Lewison J considered the judgment of Buxton LJ in *Merivale Moore v Strutt & Parker* (supra), in some detail, having described it, at [58], as a *"difficult case"*. What was said by Lewison J in that case in commenting on *Merivale Moore v Strutt & Parker* at [58] to [65] is said to support the proposition that, in a case such as the present, the focus should be on the end result, rather than on how the result was arrived at.

41. Mr Rosenthal KC refers to the issue as having been summed up by Coulson J in *K/S Lincoln v CB Richard Ellis Hotels Ltd* (supra). At [153], Coulson J, after having considered the same authorities as Lewison J had considered in *Goldstein v Levy Gee*, and Lewison J's conclusions in the latter case, said this:

> "For all these reasons I am in no doubt that in valuation cases, the law properly focuses on the end result, not the way in which that end result may have been achieved."

42. Both parties refer to, and place reliance upon, the summary of the relevant principles regarding the question of *"range"* contained in the judgment of Eder J in *Capita v Drivers Jonas* [2011] EWHC 2336 (Comm). Drawing on the authorities, including *Goldstein v Levy Gee* (supra) and *K/S Lincoln v CB Richard Ellis Hotels* (supra), which he said that did not find easy to reconcile, at [145] Eder J said this:

> "i) The process of valuing real property has strong subjective elements; it is an art not a science and not every error of judgment amounts to negligence. This leads to the concept of *'the bracket'* , or *"the permissible margin of error"*: see per Watkin J. in *Singer & Friedlander v John D Wood & Co* [1977] 2 EGLR 84 at 85G-H and 86. …
>
> ii) It is a necessary pre-condition to liability that the final valuation figure is shown to be *"wrong"*, that is, *'outside the bracket'*: see per Buxton LJ in *Merivale Moore plc v Strutt & Parker* [2000] PNLR 498 at 515–517. …
>
> iii) Where the court is considering whether a valuation in itself is negligent, the claimant must normally show, not only that the valuer fell in some way below the standards to be expected of a reasonably competent professional, but also that the valuation fell outside the range within which a reasonably competent valuer could have valued the asset. If the valuation is within the range, then the valuation will not be found to have been negligent even if some aspect of the valuation process can be criticised as having fallen below reasonably competent standards.
>
> iv) In each case the court must assess what it regards as being the competent valuation and what it regards as the being the size of the permissible range. In each case, both are findings that will depend on the particular facts of the case. The assessment of range should not be approached mechanistically.
>
> v) Where the valuation is made up of a number of different aspects, a different methodology may have to be adopted in relation to different aspects because of the nature of the particular valuation process with which the court is dealing. In general, the bracket should be assessed by arriving at a bracket for each of the variables rather than only for those variables that are alleged (or found) to have been negligently assessed: see Vos J in *Dennard* at paragraph 91 following Lewison J's interpretation of *Merivale Moore* at paragraph 63 of his judgment in *Goldstein*.
>
> vi) As summarised in *K/S Lincoln v CB Richard Ellis* at paragraph 183, for a standard residential property, the margin of error may be as low as plus or minus 5 per cent; for a valuation of a one-off property, the margin of error will usually be plus or minus 10 per cent; if there are exceptional features of the property in question, the margin

> of error could be plus or minus 15 per cent, or even higher in an appropriate case. However, a range of 14.5% to 23% has been described as *"absurd"* (see Staughton LJ in *Nykredit Mortgage Bank plc v Edward Erdman Group Ltd* [1996] 1 EGLR 119 @ pp 120/121).
>
> vii) Even if the valuation is outside the range, the professional may escape liability if he can prove that he exercised reasonable skill and care. If the valuation is found to fall within the range, the claimant will still be entitled to succeed if it can demonstrate that it has suffered loss as a result of negligent advice given in the course of, or in addition to, the valuation process."

43. Mr Rosenthal KC identified Eder J's propositions (iv) and (vii) as of being of particular note for present purposes.

44. Eder J's proposition (vii) recognises, and Mr Rosenthal KC accepts that there may be cases where the valuer escapes a finding of negligence even where his valuation lies outside of a permissible bracket. Mr Rosenthal KC refers to Coulson J, in the later case of *Webb Resolutions Ltd v E Surv Ltd* [2013] PNLR 15, as having expressed this nuance as follows at [23]:

> "I consider that, as a matter of law, the right approach is to focus on the result, that is to say the negligent valuation itself. That seems to me to be the *ratio* of *Merivale Moore Plc* and it was the basis of the subsequent decision by Lewison J. (as he then was) in *Goldstein v Levy Gee (A Firm)* [2003] P.N.L.R. 35. Of course, whilst it does not follow that, if the valuation was outside the reasonable margin, the valuer was automatically negligent, it immediately spotlights the way in which the original valuation was performed and provides a *prima facie* case for the valuer to answer."

45. Mr Rosenthal KC further refers to this approach as having been followed subsequently by Dove J. in *Barclays Bank Plc v TBS & V Ltd* [2016] EWHC 2948 (QB) and by HHJ Klein (sitting as a Judge of the High Court) in *Dunfermline Building Society v CBRE Ltd* [2018] PNLR 13.

46. On the basis of the above authorities, Mr Rosenthal KC's essential submission is that a valuer will fall below the requisite standard where he or she prepares a report outside the range of reasonable valuations that could have been arrived at on the basis that that is all that matters, and that Eder J's proposition (vii) in *Capita v Drivers Jonas* at [145] is simply not engaged on the facts and in the circumstances of the present facts for the reasons referred to in paragraph 35 above, and because, as Mr Rosenthal KC put it in paragraph 8 of his Closing Submissions, Mr Jones's case is that £4,075,000 was a valuation which could have been reached by a reasonably competent valuer.

47. As to the approach to be taken by the court in, itself, determining the value of the Site as at 14 June 2013 in order to determine the *"correct"* value, Mr Rosenthal KC helpfully referred me to what was said by Gross LJ in the Court of Appeal in *Capita v Jonas Drivers* [2012] EWCA Civ 1417, [2013] 1 E.G.L.R. 119, at [43(i)], namely:

> "Moreover, having regard to the true nature of quantum disputes and their history as jury questions, a Judge will sometimes find himself needing to do the best he can: see, for example, of a *Dennard v Pricewaterhouse Coopers* [2010] EWHC 812 (Ch), at [182]. In her skeleton argument, Ms Carr summarised the task of the Judge in such circumstances as follows:
>
> "The exercise required is not about the court reaching an immaculate or absolute value, but about reaching the most likely figure on the basis of the evidence it has heard. That evidence may well not be perfect, indeed it is unlikely ever to be so."
>
> I agree.""

Determining the Bracket

48. So far as determining the bracket is concerned, Mr Rosenthal KC relies upon:

    i) What was said by Buxton LJ in *Merivale Moore v Strutt & Parker* at 515G with regard to whether expert evidence is always required in order to establish the bracket;

    ii) What was said by Coulson J in *K/S Lincoln v CB Richard Ellis* (supra) at [183], adopted by Eder J in *Capita v Drivers Jonas* (supra) at [145] as his proposition (vi) with regard to the circumstances in which brackets, respectively, of 5%, 10% and 15% might be appropriate; and

    iii) The observations of HHJ Keyser QC in *Paratus AMC Ltd v Countrywide Surveyors Ltd* [2012] PNLR 12 at [44] to the effect that consistency in cases such as the present is important.

49. Mr Rosenthal KC recognised that where a valuation is formulaic, then the application of the bracket might lend itself to a consideration of each part of the formula separately as in *Goldstein v Levy Gee* (supra) and *Capita v Drivers Jonas* (supra), quoting Eder J in the latter case at [145)v)] as observing that this: *"depends on the nature of the particular valuation process with which the court is dealing"*. He submits that this approach is not appropriate where, as in the present case, one is concerned with the valuation of a development site. He points out that this approach has not been applied to cases involving the valuation of conventional real property as demonstrated by, for example, *Legal & General v HPC Mortgage Services* (supra), *K/S Lincoln v Richard Ellis* (supra), *Webb Resolutions Ltd v E.Surv Ltd* (supra), *Barclays Bank Plc v TBS v Ltd* (supra) and *Dunfermline v CBRE* (supra), the latter case involving an allegedly negligent valuation of a development site.

50. It is Mr Bratt's case that the present case falls within Coulson J's category (b) in *K/S Lincoln v CB Richard Ellis* (supra) at [183], namely 10%. Mr Jones's expert, Mr Buckingham, contends that any bracket ought to be 15%. However, in response to this, it is submitted on behalf of Mr Bratt that the valuation of land sold for development is commonplace, and that it cannot be suggested that the Site presented any *"exceptional features"* which justifies a margin above 10%. On this basis, it is submitted that if the valuation in the Determination is found to be more than 10% below what the court concludes was the correct valuation on 14 June 2013, then Mr Jones is liable for the loss that was caused to Mr Bratt.

Mr Bratt's case as to the witness evidence

51. Given that it is his case that the focus of the court's enquiry should be upon the *"correct"* valuation rather than Mr Jones's *"process"*, it is Mr Bratt's case that Mr Jones's own evidence is of limited value. To the extent that Mr Jones's own evidence does go to the issues that the court has to decide, Mr Rosenthal KC, on the half of Mr Bratt, makes the following key points:

    i) It is submitted that I should treat Mr Jones's evidence of *"process"* with caution given that Mr Jones kept no attendance notes and did not have any working documents or notes of his analysis in relation to his preparation of the Determination apart from limited annotations on the representations made to him, cf. *Goldstein v Levy Gee* (supra) at [15]. Given the passage of time since the Determination was prepared nearly 8 years ago, Mr Jones is unlikely, it is submitted, to have any reliable actual recollection of his thought process.

    ii) It is submitted that the evidence points to Mr Jones adopting a hurried approach to getting out the Determination after he got back to it in earnest in early 2016.

    iii) It is submitted that the circumstances in which Mr Jones instructed Mr Pillinger for his expertise in quantity surveying are obscure, particularly given the absence of any written instructions.

    iv) It is submitted that whilst Mr Jones was clear that he had only one relevant comparable to take into account, describing others as irrelevant, this is at odds with the evidence of Mr Buckingham who accepted that he would have had regard to the Aynho Road comparable, if not also another comparable on Milton Road in Adderbury that Mr Jones had not picked up on.

    v) It is submitted that Mr Jones provided no satisfactory explanation for mentioning the Aynho Road comparable, but not the Milton Road comparable.

    vi) It is submitted that Mr Jones provided no satisfactory explanation for not giving the parties the opportunity to comment on his reliance upon the Bloxham Road comparable that they had not referred to, or otherwise addressed.

52. So far as the experts are concerned, it is submitted that the evidence of Mr Fourt and Mr Davies should be preferred to that of Mr Buckingham, and that I should give only limited weight to Mr Buckingham's evidence for the following reasons:

    i) It is said that whilst Mr Fourt and Mr Davies were specifically asked to value the Site as at 14 June 2013, Mr Buckingham was merely asked to comment upon Mr Jones's valuation rather than produce his own valuation. Consequently, so it is submitted, the valuation that Mr Buckingham relies on starts from the premise of Mr Jones's approach and tinkers around the edges thereof. It is submitted that it should not be assumed that this is the approach that Mr Buckingham would have adopted had he been instructed to value the Site in 2013 (or 2016).

    ii) It is said that although Mr Buckingham accepted that there are other comparables than Bloxham Road that are relevant and ought to be taken into account, he did not take them into account when preparing his report and expressing such opinion as he does as to the value of the Site. Consequently, it is submitted that there is no valuation from Mr Jones which is of assistance to the

court in answering the primary question in the analysis, namely the *"correct"* value of the Site as at 14 June 2013.

iii) It is further said that Mr Buckingham is to be regarded as unreliable as an expert witness on the basis, so it is submitted, that he was too eager to advance Mr Jones's case rather than giving independent measured evidence to assist the court. It is suggested that Mr Buckingham, in the course of his oral evidence, had a tendency to engage in lengthy argument, often departing from the questions asked of him in order to relate them back to his support of Mr Jones's case.

Mr Bratt's case as to Market Value

53. As I have already identified, whilst Mr Jones, in the Determination, valued the Site as at 14 June 2013 at £4,075,000, Mr Fourt and Mr Davies have valued the same at £8 million, and Mr Buckingham has valued it at between £4.2 million and £4.4 million.

54. A number of factors, highlighted in the expert evidence, are relied upon by Mr Bratt for contending that the *"correct"* valuation of the Site was that arrived at by Mr Fourt and Mr Davies, whereas Mr Jones's valuation in the Determination is a wrong valuation. In short, it is Mr Bratt's case that a properly conducted exercise comparing the Site with comparable sales of development land, cross referred to a properly carried out development valuation appraisal, leads to the inevitable conclusion that the *"correct*" valuation is that contained in the evidence of Mr Fourt and Mr Davies.

55. So far as an exercise by reference to comparables is concerned, the key differences of approach between that of Mr Jones and that of Mr Fourt and Mr Davies are the following:

i) Firstly, it is Mr Bratt's case that in determining the value of the Site by reference to the Bloxham Road comparable, Mr Jones was in error in deducting enhancements. This is said to be on the basis that although it was correct to include the enhancements in the build cost, it was wrong to then deduct them because any developer would look to recover the cost thereof in an enhancement of the sale price. As to this, reliance is placed upon Mr Pillinger having informed Mr Jones in an email that he would *"expect this enhancement to be reflected in the sales price"*. Thus, it is Mr Bratt's case that of the £1,870,502 deducted in respect of abnormals, the correct figure was only £729,908, and the balance of £1,140,594 ought not to have been deducted. As I have indicated in paragraph 28(vi) above, there is an issue as to whether this balance should be £1,053,005 rather than £1,140,594. Further, there is a question, which I may not need to determine, as to whether the figure for enhancements in fact includes a figure of £200,411 representing developer profit/contingency which should not have been deducted in any event.

ii) Secondly, it is contended that in making his adjustment to reflect the deferred payment on the Bloxham Road sale, Mr Jones exaggerated the value of the deferred payment by approximately £200,000, when he deducted £610,242 for the same applying a lending rate of 9%, which is submitted, on behalf of Mr Bratt, to have been *"clearly excessive"* as a development loan interest rate in 2013.

iii) Thirdly, Mr Fourt and Mr Davies compared comparables on a £ per NDA basis rather than on a £ per unit basis. It is submitted that the problem with the latter approach is that it involves only identifying what the unit or plot is worth, rather than what the land as a whole is worth, and that it is an approach that overcompensates for density. Reliance is placed upon RICS's 2008 Information Paper No. 12 – Valuation of Development Land, paragraph. 4.1, and RICS's 2019 Guidance Note – Valuation of Development Property, paragraph 5.8[3], which, although recognising as a method the conducting of a comparables exercise by reference to unit or plot value, are said to treat the latter less favourably than an approach by reference to NDA. It is Mr Bratt's case that if the comparison with Bloxham Road had been carried out by reference to £ per NDA, then even without reference to any other comparables than Bloxham Road, this would have analysed at almost £1.4 million per NDA, which supports a valuation of significantly in excess of £8 million for the Site. In closing submissions, Mr Rosenthal KC produced an appendix which suggests the following values for the Site based upon a £ per NDA comparison with the following sites respectively, namely Bloxham Road (£9,797,062), Aynho Road (£10,570,136), Milton Road (£8,913,062), and Deddington (£8,924,189). It is thus said that these figures support the £8 million valuation even taking account of all appropriate adjustments in respect of abnormals and s. 106 costs, and in respect of affordable housing, which the appendix produced purports to do.

iv) Fourthly, it is contended that Mr Jones's approach, in relying upon only one comparable, Bloxham Road, was *"unfathomable"*, particularly in the light of Mr Buckingham's evidence under cross examination that he would have considered other comparables, including Aynho Road, if not also Milton Road, Adderbury. It is submitted that even if one had adopted a £ per unit or plot approach, then, having regard to these other comparables, the value of the Site would have come out as significantly more.

v) Fifthly, it is submitted that rather than distinguishing for this purpose between market units and affordable housing units, a blended approach should have been adopted, i.e. dividing the composite headline figure by the total number of units. Mr Rosenthal's appendix, adopting this blended £ per unit approach, shows the following values for the Site, by reference to the following comparables respectively, namely, Bloxham Road (£6,261,592), Aynho Road (£8,977,057), Milton Road (£8,560,161), and Deddington (£7,882,922).

vi) Sixthly, it is said that the process required a valuer to step back and consider the overall position, and in doing so, it ought to have been appreciated that Mr Jones's approach by reference to £ per unit had given rise to an *"outlier"*. It is complained that both Mr Jones and Mr Buckingham have ignored the dataset identified in sub- paragraphs (iv) and (v) above.

56. Mr Bratt also takes issue with a number of matters raised by Mr Buckingham in his expert evidence that a said to support a lower valuation. In summary, the key points that I have identified are the following:

i) Mr Buckingham has criticised Mr Fourt and Mr Davies in their comparables exercise carried out by reference to £ per NDA for treating all the sites alike ("*all greenfield sites; nothing out of the ordinary"*) and for failing to adjust as between sites to take into account, s.106 costs and abnormals. However, it is

[3] Although this post dates the Determination, it is said to represent practice at the time.

submitted on behalf of Mr Bratt that, properly considered, Mr Fourt and Mr Davies have taken the same into account albeit that this has not featured in their mathematical analysis of the price. Further, Mr Rosenthal's Closing Submissions contain, at paragraph 31 thereof, a table said to show that the *"tone"* is the same between the comparables therein identified with regard to abnormals/s.106 costs.

ii) It is complained that Mr Buckingham has produced *"bizarre evidence"* regarding later sales values at Bloxham Road and the Site respectively, suggesting that the former may have produced a higher per-plot valuation of between £3,000 and £10,000. It is submitted that no other expert has suggested that the rate per plot should be lower at the Site than Bloxham Road, and that, in any event, Mr Buckingham conceded that any such higher rate at Bloxham Road would be offset by the higher sales rate at the Site.

iii) Mr Buckingham has suggested that up to £410,000 might be removed from the value of the Site compared with Bloxham Road because of road frontage differences. Mr Buckingham had sought to explain this in paragraph 6.7.5 of his report. However, under cross-examination he gave a rather different explanation to the effect that Bloxham Road would command a premium in this amount because its position immediately on the arterial route out of Banbury would assist with marketing. It is submitted that this explanation lacked credibility and was symptomatic of a tendency on the part of Mr Buckingham to tailor answers towards reducing value.

iv) Mr Bratt challenges the reasons given by Mr Buckingham for objecting to a £ per NDA approach to comparables, namely that the NDA cannot be established accurately without a detailed planning consent, and that an NDA comparison ignores differences in density of permitted housing on a site. As to these points, it is Mr Bratt's position, in short, that:

    a) Details of the detailed planning permission in respect of the respective sites were available when Mr Jones prepared the Determination;

    b) The definition of NDA is tolerably clear, cf., the definition thereof in the Option Agreement;

    c) Across the comparable transactions, the evidence suggests that the NDA does not increase or decrease within the density range of the sites in question. A graph has been produced which is said to explain the position, albeit that Mr Buckingham criticises the same because it is based on the actual (net) price paid and does not reflect the s. 106 costs/abnormal costs.

v) There is an issue between the experts with regard to location of the respective sites, and the significance thereof. In particular, Mr Buckingham supports Mr Jones's position that Aynho Road and Milton Road, if not also other comparables, are situated in North Oxfordshire villages distinct from Banbury, and command a premium on this basis. Indeed, Mr Buckingham refers to having ascertained from Rightmove that properties in Adderbury sell for some £100,000 more than those on the Site. On this basis, Mr Buckingham supports Mr Jones's position that Bloxham Road was the best comparable given its similarity to the Site. However, the evidence of Mr Davies was that he regarded the Site, situated in the village of Bodicote as having village characteristics, and, if anything, as

commanding a premium over Bloxham Road for that reason, and as being comparable on this basis to other village locations such as Aynho Road and Milton Road.

57. So far as a residual valuation is concerned, whilst the differences between the parties as to amount are as pronounced, the number of issues between them are more limited, and can be summarised as follows:

i) In their appraisal, Mr Fourt and Mr Davies proceed on the basis that 86 units are to be constructed, namely 54 market units and 32 affordable housing units, rather than the 82 (50+32) provided for by the outline planning permission obtained as at the *"Valuation Date"*. The reasoning of Mr Fourt and Mr Davies is that any purchaser would have looked to maximise the planning consent, and thereby enhance the asset that they acquired, and that this would have been factored into the price that they were prepared to pay. The fact that final planning permission and/or building regulations approval has been granted for the construction of 86 units is said to demonstrate the point. This enhances the GDV figure by some £1,019,730 and increases the residual valuation by some £500,000 odd.

ii) As identified above, even apart from the number of units, there is a significant difference between Mr Fourt/Mr Davies on the one hand, and Mr Jones and Mr Buckingham on the other hand, as to the sales value to be included in the GDV. The Determination said £21,465,000 (market units, £17,925,000, and affordable units, £3,540,000), Mr Fourt/Mr Davies say £25,336,505 (market units, £20,402,010, and affordable units, £4,934,495), Mr Buckingham says £21,442,628 (market units, £17,871,000, and affordable units £3,571,628). So far as the market units are concerned, I have already indicated what Mr Jones relied upon in producing the Determination. So far as Mr Fourt and Mr Davies are concerned, they rely upon a consideration of the value of house sales of what are said to be new-build properties of a similar nature and in a similar location as referred to in paragraph 7.12 of Mr Fourt's report, the properties in question being in Bloxham, a village a few miles south of Banbury, and Milne Close in Banbury. This led to the use in Mr Fourt's report of a valuation of £285 per ft sq, as against Mr Jones's £263.50 per ft (and Mr Fairbairn's £315.00 per sq ft). Support for the £285 per sq ft figure relied upon by Mr Bratt is said to be further provided by what is said to have been a strong market that existed at the relevant time, and a consideration of the actual GDV realised from the Site by Banner, with appropriate indexing back. There is an issue between the experts with regard to the latter.

iii) I had understood at one point that that there was no issue between the parties with regard to construction costs. However, I do understand this to be an issue with regard to the reliance placed by Mr Jones on the figures provided by Mr Pillinger, without any crosscheck as against industry (BCIS) rates, leading Mr Fourt to propose his *"correct"* residual calculation based upon lower construction costs as identified in Appendix 14 to his report.

iv) As I have ready identified, it is accepted by Mr Jones that his residual valuation was in error in including enhancements again as a cost despite the fact that they had already been included in Mr Pillinger's build costs.

58. It is Mr Bratt's case that Mr Fourt/Mr Davies's residual valuation remains robust, with its valuation of £8 million being relied upon as the corroborating a very similar valuation derived using comparables.

Mr Bratt's Pleaded case

59. Before concluding my consideration of Mr Bratt's case, it is necessary to set out how Mr Bratt's case in negligence is pleaded as set out in paragraph 27 of his Particulars of Claim:

> **"Breach of duty**
>
> 27. The Defendant was negligent and thereby in breach of the aforesaid duties, in his determination of the Market Value by the Determination.
>
> PARTICULARS
>
> 27.1 The true value of the Option Land at the Valuation Date was between £7 Million and £8.6 million (representing a margin of 10% above or below £7.8 million).
>
> 27.2 The Defendant's valuation of £4,075,000 amounts to a rate of £472,000 per net developable acre for the Option Land which falls considerably short of the value per net developable acre of all of the comparables which were cited in the parties' respective representations to the Defendant and also of the transaction at Bloxham Road, Banbury which was not relied upon by either the Claimant or the Buyer but on which the Defendant focussed in his Determination.
>
> 27.3 The Defendant's valuation results in a value per developable plot of £49,695, which is considerably lower than in all of the comparable transactions which were referred to in the Determination.
>
> 27.4 In relying on the transaction at Bloxham Road as the only relevant comparable, the Defendant failed to adjust the price paid for that development site to reflect the higher density of dwellings permitted on that site (13.71 units per net developable acre). The Defendant ought to have recognised that the larger plot sizes in the development permitted on the Option Land would have a higher value per plot.
>
> 27.5 Based on the Defendant's valuation of the Option Land, the value of that part of the Option Land available for open market development was only 22 per cent higher than the value of the part of the Option Land available for affordable housing. This ought to have indicated to the Defendant that his valuation of the development land for open market housing was too low.
>
> 27.6 The Defendant failed to take account of the advice of Mr Pillinger about his inclusion of "enhancements" in his abnormal costs and as a result the Defendant made the

following errors in his comparable valuation and his residual valuation.

27.6.1 In his comparable valuation, the Defendant failed to reflect the inclusion of equivalent build cost enhancements in the sale price for the development site in the comparable transaction on which the Defendant relied (and the other comparable transactions which were referred to by the Claimant and the Buyer). Accordingly, in order to determine the market value of the Option Land by reference to the comparable evidence, the Defendant should not have deducted the sum of £1,870,502 from the gross market value of the Option Land (as derived from the comparable transactional evidence) but only £729,908 which, according to Mr Pillinger, reflected the genuine abnormal costs without the cost of the enhancements.

27.6.2 For the purpose of determining the gross development value of the site of the Option Land in his residual valuation, the Defendant relied on comparable sales of houses which did not include equivalent building enhancements but failed to make any adjustments to reflect the inclusion of those enhancements in the houses to be constructed on the Option Land.

27.6.3 The Defendant wrongly double-counted these building enhancement costs in his residual valuation by adopting Mr Pillinger's rate of £108.04 per square foot for build costs which included the cost of these enhancements and the total sum of £1,870,502 for abnormal costs which also included the enhancement costs. Although the Defendant has admitted this error (in the letter of response from his solicitors dated 15 May 2019), he has not accepted that his determination of a Market Value of £4,075,000, was wrong or otherwise negligent."

60. It is to be noted that, consistent with the way that Mr Bratt's case was put, focussing on outcome rather than process, the only allegations within paragraph 27 of the Particulars of Claim that specifically allege that Mr Jones failed in some way, or did not do that which he ought to have done, consistent with an allegation of breach of duty of skill and care, are those contained within sub-paragraphs 27.4, 27.5, and 27.6. As to these:

i) The allegation in sub-paragraph 27.4 is to the effect that Mr Jones *"failed"* to adjust the price paid for Bloxham Road to reflect the higher density of dwellings. However, this was not an argument pursued by Mr Rosenthal KC in submissions, albeit included at paragraph 10.3 of Mr Fourt's report. Mr

Rosenthal KC's submissions in respect of density were more concerned with seeking to answer the point made by Mr Buckingham that the problem with any comparables exercise conducted by reference to £ per NDA is that an analysis by reference thereto does not adequately reflect the effect on value of density.

ii) The allegation in sub-paragraph 27.5 is a contention that the fact that the value of the part of the Site available for open market development was only 22% higher than the value of the part thereof available for affordable housing *"ought"* to have indicated to Mr Jones that his valuation for market housing was too low. Again, although included at paragraph 10.19 of Mr Fourt's report, there was no emphasis on this point in the course of submissions.

iii) The allegations in sub-paragraph 27.6 are to the effect that Mr Jones *"failed"* to take on board and apply the advice of Mr Pillinger with regard to his inclusion of enhancements in his abnormals costs with the result that he made the *"errors"* then identified in sub-paragraphs 27.6.1 to 27.6.3 in his comparable valuation and his residual valuation.

61. Although other matters are identified as *"errors"* in Mr Fourt's report, there is no allegation, as such, in the Particulars of Claim that Mr Jones failed in some way, or that he fell below the requisite standard of competence as a valuer, in ultimately relying on only the one comparable, or in comparing comparable sites on a £ per unit basis, or otherwise save than as referred to above. Consistent with the way that Mr Rosenthal KC put Mr Bratt's case as to the proper application of the legal principles involved, the case as pleaded, as I have said, focuses on the result, rather than on how the result was arrived at.

Conclusion

62. Accordingly, it is Mr Bratt's case that the Court should reach a determination as to the true Market Value of the Site as at 14 June 2013, and find that the likely value thereof was £8 million as contended for. Mr Jones's valuation was considerably more than 10% less than this and was thus negligent.

63. Had Mr Jones, as he ought to have done, found the Site was worth £8 million, then the purchase price payable by Banner on the exercise of the Option would have been £7,062,000 (90% of £8 million, minus £138,000 costs). In fact, on the basis of the Determination, the price paid by Banner was only £3,529,500 (90% of £4,075,000, minus £138,000 costs). Thus, Mr Bratt has suffered a loss representing the difference between the two figures, namely £3,532,500, which Mr Bratt is entitled to by way of damages.

Mr Jones's Case

Introduction

64. Mr Jones's essential submission is that the starting point to any consideration as to whether Mr Jones acted negligently is the *Bolam* principle, i.e. that it is not enough to show that another expert would have given a different answer. Rather, the issue is whether the defendant has acted in accordance with practices which are regarded as acceptable by a respectable body of opinion in his profession – see *Zubaida v. Hargreaves* [1995] 1 E.G.L.R. 127 at 128A-B *per* Hoffmann L.J., citing the very well-known passage in *Bolam v. Friern Hospital Management Committee* [1957) 1 W.L.R. 582 at 587. Consequently, where questions arise as to the methodology used by a

valuer, it is submitted that it is necessary to make a determination in respect of the reasonable competence of that methodology before adopting the *Merivale Moore v Strutt & Parker* approach of determining the *"true"* value, and then applying thereto a notional range or bracket of, as contended for by Mr Bratt in the present case, 10% in order to see whether the valuer falls within the range, and thereby escapes liability.

65. Thus, in the present case, it is submitted on behalf of Mr Jones that the court needs to make a determination as to whether Mr Jones acted reasonably competently in approaching his valuation on a £ per unit basis by reference to the one comparable, Bloxham Road, and, if he did, to then consider whether the methodology was applied in a reasonably competent way.

66. It is submitted by Mr Allen on behalf of Mr Jones that Mr Jones did act at all times in accordance with practices which ought to be regarded as acceptable by a respectable body of opinion in his profession, and that he applied his methodology in a competent way so that, notwithstanding the difference between his own valuation and that of Mr Fourt/Mr Davies, he is not to be regarded to have acted negligently.

67. Mr Allen submits that a number of the authorities relied upon by Mr Bratt are properly to be regarded as giving rise to what he describes as a *"logical fallacy"*. This is said to be demonstrated by, for example, Judge Langan QC's remarks in Legal & General v HPC Professional (supra) at p574 referred to in paragraph 36 and 37 above, and the first sentence of Eder J's proposition (vii) in *Capita v Jonas Drivers* (supra) at [175], and the observation therein that: *"Even if the valuation is outside the range, the professional may escape liability if he can prove that he exercised reasonable skill and care."* The argument is that a valuation ought only to be *"outside the range"* if it falls outside what is to be regarded as acceptable by a respectable body of opinion within the profession. But, if that is the case, it cannot, as a matter of logic, be open to the valuer to show that, notwithstanding, he exercised reasonable skill and care.

68. Mr Allen summarised what he contends is the task for the court in the present case in paragraph 72 of his Skeleton Argument where he submits that, on the basis of settled authority, the task of the court is to look at the relevant methods of valuation deployed and:

    i) Make findings as to the reasonable range of opinion on each of the relevant variables;

    ii) Make a finding as to the reasonable overall valuation range; and then

    iii) See whether Mr Jones' valuation fell within that overall range.

    It is submitted that this approach is consistent with the way that Eder J reached his finding in *Capita v Jonas Drivers*, as summarised at [260]-[261].

69. Mr Allen submits that Mr Bratt, whilst having produced valuation evidence which sets out a valuation of the Site, which is different to Mr Jones' valuation, has not led any evidence that addresses the question of the reasonable range of opinion on each of the relevant variables, or as to the reasonable overall valuation range. Whilst recognising that Buxton LJ in *Merivale Moore v Strutt & Parker* at 517A-D accepted that expert evidence might not always be required as to range, Mr Allen submits this would only be the case in the sort of situation identified by Buxton LJ, namely a *"suitable case"* where the valuation was "*so far removed from what was the true value of the property that it must be regarded as a valuation that was outside the limits open to a competent valuer,*

without specific professional evidence been given of what those limits were." It is submitted that this is plainly not such a case.

The authorities

70. Mr Allen highlights rather more of the citation from the judgment of Hoffmann LJ in *Zubaida v Hargreaves* (supa) *at* 128A-B, referred to in paragraph 62 above:

> "In an action for negligence against an expert, it is not enough to show that another expert would have given a different answer. Valuation is not an exact science; it involves questions of judgment on which experts may differ without forfeiting their claim to professional competence. The fact that a judge may think one approach better than another is therefore irrelevant … The issue is not whether the expert's valuation was right, in the sense of being the figure which a judge after hearing the evidence would determine. It is whether he has acted in accordance with practices which are regarded as acceptable by a respectable body of opinion in his profession: see *Bolam v Friern Hospital Management Committee* [1957] 1 W.L.R. 582 at p.587, a well-known citation."

71. Mr Allen points out that this passage was cited with approval by Buxton LJ in *Merivale Moore v Strutt & Parker* at 515D. I note that, having cited this passage, Buxton LJ went on to say: *"However, where the complaint relates to the figures included in a valuation, there is an earlier stage that the court must be taken through before the need arises to address considerations of the Bolam type"* [my emphasis]. It might be said that this demonstrates that the need to address *Bolam* considerations will always arise, but the need to consider them further might be removed by an earlier stage if the valuation is within range, or within the bracket, in any event.

72. Mr Allen, referring to Buxton LJ's judgment in *Merivale Moore v Strutt & Parker* at 519C-E , observes that the Court of Appeal reversed the judgment below on the basis that there had not been any finding by the trial judge as to what the valuer had done wrong - *"No separate reasoning was provided to explain why that value in the June 12 assessment had been negligently arrived at, as opposed to being wrong ... It was essential that reasons be stated as to why each of the figures in themselves connoted negligence ..."*. It is thus submitted that it is accordingly clear beyond doubt that there must be a finding as to what the valuer has done negligently before a claim can be established. However, I note that the passage cited by Mr Allen was proceeded, at 519B, by the observation by Buxton LJ that, in that case, there was effectively no evidence as to the proper bracket. Buxton LJ regarded this as ... *"a particularly important issue in relation to this property, which is being valued as it would stand after development, and thus might be an example of the profession regarding as to be expected a wider margin of difference than usual between values."*

73. Despite the apparent approval of passages therefrom by the Court of Appeal in *Merivale Moore v Strutt & Parker,* Mr Allen is critical of a number of passages in the judgment of Judge Langan QC in *Legal & General v HPC Professional* (supra), including that at 574F cited at paragraph 36 above, where Judge Langan QC suggested that as soon as it is shown that the impugned valuation falls outside the bracket, then the competence of the valuer and the sort of care he gave to the task are brought into question. Mr Allen submits that this displays the logical fallacy that I have referred to in

paragraph 67 above. Likewise, Judge Langan QC's observation at 574D that he did not accept that *"where the figure under attack has been shown to be outside the acceptable bracket (the wrong result) a plaintiff has the additional burden of showing why the valuer reach that result (the wrong method)."* Mr Allen's point is that the figure ought only to be outside the acceptable bracket where it falls outside the range of reasonable opinion.

74. With regard to *Goldstein v Levy Gee* (supra), Mr Allen identifies that the competing submissions in that case were that the defendant contended that there would be no liability if the final valuation number to be determined by the court was within a reasonable range, whereas the claimant maintained that there could be liability even if the final valuation figure was within a reasonable range if it had been skewed in some way by reason of a negligent error in the valuer's reasoning. Despite expressing reservations, Lewison J concluded that, on the authorities, the defendant's proposition was correct, and that unless there had been separate reliance on a part of the valuer's reasoning, the test for liability was whether the valuer's final figure was outside of a reasonable range.

75. Mr Allen refers to the fact that the defendant in that case submitted that the court should not even submit the reasoning process behind the valuation to scrutiny, but that Lewison J at [69] observed that:

> "The practical difficulty with this submission is that both the experts arrived at their final figures by considering the component parts of the valuation separately. In order to reach a conclusion on the validity of the final figure, it seems to me that I must replicate that process."

76. Mr Allen submits that this demonstrates that in all but possibly the most straightforward cases, the only way in which a court can scrutinise the overall valuation is to replicate the process of the valuation, because the court cannot simply substitute its own view, or that of another valuer for that of the defendant and has to decide whether the defendant's valuation was a reasonably competent one.

77. Mr Allen refers the fact that, in *Goldstein v Levy Gee*, the court had the benefit of expert evidence on the constituent parts of the valuation and the competent bracket for each variable upon which judgment was required – see e.g. at [112]. At [122]-[124], Lewison J addressed the variable which the valuer did deal with negligently and gave a bracket for what the range of competent approaches to that question was. In finding the overall permissible range, the court took all the low-end variables and then all the high-end variables, so as to give a range between £3,027,628 and £3,692,892 – see at [133]-[136]. As the valuation was within this range, the claim failed.

78. Thus, Mr Allen relies on the fact that, in the latter case, the approach of the court was to assess the competent range of approaches to each part of the valuation process and add those figures together to get the overall competent range. Mr Allen does not suggest that the court need necessarily always adopted this approach in respect of every valuation with multiple stages and inputs, and that due to the sensitivity of a residual valuation, it may well not make sense to derive the overall range. Thus, whilst the court still needs to make an assessment of the competent approach to each variable, Mr Allen suggests that the court might take the view, as Mr Buckingham has done, that it is inherently unlikely that a competent valuer would always be at the extreme end of a range when so many variables are involved, and come to a form of *"blended view"* about the overall range.

79. As to *K/S Lincoln v CB Richard Ellis* (supra), Mr Allen points out that this was, again, a case where the claimant submitted that the defendant valuer should be liable for damages even where the overall valuation result was within a reasonable range, a submission which the court rejected. Mr Allen refers to Coulson J, at [148], having considered the authorities, holding that the court had to analyse a valuer's legal liability by reference to whether the overall valuation number was within a reasonable range, and that liability could not be established just by establishing that some part of the methodology had been negligent.

80. Mr Allen further refers to Coulson J, at [150], expressing the view that *"the valuer's performance should be judged by reference to the final figure, not the minutiae of how he got there"*. Mr Allen submits that it is clear that Coulson J was there talking about the question of overall liability and the fact that there cannot be legal liability for damages without the overall valuation being outside of the reasonable competent range, and that this cannot sensibly be read as it being said that, conversely, a valuer could be found liable for damages without a finding that he had done something negligently wrong. It is therefore submitted that nothing in this case supports the proposition that the *Bolam* test does not apply to valuers, or that there need not be a finding that a valuer has done something negligently within a valuation in order to establish legal liability.

81. Mr Allen identifies that Coulson J looked at the individual parts of the valuation and the expert evidence he had received about each issue, making findings about the reasonable range of approaches on each issue – see at [165]. Mr Allen submits that it can be seen that Coulson J did not simply apply a percentage to arrive at a bracket, but carefully considered the expert evidence from both parties on the margin of error, concluding that the range in that case was more than 10%, with 15% the upper end of the range – see [183]-[191]. Mr Allen further submits that it can be seen, at [190], that a factor taken into account by Coulson J in finding for a higher percentage was that *"there were a whole range of matters on which, in this case, a valuer would need to exercise his judgment."*

82. So far as *Capita v Jonas Drivers* (supra) is concerned, I have already identified that Mr Allen takes the point that Eder J's proposition (vii) at [145] is, he submits, subject to the logical fallacy that I have referred to above. Mr Allen does, however, suggest that this proposition might be intending to capture an edge case unusual situation, e.g. if the value had incorrectly entered an input because he had been deliberately misled by somebody about it in circumstances where he owed no duty to check the position for himself.

83. Subject thereto, Mr Allen submits that Eder J's other propositions are consistent with Mr Jones's case as to the true state of the law. He points out that Eder J went on to consider the reasonable range for each of the valuation inputs, before considering the valuation range for the overall valuation, deciding that the correct approach was to look at the range for the various inputs, including a 20% range for one of the valuation inputs – see [257]-[259].

84. As to *Webb Resolutions Ltd v E.Surv Ltd* (supra), Mr Allen refers to the fact that Coulson J, at [23], suggested that the overall valuation being outside the reasonable margin is a threshold test which presents a prima facie case for the valuer to answer. He submits that the overall thrust of this paragraph is that the *Bolam* test applies, and that it has to be shown that the valuer did something negligent, i.e. something which no reasonably competent valuer would have done, before liability can attach. He further submits that, in so far as this paragraph is said to suggest that a valuation can be outside

of a reasonable margin of error without any act of negligence, then it is a proposition that is logically impossible to accept and misunderstands what *"the reasonable margin"* means, i.e. something that can only be determined by a close examination of what a reasonable competent approach would have comprised in the individual case, and a measurement of what results a reasonably competent approach could have returned.

85. The latter case involved a two-bedroom city centre flat, where a margin of 5% was held to be appropriate. Mr Allen makes the point that this is about as far from the type of property that we are concerned with in the present case as it is possible to get.

86. Finally, *Dunfermline Building Society v CBRE Ltd* (supra), a decision of HHJ Klein in which, at [33], he cited and approved Eder J's propositions in *Capita v Jonas Drivers (*supra) at 145. Mr Allen refers the fact that, at [35], Judge Klein went on to state that:

> " … it is clear from Capita, that, to succeed in a professional negligence claim against a valuer, a claimant must establish not only that the valuer's valuation fell outside the range of valuations which a reasonably competent valuer could reach (that is, the *"bracket"*, as I shall describe it in this judgment) <u>but also</u> that the valuer *"fell in some way below the standards to be expected of a reasonably competent professional"*. [My emphasis]

87. Mr Allen submits that this shows that there is no doubt but that the *Bolam* test still applies to cases such as the present, and that a valuer has to be shown to have acted below the standards of his profession in some way before liability can be found. Mr Allen recognises that Judge Klein did then say that he derived assistance from the passage in *Legal & General v HPC Professional Services* (supra) that he criticises. However, Mr Allen points out that Judge Klein did go on to consider aspects of the defendant's work which were relevant to the specific allegations of negligence made against it. Mr Allen submits that the judge had to do this because: (a) it is well established that the specific allegations of negligence against a professional person have to be distinctly pleaded and proved in any professional negligence case, and the judge had to deal with the case which was alleged against CBRE; and (b) in deciding what the reasonable bracket for error was, the judge had to look at each part of the valuation and decide what approach was reasonably competent, in order to derive the reasonably competent range.

88. On this basis, it is submitted on behalf of Mr Jones that what this case adds to the analysis is to demonstrate that in any valuation case the court has to form a view as to the competent range for each of the steps in order to arrive at a view about the overall reasonably competent range, particularly in the case of a multilayered-valuation exercise. In fact, *Dunfermline Building Society v CBRE Ltd* involved a valuation of a site for residential development and also a discussion of the margin of error in respect of a residual valuation. The experts had agreed on a margin of error of +/- 15%, within which the defendant's valuation fell. The court considered each stage of the residual analysis, not just the stages which were alleged to have been carried out negligently, and considered what a reasonable input would have been at each stage.

89. Mr Allen, in his Closing Submissions, summarises his submissions as to the appropriate principles by adding to Eder J's propositions in *Capita v Jonas Drivers* at [145] (apart

from the first sentence of proposition (vii), which Mr Allen objects to as an illogical fallacy), the following:

i) A claimant must particularise and prove the ways in which it is said that the valuation was not reasonably competent, in the same way that any allegation of negligence against a professional must be pleaded and proven.

ii) A valuer cannot be found liable unless the court finds that some aspect of the valuation was carried out in a manner which was not reasonably competent – i.e. was not something which could be supported by a reasonably competent member of the valuers' profession. This is a necessary but not sufficient condition for liability; there is an additional requirement that the overall valuation result must be outside of the range which reasonably competent members of the profession could have arrived at in respect of the same valuation.

iii) In determining what the overall reasonable range was for a particular valuation, the court must by necessity consider each relevant aspect of the valuation, and what approach was reasonably competent for each aspect. The determination of the reasonable range therefore inevitably has bound up in it the court's views about what a reasonably competent approach was to each part of the valuation.

iv) As a matter of inexorable logic, the reasonably competent range will encompass every result which could be arrived at by a reasonably competent valuer acting reasonably competently at every step of the valuation. It is conceptually impossible for a valuer to act reasonably competently at every stage of the valuation and yet produce a valuation that was outside of a reasonably competent range.

v) Although the court is obliged to consider the reasonably competent approach to every stage of the valuation, there may be cases where the overall valuation range is derived not by arithmetic addition of input sums from each stage of the equation, but by the court taking an overall blended view as to what reasonable competence required of a valuer doing his job as a whole on the facts of the individual case. Residual calculations may be in this category, given their sensitivity to small changes in input data, but the court must reflect that volatility in the overall reasonable range which is determined.

Application of the legal principles

Introduction

90. In his submissions, Mr Allen considered, in turn, the residual valuation and the comparable valuation carried out by Mr Jones in the Determination. It is necessary to consider his submissions in relation to each in turn.

Residual valuation

91. Pleaded allegations/Enhancements – So far as pleaded allegations of negligence in relation to the residual valuation are concerned, Mr Allen identifies that the only two relevant allegations in respect of the residual valuation are those in paragraphs 27.6.2 and 27.6.3 that I have set out in paragraph 59 above.

92. So far as paragraph 27.6.2 is concerned, the allegation is that Mr Jones relied on comparable sales of houses which did not include equivalent building enhancements but

failed to make any adjustments to reflect the inclusion of those enhancements in the houses to be constructed on the Site. Mr Allen contends that this allegation does not appear to be supported by any part of the evidence in Mr Fourt's or Mr Davies's reports. Whilst they contended for a higher overall price per sq ft for the GDV, this does not, it is submitted, appear to be on this particular basis.

93. Mr Allen points to the fact that Mr Jones deals with the matter in paragraph 34 of his witness statement, on which he was not challenged under cross examination. In that paragraph he describes the process of comparing the sales evidence of transactions relevant to the Valuation Date in June 2013 with the proposed dwellings and, amongst other things, taking into account all of the constructional enhancements that Mr Pillinger had commented on. It is therefore submitted that, even this is a matter that is still pursued, it has been answered and rebutted by Mr Jones.

94. So far as paragraph 27.6.3 is concerned, this is the matter in respect of which Mr Jones accepts that he made a mistake. Mr Allen submits that it is trite that not every mistake is negligent, and he points out that Mr Davies candidly accepted in his evidence that this was the kind of mistake that any valuer faced with a valuation of this kind could have made. On the basis that in order to make a finding that a mistake by a professional was negligent, there needs to be an evidential basis which shows that it was not a mistake that a reasonable body of the same profession could have made, Mr Allen submits that Mr Davies's concession means that there is no such evidence in support of the allegation in the present case. Consequently, this allegation cannot be made out.

95. Number of units - Mr Allen relies upon Mr Davies, in evidence, not having ultimately contended that it was unreasonable for Mr Jones to value the Site as having the 82 units for which planning permission was obtained on appeal, and for which reserved matters planning permission had been granted a matter of weeks before the valuation date. He submits that it would have been absurd to content otherwise, and he submits that there is no reasonable range on this item on the basis that no prudent purchaser or valuer would assume a higher number of units than that for which there was actually planning permission.

96. Mr Allen relies, amongst other things, upon the fact that Mr Fairbairn did not, in his representations, seek to suggest that any more than 82 units would be built, and that nor did Mr Fourt do so in an initial valuation in January 2022.

97. Mr Allen submits that the approach taken by Mr Fourt and Mr Davies is demonstrative of what he described as a *"naked and obvious attempt to put forward the highest figure that could conceivably be contended for by way of residual calculation"*, as part of a more general criticism that the *"correct"* calculation put forward by Mr Davies was not a fair or measured attempt at portraying the true position. Mr Allen makes the further point that Mr Fourt's and Mr Davies's calculations, whilst including the four additional units, have failed to include additional s.106 costs and professional fees in seeking to improve the planning permission, leading to further inflation of the residual valuation presented to the court.

98. On Mr Jones's case it is calculated that removing the four units, removes 3578 sq ft from Mr Davies' residual calculation, or the sum of £1,019,730 from the GDV of the Site. Whilst it may not be an easy task to track this through to the overall residual valuation, it is said that this would remove at least £500,000 from the bottom-line calculation.

99. Affordable Housing GDV – Mr Jones's case is that Mr Davies's written evidence on this was hopelessly flawed as it was based on a mistaken understanding on the part of Ms Kilminster, the affordable housing expert in his firm, as to the square footage of the affordable housing units at the Site. Once this is appreciated, then her range of values requires, so it is said, to be adjusted down to a range of £3,658,415 to £4,583,014. Using the lower end of this range, would, it is pointed out, reduce Mr Davies's residual calculation by £1,276,080.

100. A point is taken that, again, Mr Fourt/Mr Davies used the top end of the range for the purposes of their residual calculation, and it is submitted that Mr Davies had no cogent explanation under cross examination as to why he had done this.

101. Further, reliance is placed upon the fact that once the flaw had been exposed, Mr Davies, under cross examination, conceded that Mr Jones's figure of £3.54 million as the GDV of the affordable units was a *"reasonable one"*. There is said to be logic in this because Ms Kilminster had based her calculations upon the figure of £280 per sq ft for the market housing, and so if any reduction in the latter is appropriate, then so too must it be in respect of the affordable housing GDV. Mr Allen makes the further point that Mr Jones's figure had been based upon an actual offer from a registered affordable home provider, and that the court heard evidence from all the surveyors who gave evidence that that was how it almost always works in the real world, with the developer getting an offer from an affordable housing provider offering to acquire the same en masse that would inform what it was prepared to pay.

102. On the basis that Mr Jones's figure of £3.54 million was competent, Mr Allen submits that there is no reason to consider any range on this figure. This would reduce Mr Davies's GDV input by £1,394,495. There would be some saving not having to build the erroneous 1,941 ft sq, but this, it is submitted, still leaves a reduction to the residual valuation of something around £1,225,570.

103. Build Costs – In his *"correct"* appraisal at Appendix 14 to his report, Mr Fourt has inserted lower construction costs than those as advised to Mr Jones by Mr Pillinger. It is submitted by Mr Allen that Mr Fourt had no good reason to do so, in particular bearing in mind that Mr Pillinger had considered the spot BCIS rates when compiling his own report. Indeed, Mr Allen submits that there is no reasonable range on this item, and that the court should work from Mr Jones's costings that he had used to assess the cost for himself in the light of the advice that he had received and given the technical submissions that were made to him by the parties.

104. Mr Allen relies upon Mr Davies having accepted that, if Mr Jones's approach is to be regarded as acceptable, one needs to remove a further £739,066 from the supposed "correct" residual being the difference between the adjusted residual valuation shown at Mr Fourt's Appendix 13, and the supposed *"correct"* residual valuation shown at his Appendix 14.

105. Market Unit GDV - Mr Allen submits that Mr Jones' assessment of the market units was arrived at by competent methodology, namely using them to carry out a unit by unit appraisal of the likely market sales values at the Site. He submits that such a unit by unit appraisal represents what any developer purchaser would carry out, as confirmed by the evidence, and was patently therefore the correct approach. Reliance is placed upon the fact that Mr Jones's assessment coincided with the assessment of the local sales agents, Stanbra Powell, properly interpreted.

106. Whilst Mr Davies did not feel able to support the £315 per sq ft which Mr Fairbairn had contended for, and instead included a value of £285 per sq ft in his residual appraisal, this such was not derived from a unit by unit appraisal, but by considering an *"area blended average for new build properties"* in OX15 and OX16. It is submitted on behalf of Mr Jones that this was an extremely blunt tool, unlikely to provide as accurate a result as a unit by unit analysis.

107. As to the comparables relied upon by Mr Davies, it is submitted by Mr Allen that they do not provide any support for a GDV value of £285 per sq ft at the Site for the following reasons:

    i) It is submitted that the figures contain three obviously high outlier numbers, two of which relate to a gated development (Milne Close) in central Banbury, likely to attract significantly higher prices than at the Site, as, it is said, Mr Davies seemed to accept in giving evidence.

    ii) It is submitted that when the outliers are removed, it is clear that the comparables in fact provide very close support for the assessment of Mr Jones at £265 per sq ft (and Stanbra Powell at £262.50) as analysed in the graph at Annex 3 to Mr Allen's Skeleton Argument.

    iii) It is submitted that, contrary to the approach that Mr Fourt indicated was going to be adopted, no adjustments of any kind have been made to the comparables.

    iv) It is submitted that the comparables are, on average, 277 sq ft smaller than the properties to be built on the Site, but that no adjustment has been made for the well-known fact (as is said to have been conceded by Mr Davies) that prices per square foot increase as the units get smaller.

    v) It is submitted that the average sale price per unit of Mr Davies' comparables is £85,038 lower than the figure which Mr Davies contends for at the Site, on the basis of his £285 per sq ft valuation, and that no explanation is provided as to the basis upon which the units at the Site should be valued at £85,038 more on average than the comparables selected.

108. In support of his own assessment of GDV, Mr Davies has, as I have ready mentioned, sought to rely on actual sales at the Site. The actual sales figures average out at a value of £305 per ft sq some 4 to 5 years after the valuation date. It is Mr Jones's case that this comes nowhere near to supporting a value of £285 ft sq as at June 2013. Mr Buckingham has carried out an indexation exercise, which returns a value of £231 per ft sq as at June 2013, being significantly lower than the £265 per sq ft that Mr Jones adopted. Whilst Mr Davies has produced a supplemental report challenging the accuracy of Mr Buckingham's indexation exercise, and suggesting that the latter distorts the position, Mr Jones's case is that looking at actual sales achieved some five year after the event provides no real assistance as to the value as at the June 2013 Valuation Date, absent some robust method for adjusting the same.

109. Mr Jones relies upon the fact that Mr Buckingham's own assessment of the market GDV comes out it £262.62 per ft sq, and that this, taken together with Stanbra Powell's analysis from 2013, demonstrates a tight cluster between £262 and £265 per ft sq, which well justifies Mr Jones's figure of £265 per ft sq.

110. Adopting this latter figure, is said to remove a further £1,360,160 from Mr Davies's residual calculation.

111. Developer's profit – It is Mr Jones's case that a further mistake revealed in Mr Bratt's expert evidence is the fact that the parties to the Determination had agreed a developer's profit figure of 17.5% on GDV, whereas Mr Fourt has applied the 17.5% to cash. This is said to have plainly been a mistake as Mr Fourt stated in his report that he was going to apply the 17.5% to GDV. Mr Allen describes this as part of what he describes as a troubling trend of misstatements serving to increase the value of Mr Bratt's *"correct"* residual calculation. It is complained that Mr Davies had the opportunity to correct this following the joint meeting of experts but failed to do so. It is contended that this error meant that Mr Davies's *"correct"* residual calculation was overstated by a further £506,000.

112. Conclusion - It is Mr Jones's case that the sums referred to above that are required to come out of Mr Bratt's *"correct"* residual calculation amount to some £4,330,796, which would lead to an adjusted residual figure of approximately £3.87 million, albeit that it is accepted that, given the way that residual calculations work, there will not be a straight line reduction in some of the items as the figures feed into finance percentages, profit etc..

113. Mr Allen points out that making the correction in respect of the double counting of enhancements, Mr Jones's residual calculation would have returned a value of approximately £4.56 million. It is submitted that, in the light of the above submissions in relation to Mr Bratt's *"correct"* residual valuation, this figure of £4.56 million represents a *"reasonable anchor point for analysis of the residual calculation"*.

114. Mr Allen submits that whilst it is not suggested that Mr Jones or the experts should have based their valuations primarily on a residual calculation in the present case, it is submitted that the reasonable residual calculation is of real relevance to the resolution of the present case for what are submitted to be the following reasons:

    i) It is common ground that a competent valuer would have considered the residual valuation as against the comparable valuation to ensure that they were within a reasonable range of one another.

    ii) It was also the firm evidence of Mr Buckingham, if not common ground, that developer purchasers would carry out their own detailed residual calculations and work out their bids for the land on the basis thereof. On this basis, a developer purchaser would be unlikely to pay a price for the Site that did not bear a sensible relationship to a competent residual calculation in respect thereof.

    iii) The fact that a reasonable residual calculation would have shown a value of in the order of £4.54 million must therefore be relevant to what its value was in the market. On this basis, a competent comparable valuation would have to be within a reasonable striking distance of £4.54 million.

    iv) Mr Bratt and his expert Mr Davies having put forward as *"correct*" a residual valuation of £8.2 million demonstrates what is said to be their approach to the case as a whole, namely, to inflate the value contended for as far as possible.

Comparable valuation

115. Pleaded allegation/enhancements – Mr Allen submits that the first task for the court is to see what the pleaded allegations of breach of duty are in respect of Mr Jones's comparable valuation in order to understand what it is being asked to find that Mr Jones did negligently. Consistent with what is said about the pleaded allegations in paragraphs

60 and 61 above, Mr Allen identifies that the only allegation about the actual way that Mr Jones carried out his comparable valuation is the allegation contained in paragraph 27.6.1 of the Particulars of Claim. Mr Allen submits that paragraphs 27.2, 27.3 and 27.5 amount merely to the proposition that three different metrics demonstrate that the valuation of £4.075 million for the Site was too low, in support of the overarching allegation at paragraph 27.1 that Mr Jones' valuation was below the *"true"* value of the Site which is said to be £7.8 million.

116. The first matter that Mr Allen asks the court to note in respect of paragraph 27.6.1 is that the figure of £729,908 therein is, he says, wrong and should be £817,497, as to which see paragraph 29(vi) above.

117. As to whether Mr Jones should have made this deduction in respect of enhancements, it is his position that he had no evidence that similar costs had been factored into the bid for the land at Bloxham Road, and so it would not have been right to assume that such costs were going to be incurred at that site. On the other hand, he knew what the costs of enhancements was going to be at the Site and therefore had to include them in his analysis. The relevant figure features in his assessment of GDV values, and the costs were known costs which had to be accounted for in his comparative valuation. As he sets out in his witness statement, contrary to what appeared to be suggested to him by Mr Pillinger in an email, he did not take the view that the enhancement costs would necessarily translate into sales value at the Site.

118. Mr Allen identifies that Mr Buckingham took a slightly different view and considered that it would have been possible to infer that some similar enhancement costs would have been incurred at the Bloxham Road site, and so some adjustment could have been made to take account of this, with the adjustment being anything between 25% and 75% of the enhancement costs on the basis that there were plainly fewer enhancements apparent at the Bloxham Road site than at the Site – see paragraph 6.7.1 of Mr Buckingham's report.

119. Mr Allen submits that the key consideration is as to whether reasonably competent steps were taken to ensure that a like-for-like comparison was made between the Bloxham Road comparable and the Site, the question being how that should be achieved.

120. Mr Allen makes the point that the enhancements were known costs at the Site and had to be accounted for in the analysis in some way. He submits that it would only have been if there had been good information to suggest that identical costs were to be incurred at Bloxham Road that they should have been treated as having a neutral outcome on the comparison exercise. As Mr Jones did not, as a matter of fact, have any information that similar costs were going to be incurred at Bloxham Road, he took the view that it was prudent to assume that there were no such costs rather than make a speculative assumption to the contrary, and that he would have been told by Savills if such costs are going to be incurred. It is submitted that this was a reasonably competent view. Alternatively, if the court prefers the evidence of Mr Buckingham, then it is submitted that there was a range of views on the matter as Mr Buckingham explains, and that there was no basis for a cavalier view that entirely equivalent enhancement costs would certainly be incurred at the Bloxham Road site, and thus that there is no basis for an approach which removed all these costs from the valuation equation.

121. On this basis, it is submitted on behalf of Mr Jones that the sole pleaded ground of negligence must fail.

122. Per-Plot approach - Mr Allen points out that the allegations of negligence in the case do not include an allegation that Mr Jones acted negligently in carrying out his comparable analysis on a per plot basis. He says that there is very good reason for this, namely that there is no evidence to support such a case.

123. It is recognised by Mr Allen that the two key pieces of professional guidance relating to valuation of development property are RICS's 2008 Information Paper No. 12 – Valuation of Development Land, paragraph. 4.1, and RICS's 2019 Guidance Note – Valuation of Development Property, paragraph 5.8, although Mr Allen does point out that the latter was not current or available when Mr Jones carried out the Determination. In relation thereto, it is submitted that such guidance:

    i) Identifies a number of different potential methods and allows the valuer to use their judgment as to which is to apply in a particular case;

    ii) Does not say that it is an impermissible approach to value on a £ per plot basis, recognising that this may be appropriate.

124. Mr Allen refers to para 4.3 of the 2008 Information Paper which set out a list of potentially relevant factors to consider when carrying out a comparable valuation:

> "- values may differ considerably within a small geographic area;
>
> - the condition of the site and associated remediation costs are very site specific and could differ significantly between greenfield and brownfield, and between brownfield, sites;
>
> - site and construction costs, for example, in terms of infrastructure and service requirements differ;
>
> - the type of the development will vary and may reflect a requirement to provide affordable housing. In the case of residential developments, the density achieved can also affect the price;
>
> - the price may be affected by planning obligations; and
>
> - in a rapidly changing market, the date of the sale of the comparable is relevant."

125. Mr Allen submits that the court should bear this list in mind when considering Mr Davies's evidence to the effect that S. 106 costs and abnormal costs do not have to be known or factored into a valuation of a development site and can be assumed at a constant level between sites.

126. Mr Allen further refers to paragraph 4.4 of the 2008 Information Paper which notes that *"the higher the number of variables and adjustments for assumptions the less useful the comparison."*

127. Mr Allen makes the point that nowhere does Mr Bratt's expert evidence state that the only reasonably competent approach to the comparable valuation of the Site was to carry it out on a basis other than a £ per plot basis. Mr Davies did, in giving evidence, describe Mr Jones's approach as *"unusual"*, but did accept that it was an approach open

to Mr Jones. On this basis, it is submitted that there is no evidential basis for a finding that it was incompetent of Mr Jones to value the Site on a per plot basis.

128. Mr Allen refers to Mr Jones having explained his thought process in paragraph 27 to 30 of his witness statement where he refers to having considered comparison by NDA as being a very crude methodology for reasons that he explained. Further, he says that he was concerned that using an acreage unit comparison did not take account of the density of development, having regard to the fact that the Site was a relatively low density site. He described the advantage of the per plot basis as being that it overcame the density issue and meant that the *"NDA measurement issue became irrelevant"*.

129. Mr Allen identified that Mr Buckingham set out his views at paragraph 6.3 of his report. He expressed the opinion, amongst other things, that if Mr Jones adopted a per sq ft basis or a per NDA basis, as suggested to him by Mr Turner and Mr Fairbairn respectively, then he would have been open to criticism for *"failing to properly pick up the issue of the lower density."* Further, he expressed the view that the NDA approach was, in any case, too blunt a method when dealing with comparables that have only outline planning permission. He concluded by saying that he believed that Mr Jones's approach was *"not inconsistent with the contemporaneous RIC S guidance notes and was cognisant of the issues in dealing with a per plot basis … and dealt with these issues in his Determination."*

130. Mr Allen submits that the highest that the case can be put by Mr Bratt on the evidence before the court and the pleaded case is that Mr Jones should also have considered other metrics of valuation before finalising his view as to the value of the Site, and that the court will, accordingly, have to consider both the competent approach to the £ per plot basis of valuation, and also whether Mr Jones should have done anything in addition to it.

131. Selection of comparables - Mr Allen makes the point that there is no pleaded case that Mr Jones acted negligently in carrying out his comparable analysis by reference only to the Bloxham Road comparable.

132. It is Mr Jones's case that he considered all the comparables in respect of which he was provided with details and inspected every site as well as carrying out his own research, and thereby discovered the two additional sites, Bloxham Road and Aynho Road. He then carried out further analysis on seven potential comparables, but ultimately decided that the Bloxham Road comparable was so strong that it should be used as sole comparator to value the Site. Mr Allen submits that this was a decision born of Mr Jones's many years of professional experience and judgment, having visited every potential site. Mr Allen emphasises Mr Jones and Mr Buckingham having spoken at some length about *"feel"*, and how value is appraised at different sites by means of this developed sense on the basis that part of the real art of valuation is knowing an area and developing a feel for how and where differences occur between different sites.

133. It is said that this led Mr Jones to conclude that the other comparables were not in fact true comparables given their differences to the Site. The point is made that sites such as Aynho Road in Adderbury, although reasonably close to the Site, were perceived as locations that commanded a premium. Whilst Bodicote is a village, it is said that it has, to all intents and purposes, been subsumed into Banbury. Further, and in any event, the Site is not accessed through Bodicote, but rather through a road shared with the garden centre leading off a main arterial road out of Banbury making it, in reality, a suburban area on the southern edge of Banbury with no real village characteristics, i.e., very like

Bloxham Road. It is these factors that are said to have led Mr Jones to quite fairly regard the Site as so similar to Bloxham Road, and as distinct from a traditional village location so as to place Bloxham Road at the top of the hierarchy of valuation evidence, cf. paragraph 5.3 of the RICS 2008 Information Paper.

134. Mr Allen submits that the *"real question"* is whether the opinion that Mr Jones formed about the fact that Bloxham Road was by far and away the best comparable and a sound basis upon which to compile his valuation was a reasonably competent one, or an incompetent one, i.e. one which no reasonably competent valuer could have formed. He submits that it cannot properly be said that Mr Jones's approach was one which no reasonably competent valuer could have adopted.

135. Whilst Mr Buckingham would not use the same language as Mr Jones or describe Bloxham Road is virtually identical to the Site, it is submitted by Mr Allen that Mr Buckingham was clear in his evidence that it was a very strong comparables, and that Mr Jones acted reasonably competently in using it as the basis of his comparable valuation. Consequently, it is submitted that if the court takes the view that Mr Buckingham's view represents respectable professional opinion, then there is no basis to criticise Mr Jones for selecting the sole comparable as he did.

136. In the alternative, if the court finds that Mr Jones was obliged to use more than the one comparable, then it is submitted that those which would have been used are the ones for which the per plot analysis was carried out as recorded in Appendix L to the Determination, and that a competent analysis of those comparables would have been in accordance with the commentary upon them that was set out in the Determination at paragraphs 3.53 to 3.62, and that this would not have led to a different valuation of the Site.

137. In the further alternative, it is Mr Jones's case that even if one did use the comparables urged upon Mr Jones by Mr Fairbairn, there is nothing out of tone with Mr Jones's analysis. Mr Fairbairn produced a schedule of comparable properties that Mr Jones was asked to consider. Mr Fairbairn accepted that four of the properties should be excluded from the exercise, leaving seven properties. At the bottom of his schedule, Mr Fairbairn set out a gross £ per unit calculation for the sites. The gross calculation is the purchase price with the abnormal costs and s. 106 costs added back on. The gross is then divided by the number of units for which planning permission has been given. Mr Fairbairn's analysis makes no distinction between affordable units and market units, which Mr Jones says is a flawed approach. Nevertheless, the average gross £ per unit across Mr Fairbairn's comparables is £84,895. The gross price per unit for the Site, on Mr Jones's valuation is £84,176 (being the gross price of £6,902,500 divided by the number of units). It is Mr Jones's case that this shows that there was nothing out of tone in Mr Jones's per unit comparable assessment when compared with the comparable evidence urged upon him by Mr Fairbairn.

138. Thus, in short, it is Mr Jones's case that his comparable valuation on a per plot basis was reasonably competent and in accordance with the evidence presented to him.

139. <u>Adjustments made by reference to the Bloxham Road comparable</u> - I have summarised the adjustments made by Mr Jones in paragraph 28 above. The only pleaded allegation is in respect of enhancements, which I have already referred to above. Mr Allen submits that there is no evidence which establishes that Mr Jones's approach to other adjustments was not reasonably competent. Mr Buckingham deals with them at paragraphs 6.7.2 to 6.7.6 of his report, as amended in his addendum report. He takes

the view that there were a range of possibilities in respect of the adjustments, and that Mr Jones's approach was reasonable in respect of each of them, although Mr Buckingham would have taken the view that the plots at the Site were likely to be worth a little less than those at Bloxham Road. Mr Buckingham opined that the overall valuation range was +/- 15% of a value of around £4.2 million.

140. The NDA method of valuation - Mr Allen identifies that it is a key feature of Mr Bratt's case that Mr Jones should have looked at the valuation on a different basis, namely the value of the Site on a £ per NDA basis, and that if only Mr Jones had done so, then he would have discovered that the value of the Site was almost double that which he had determined.

141. The key criticism made on behalf of Mr Jones as to the use of an NDA analysis is that it is said to require detailed planning permission before the actual net developable acreage of a site can be ascertained. Further, it is submitted that by adopting this approach, a valuer will not get the true value of the site as the assessment will be carried out by reference to the developable area, not the number of units to be built, which is where, so it is said, the value lies for a developer. The point is said to be illustrated by the example provided in paragraph 88 of Mr Allen's Skeleton Argument.

142. Mr Allen relies upon what is said to be the clear evidence of both Mr Jones and Mr Buckingham that sophisticated purchasers of development land, such as Persimmon, simply do not use a NDA analysis in their own appraisals of sites to purchase, and so, in real life, no purchaser would ever analyse the value of a development site in this way.

143. Mr Allen relies upon Mr Buckingham having been, as he put it, absolutely adamant that it is not permissible to analyse development sites where good information is not available in respect of key costs, such as s.106 and abnormal costs, and that it cannot be assumed that costs are somehow constant between sites such as those under consideration, as Mr Davies sought to suggest in giving evidence. Mr Allen submits that the available evidence shows that this is simply not the case, and that there are huge variations between costs from site to site. Further, Mr Allen submits that no developer would have bid on site without details of those costs and having factoring them into their appraisal, something which, so it is said, Mr Davies agreed with.

144. Reliance is placed by Mr Jones upon what was said by Mr Turner in his representations at paragraphs 15.2 to 15.5 thereof, that Mr Jones contemporaneously noted that he agreed with, and which Mr Allen submitted amounted to a well-reasoned criticism of Mr Fairbairn's valuation approach that had assumed similar levels of s.106 costs and abnormals.

145. Mr Allen maintains that the court does not have to make a finding that Mr Jones, Mr Buckingham and/or Mr Turner are right about the flaws in question, it is enough that there are sufficient question marks about its utility to make impossible a finding that Mr Jones was obliged to utilise an NDA basis of comparable exercise when carrying out the Determination.

Margin of error

146. Mr Allen takes the point that Mr Bratt has adduced no expert evidence as to the appropriate margin of error. The only evidence that the court has about the margin is Mr Buckingham's evidence that the margin of error was 15% around value of £4.2 million, but on the basis that there was a very strong comparable in Bloxham Road. Mr

Buckingham expressed the view that if Bloxham Road was not to be regarded as a strong comparable, then the margin would have been very much more like 20%. Mr Allen submits that Mr Buckingham brought this point to life in giving evidence by discussing how, in the real world, professionals in a team working on a transaction of this nature can have bets about what the development bids for a piece of land will be, and that they will be lucky to be within 20% of the offer. As Mr Allen put it, *"this is a complex world and precision is impossible."*

147. Mr Allen submits that the valuation provided by the Determination was plainly a valuation which involved the application of multiple judgment calls by a valuer, with Mr Davies accepting that there were questions of judgment in respect of the variety of matters as set out in paragraph 153 of Mr Allen's Closing Submissions.

148. It is thus submitted that it cannot seriously be contended that the margin of error in a valuation like the present one is anything like 10% and must be significantly more this.

The witnesses and the evidence

Introduction

149. It is said on behalf of Mr Jones that it is hard to think of many occasions in the present case where the court has to prefer the evidence of one witness over another, because the evidence of Mr Bratt's expert witness, Mr Davies, does not on its face go far enough to establish a claim in negligence.

Mr Jones

150. Mr Allen submits that Mr Jones was plainly an honest witness giving an honest account of the process he undertook to arrive at his honest professional opinion of the value of the Site within the Determination. It is said that he was straightforward in his evidence, answering the questions asked of him without prevarication or artifice.

151. Whilst it has been suggested that Mr Jones had been rushed in his work and had cut corners in order to produce a timely determination, it is submitted on behalf of Mr Jones that there is absolutely no evidence to support any such proposition.

Mr Davies

152. Mr Allen describes Mr Davies as a *"mixed bag"* as a witness. He points to what he describes as moments of straightforward candour such as when he accepted that the error that Mr Jones made with Mr Pillinger's figures was one of those things that any valuer carrying out an exercise such as that carried out in the present case could have done. It is suggested that there were other moments of more reluctant acceptance that things Mr Jones had done were reasonably competent. Mr Allen points to a number of mistakes which Mr Davies had not picked up on when assisting Mr Fourt in relation to his report, when reviewing the latter for the purposes of his own report, and when reviewing the case for the purposes of the trial. Further, Mr Allen points to important matters which Mr Buckingham had flagged up for Mr Davies in December, which it is said that Mr Davies had bafflingly failed to deal with.

153. Mr Allen submits that there were some particularly unsatisfactory parts of Mr Davies' evidence where he tried to distance himself from an exercise which he had carried out to support his view on GDV but which he then tried to pretend had never been referred to in support of his position. Further it is submitted that Mr Davies failed at all

satisfactorily to explain why he had only presented the highest possible numbers in his *"correct"* residual calculation. On this basis, it is said that there were a number of respects in which Mr Davies evidence should not be regarded as fair and measured and designed to provide an impartial view of the case.

154. Mr Allen submits that given the number of mistakes that he made in the reports he presented to the court, and his failure to investigate matters that were flagged for him in December 2022 by Mr Buckingham, the court should approach Mr Davies's evidence with caution. Further, given that he was not a careful or diligent expert witness on matters of detail and valuation practice, it is submitted that the court should defer to the more experienced and more persuasive valuer witnesses, namely Mr Jones and Mr Buckingham.

155. It is submitted that Mr Davies's position that s.106 costs and abnormal costs did not need to be known and expressly factored into a development valuation exercise is particularly perplexing and unsatisfactory. It is submitted that this position is illogical and contrary to Mr Davies' own acceptance that these costs would always be known to and factored into their bid by a potential purchaser. Mr Davies' evidence on this point cannot, it is said, be accepted, and at least must be doubted.

Mr Buckingham

156. Mr Allen submits Mr Buckingham's wealth of on the ground experience in valuations of the present kind showed through in his evidence. It is submitted that Mr Buckingham was a careful witness with a very clear view of how the current types of valuations work.

157. It is submitted that, in contrast to Mr Davies, no holes or errors were discovered in Mr Buckingham's reports, and they are measured and well-reasoned. It is submitted that Mr Buckingham remained professional and reliable, and that he was keen to get his points across and explain to the court what his very clear view was of how valuations of the present kind actually work, compared to what he saw as an approach from Mr Davies that was simply wrong and without basis. Thus, so it is submitted, the court has no reason to distrust any part of Mr Buckingham's evidence.

Conclusion

158. It is Mr Jones's case that for all the reasons advanced as set out above, Mr Bratt does not get close to establishing that Mr Jones conducted any part of this valuation in a negligent manner, or that his overall valuation fell outside of a reasonable range.

159. It is submitted on behalf of Mr Jones that:

i) The residual valuation which Mr Bratt relies upon as the *"correct"* one borders on the absurd, and not a shred of credibility remains in respect of it;

ii) A competent residual calculation was plainly in the region of £4.5m. A competent comparable valuation has to be in the same region. Mr Jones' valuation was in this region and was plainly within a 15% bracket for error.

iii) The Claimant's contention of a value for the Site at the Valuation date of £8m is *"pie in the sky"* and supported only by flawed methodology and inflated figures.

iv) The claim should accordingly be dismissed, with costs.

Decision

The applicable legal principles

160. As Eder J identified in *Capita v Jonas Drivers* (supra) at [145], the authorities are not entirely easy to reconcile. However, I am satisfied that liability for negligence on the part of a valuer cannot be determined simply by reference to the value of the relevant property as determined by the court, and an application of a margin of the kind identified as applicable to non-negligent valuations by Coulson J in *K/S Lincoln v CB Richard Ellis* (supra) at [183], at least, that is, unless:

    i) There is no real issue between the parties that if the valuation does fall outside such a margin, then liability is established, as was the case in a number of the cases cited;

    ii) There is no real issue between the parties as to the extent of the margin as, say, in the case of a straightforward residential property of the kind the subject matter of cases such as *Legal & General v HPC Professional* (supra), in contrast to, say, a development site with many variables where the valuation requires a number of judgment calls; or

    iii) The consideration of the appropriate margin by the court itself involves a determination of the bounds of reasonable professional competence as applied to the steps taken by the relevant valuer in the course of the particular valuation process.

161. Otherwise, unless there is a second stage involved of considering whether the valuer has acted negligently applying *Bolam* considerations, then I consider that one is confronted with the logical fallacy or inconsistency identified by Mr Allen, at least unless one is concerned with an edge case of the kind identified by Mr Allen as referred to in paragraph 80 above.

162. The authorities, as I read them, recognise two relevant principles so far as negligence claims against valuers are concerned:

    i) For a valuer, like any other professional, to be found to be liable for professional negligence it is a fundamental *"Bolam"* requirement that they be found to have acted otherwise than in accordance with practices which are regarded as acceptable by a respectable body of opinion in the profession, recognising that there is scope for differences of reasonable professional opinion, and that the process of professional valuation is an art as much as a science;

    ii) <u>But</u> it is, in any event, a precondition of liability that the valuer's valuation should fall outside the range permitted to a non-negligent valuer in respect of that particular type or kind of valuation.

163. I consider that clear authority for the above is provided by the following passages in the judgment of Buxton LJ in *Merivale Moore v Strutt & Parker* (supra), namely:

    i) Buxton LJ's observation at 515G that:

> "A valuation that falls outside permissible margin of error calls into question the valuer's competence and the care with which he

> carries out his task … But not only if, but only if, the valuation falls outside that permissible margin does that enquiry arise."

ii) Buxton LJ's observation at 516F that:

> "Caution at least has to be exercised in this respect, because the question must remain, in valuation as in any other professional negligence cases, whether the defendant has fallen foul of the *Bolam* principle. To find that his valuation fell outside the "bracket" is, as held by this court in *Craneheath* and also, I consider, by the House Lords in *Banque Lambert*, a necessary condition of liability, but it cannot itself be sufficient."

164. The fact that reference is made to a *"condition"*, or *"pre-condition"*, that the valuation should fall outside the margin, itself demonstrates to me that the identification of the margin or bracket cannot itself be determinative of the bounds of reasonable professional competence, at least unless the process of determining the margin itself involves such an exercise. A number of the cases cited such as *Dunfermline Building Society v CBRE* (supra) were grappling with the converse situation to the present, where it was the defendant saying, I may have been negligent but it does not matter because the valuation was within the appropriate bracket. I consider that one needs to be careful about applying some of the language of these cases to a situation such as the present where the defendant is saying, whatever the appropriate bracket is, I have not acted negligently. As I read it, it was the former situation that vexed Lewison J in *Goldstein v Levy Gee* (supra), rather than the latter.

165. Having regard to these considerations, the question then arises as to the proper approach to be taken by the court in cases such as the present in order to give effect to the above. I found of particular help the summary of the approach to be taken as described by Dove J in *Barclays Bank Plc v TBS & V Ltd* [2016] EWHC 2948 (QB) at [64]. This can be paraphrased as follows:

i) The court must form its own view, based on the evidence before it, and its own evaluation, of the correct value as at the valuation date applying professional practice standards which applied at that date;

ii) Having formed its own view the court then has to consider what the appropriate margin of error applicable to the valuation judgment should be, in order to determine the bracket within which a non-negligent valuation would have fallen. This will depend upon the facts of a particular case, and guidance is provided by the categorisation adopted by Coulson J in *K/S Lincoln v CB Richard Ellis* (supra) at [183];

iii) If the impugned valuation is within the relevant margin of error of the court's valuation, then it is within the bracket of potential non-negligent valuations and thus negligence would not have been established. Liability is to be established by reference to the results of the valuation, not purely and simply by reference to the details of how that result was arrived at;

iv) If the valuation is beyond the margin of error in relation to the court's valuation and therefore outside the bracket, then the valuer's competence and the care used in his or her valuation is called into question. The court will examine at this stage the question of whether in reaching a valuation outside the bracket the

valuer has acted *"in accordance with practices which are regarded as acceptable by a respectable body of opinion in his profession"*, i.e. the *Bolam* type considerations referred to above. [My emphasis].

166. The general process to be adopted by the court as referred to above, as I see it, lends itself to two possible approaches:

i) For the court to form its own view, based on the evidence before it and its own evaluation, of the *"correct"* value as at the valuation date, and to then apply a margin of error or bracket applicable to the type of valuation exercise in question consistent with the margins identified by Coulson J in relation to non-negligent valuations *K/S Lincoln v CB Richard Ellis* (supra) at [183]. In the event that the valuation falls within the bracket, then the claim fails irrespective, but if the valuation falls outside the bracket, the court is then required to then go on and consider whether the valuer has acted *"in accordance with practices which are regarded as acceptable by a respectable body of opinion within the profession."*

ii) An alternative course would be for the court to carry out the same valuation exercise, but to adopt a more analytical approach to the determination of the margin of error or bracket by reference to various steps in the valuation process adopted by the valuer by reference to the scope of reasonable professional opinion as applied to each of those steps so that the valuer could only fall outside the overall margin of error or bracket if it had been demonstrated that one or more the steps taken in the course of the valuation were steps that were not to be regarded as acceptable by a respectable body of opinion within the profession. In this event, there would clearly be no necessity to go on to a second stage because *Bolam* considerations would have been taken into account in the determination of the margin of error or bracket.

167. The second of these approaches is, broadly speaking, that which I understand to be suggested to be the appropriate course by Mr Allen, and reflects the approach taken on the facts of cases such as *Goldstein v Levy Gee* (supra) and *Capita v Drivers Jonas* (supra). This may thus be the appropriate course to adopt on the facts of certain cases, for example if there are only a limited number of steps within the valuation process that are the subject of complaint. However, I consider that such a course is unlikely to be the appropriate course to be adopted in many other instances, for example:

i) Where the possibility of negligence can be excluded on the particular facts at the pre-condition stage in any event by the application of a vanilla margin of the kind applicable to non-negligent valuations considered in by Coulson J in *K/S Lincoln v CB Richard Ellis* (supra) at [183]; or

ii) Where the challenged valuation falls outside such a margin, but the issue that then arises as to whether the valuer has acted *"in accordance with practices which are regarded as acceptable by a respectable body of opinion within the profession"* falls within a comparatively narrow compass.

168. I will seek to apply the above principles in determining liability in the present case.

The Witnesses

Mr Jones

169. I consider that Mr Jones was a perfectly truthful and honest witness. However, I accept Mr Rosenthal KC's point that the Determination was carried out nearly 8 years ago, and therefore that Mr Jones is unlikely to have a reliably accurate actual recollection with regard to the steps taken in carrying out the Determination, as opposed to a recollection reconstructed in the face of the allegations made in the present case. Consequently, to the extent that there may be any issue in relation to Mr Jones's actual recollection, as opposed to the contents of his report or any contemporaneous notes, I would need to be very careful before placing any particular reliance thereupon.

170. Further, Mr Rosenthal KC makes a fair point in relation to the absence of contemporaneous notes and records made by Mr Jones, for example in relation to instructing Mr Pillinger, and that this is a factor that requires to be taken into account so far as the weight to be attached to his evidence is concerned.

171. However, ultimately, the case does not, I consider, turn upon Mr Jones's actual recollection in any material way.

Experts

172. With regard to the expert evidence generally, I consider that this is the sort of case where there is a very real danger of confirmation bias having acted on the minds of the experts, i.e., of them having an innate tendency to unwittingly interpret or apply evidence or facts as supportive of their existing positions or the relevant party's case. I bear this firmly in mind in considering the weight to be attached to the experts' evidence.

Mr Davies

173. In the case of Mr Fourt and Mr Davies, I did gain the impression that, in a number of respects, their evidence was skewed towards arriving at the highest end of the range of valuations that might been available on the evidence that they considered. I consider this to be particularly so in respect of a number of inputs into their residual valuation, but evident also in their approach to the comparables valuation. Having said this, it is fair to say that Mr Davies fairly made a number of concessions during the course of his evidence, and I am satisfied that he was doing his best to assist the court.

Mr Buckingham

174. It is a fair criticism of Mr Buckingham that there were occasions whilst he was giving oral evidence when he might have been interpreted as acting more as an advocate for Mr Jones, than as an independent expert. However, again, I am sure that he was doing his best to assist the court, and I consider that a number of his answers that might have been construed as crossing the line in fact reflected a firmly held opinion on a matter that Mr Buckingham genuinely felt strongly about as an expert with experience of the matters in issue. For example, as to whether the various comparable sites could properly be treated as substantially the same sort of greenfield sites for the purposes of s. 106 and other costs, and as to whether a potential developer purchaser would be more interested in the value of the units on the Site, or its GDA. As to the latter, I found Mr Buckingham's evidence as to his experience of potential purchasers such as Persimmon to be particularly persuasive and helpful. It is also fair to say that Mr Buckingham made concessions where necessary, in particular that he would have looked more closely at Aynho Road and Milton Road as part of a comparables exercise.

175. Mr Buckingham is criticised for not having produced his own valuation as such, but to have sought to value the Site by way, effectively, of a commentary on the Determination. It is submitted on behalf of Mr Bratt that it cannot be assumed that Mr Buckingham would have come to the same conclusions had he started from scratch, and that as the first function of the court is to reach its own valuation, Mr Buckingham's report is of limited value for this purpose. There is some force in this. However, the differences between the approaches of Mr Jones on the one hand, and Mr Fourt and Mr Davies on the other hand, reveal some significant differences as to the appropriate methodology to be adopted, and I have found Mr Buckingham's evidence to have been of considerable assistance in seeking to resolve the issues raised thereby.

176. Having said that there were some unsatisfactory features of Mr Buckingham's evidence, e.g. his changing position in relation to the advantage of frontage onto the main road enjoyed by Bloxham Road. I have taken this into account, but do not consider that it significantly detracts from the value that I consider that I ought to attach to his other evidence on key issues.

Valuation of the Site by the Court

Introduction

177. As I have identified, the first task for the court is to reach its own view as to the value of the Site as at the Valuation Date, 14 June 2013, based on the evidence before it and its own assessment of the correct value. In doing so, I bear in mind the observations of Gross LJ in the decision of the Court of Appeal in *Capita v Jonas Drivers* at [43(i)] referred to in paragraph 47 above, that the exercise required is not about the court reaching an immaculate or absolute value, but about reaching the most likely figure on the basis of the evidence that I have heard, evidence which is unlikely ever to be perfect. I thus embark on this task.

Residual valuation

Introduction

178. It is common ground between the parties that the appropriate primary valuation approach should be by reference to comparables. However, I agree with Mr Allen that consideration of the reasonable residual appraisal is of real relevance and assistance in considering a valuation by reference to comparables in the present case, essentially, for the reasons that he submitted as referred to in paragraph 114 above. Of particular importance on this point, is, I consider, the firm evidence of Mr Buckingham with regard to the fact that developer purchasers would have carried out their own detailed residual calculations in respect of the Site, and that any offers that they might have made for the Site are likely to have been informed thereby, and that they would have been unlikely to bid at a price significantly out of kilter with their residual valuation, at least absent special circumstances. It is, of course, a fundamental principle of any open market valuation that it is concerned with what a purchaser would be likely to pay for the relevant asset on the open market at the relevant time, and that it is not a purely theoretical exercise. Thus, whilst a residual valuation might, in certain situations, be seen as too theoretical to really assist, in the present context, where I can be reasonably satisfied that a potential purchaser would be likely to have carried out their own residual appraisal prior to making any bid, a properly determined residual valuation is, I consider, of real assistance as, at least, a cross check with any comparables valuation.

179. I remind myself that Mr Fourt/Mr Davies's residual appraisal came out at £8,204,095 - see Appendix 14 to Mr Fourt's report. Mr Jones's residual appraisal came out at £3,634,218 but corrected to reflect the error in the double counting of enhancements, should be taken to be either £4,774,812, or £4,686,249, dependent upon the correct figure for enhancements as to which see paragraph 28(iii) above. Mr Buckingham arrived at a residual valuation figure of £4,369,355, Mr Buckingham's figure reflecting a number of adjustments that I have referred to in paragraph 56 above.

180. I consider that the appropriate course for me is to take Mr Fourt/Mr Davies's appraisal, and to consider the objections to the particular items therein taken on behalf of Mr Jones, and to the extent that those objections are made out, to consider the effect that they have on the residual appraisal in order to arrive at an adjusted figure, which would then fall to be considered as against Mr Jones's appraisal and Mr Buckingham's appraisal, to arrive at my own residual valuation.

181. I therefore consider the objections to Mr Fourt/Mr Davies's appraisal in turn.

Number of Units

182. I have identified the issue between the parties above. In short, Mr Fourt and Mr Davies say that any developer purchaser would have looked to maximise the planning consent to the extent that was, subsequently, actually obtained, i.e. four additional market units, taking the total number of units to 86 rather than 82, and that the developer purchaser would have factored that into any appraisal of their own of the Site. On the other hand, Mr Buckingham says that this would have been a cavalier approach, and Mr Fourt and Mr Davies rely too much on hindsight.

183. The point might be made that the Site was recognised to be a low density site, and therefore one where, perhaps, one might have expected some leeway so far as an expanded planning consent was concerned, as has turned out to be the case. However, as against this, outline planning permission was only obtained on appeal, and the Valuation Date was only shortly after reserved matters had been dealt with. I prefer Mr Buckingham's evidence on this point, and place weight on his experience acting on behalf of purchasers of sites such as the present. Given that planning permission had only been obtained on appeal, I consider that a purchaser looking at the site in June 2013 is more likely to have taken a cautious approach on this particular matter, and not been prepared to take the risk that a more beneficial planning consent could be obtained.

184. The effect therefore is that I consider that an appraisal should proceed on the basis of there being only 82 units, and 3,578 ft sq less of development than as provided for by Mr Fourt and Mr Davies, and the GDV arrived at on that basis. On my calculation, this would reduce the GDV by £1,019,730 based on Mr Fourt/Mr Davies's market unit GDV of £285 per sq ft, and by £948,170 based on Mr Jones's market unit GDV of £365 per sq ft. However, because this reduces the sq ft being developed by 3,578 ft sq, there would be a reduction in the construction costs of some £292,573, based on a build cost of £81.77 per sq ft.

185. These figures do, as I see it, support Mr Jones's contention that the residual valuation ought to be reduced by at least £500,000 if one proceeds, as I consider that one ought, on the basis that a development would comprise only 82 units.

Affordable housing GDV

186. Again, as I have identified above, the issue here relates, at least in part, to a misunderstanding on the part of Ms Kilminster, the affordable housing expert within Mr Fourt's and Mr Davies's firm, as to the square footage of the affordable housing at the Site. Once this is recognised, as I consider that it ought to be, then her range of values requires to be reduced down to a range of £3,658,415 to £4,583,014. Mr Jones's figure own figure in his appraisal was £3,540,000.

187. This figure of 3,540,000 is only marginally below Ms Kilminster's lower figure. In the course of cross-examination, Mr Davies accepted that Mr Jones's figure was a *"reasonable one"*. I bear in mind the evidence that Mr Jones's figure was based upon an actual offer from a registered affordable home provider, and that the common practice is for a developer to obtain an offer from an affordable housing provider to, effectively, take on the development of the affordable housing on a site such as the present. Further, Ms Kilminster's figures were based upon a per unit GDV of £280 per sq ft for the market housing. For the reasons I explained below, I consider that this latter figure is too high a figure.

188. For all these reasons, I consider that the best evidence is to the effect that the affordable housing GDV was broadly as assessed by Mr Jones at a figure of £3,540,000. Mr Fourt/Mr Davies' appraisal works on the basis of a figure of £4,934,495, i.e. the top end of Ms Kilminster's incorrect range. This is a difference of some £1.4 million. It is suggested that I should reduce Mr Fourt/Mr Davies's residual valuation by some £1,225,000 odd. In the light of my findings, I consider this to be, prima facie, appropriate.

Market unit GDV

189. The issue between the parties in respect of the market unit GDV is as to the difference between Mr Fourt's and Mr Davies's figure of £285 per sq ft, and Mr Jones's figure of £265 per sq ft.

190. I consider it to be a legitimate criticism of the comparables used by Mr Fourt in his report to arrive at his figure of £285 per sq ft that a number of the properties relied upon for this purpose were within a gated development in Banbury, and I agree that the evidence supports there being a premium for such properties over the types of unit that might be constructed on the Site. The other properties relied upon by way of comparable are in the village of Bloxham, which lies some three miles south-west of Banbury. As I will comment upon in more detail below, there is what I consider to be good evidence to the effect that such a village location is likely to have commanded a premium in property prices of equivalent properties over the Site. However, even treating the gated properties as outliers, and focusing just on the other properties, they are not inconsistent with Mr Jones's £265 per sq ft, as demonstrated by a graph produced by Mr Allen.

191. Although subjected to criticism by Mr Rosenthal KC, Mr Jones applied a recognised methodology in arriving at his figure of £263.57 per sq ft by carrying out a unit by unit appraisal of likely market sales values at the Site. Mr Buckingham's evidence supported the proposition that this is the approach that would be likely to be adopted by a developer purchaser. Although there is an issue between the parties as to what should be made of the Stanbra Powell report referred to by both Mr Fourt and Mr Jones, I consider that the better analysis is that it suggests a figure of £262.50 per ft sq for the reasons considered by Mr Jones in the Determination.

192. Mr Buckingham's own assessment of the market GDV, involving his own unit by unit appraisal, arrived at a figure of £262.62 per sq ft.

193. I do not consider that any significant weight should be attached to the exercise carried out by Mr Davies by reference to actual sales at the Site which, some five years after the Valuation Date, averaged out at £305 per ft sq. Mr Buckingham has carried out an indexation exercise, indexing back to the Valuation Date in June 2013, which suggests a value of £231 per sq ft. Even accepting that there may be flaws in this latter exercise, no robust mechanism for adjusting between the two relevant dates has, I consider, otherwise been suggested by the experts. Absent such robust adjustment, the figure in respect of actual sales is, as I see it, of no real assistance.

194. In the circumstances, I am led to the firm conclusion that the figure of £285 per sq ft relied upon by Mr Fourt and Mr Davies is significantly too high. I consider that the evidence supports a GDV unit value roughly consistent with that used by Mr Jones of £263.57. Even given their village location, this is consistent with the comparables relied upon by Mr Fourt apart from the gated properties in Banbury, and consistent with the Stanbra report.

195. I have considered the allegation in paragraph 27.6.2 of the Particulars of Claim that in his use of comparables for this purpose, Mr Jones did not include equivalent building enhancements but failed to make any adjustments to reflect the inclusion of those enhancements in the houses to be constructed on the Site. However, as Mr Allen pointed out, this is not an allegation that is developed in either Mr Fourt's or Mr Davies's reports, or otherwise in the evidence or submissions, and I do not consider there to be any real evidence to the effect that Mr Jones's £263.57 per sq ft figure would have been significantly greater had he had in mind enhancements for this purpose. I say that bearing in mind that this figure is consistent with Mr Fourt's comparables in the village of Bloxham notwithstanding that properties there might have been expected to command something of a premium, as well as being consistent with Mr Buckingham's figure, and the Stanbra Powell report. Further, and in any event, I do not consider that it would be appropriate for me to simply pick a figure out of the air somewhere between Mr Fourt's figure and Mr Jones this figure. As I see it, my function is to decide upon the most likely figure between Mr Fourt's figure on the other various figures clustering around Mr Jones's figure – cf. *Stanley J Holmes & Sons v Davenham Trust Plc* [2006] EWCA Civ 1568.

196. Recalculating Mr Fourt's and Mr Davies' market unit GDV figure using £263.57 per sq ft rather than £285 per sq ft reduces the latter, on my calculations, by £2,965,808 based on the construction of 86 units, and £2,824,372 based on the construction of 82 units.

197. Mr Allen submits that applying a figure of £265 per sq ft, leads to a reduction in Mr Davies's residual calculation by a further £1,360,160. I consider that, prima facie, the latter does fall to be reduced by at least this sort of figure.

Build Costs

198. The issue here is as to whether the figure used by Mr Jones for build costs, based upon the figures provided to him by Mr Pillinger, ought to be reduced, as contended for on behalf of Mr Bratt, to reflect the fact that the figures are in excess of BCIS rates. Mr Davies accepted in evidence that if one were to work from Mr Pillinger's figures, then Mr Fourt's residual appraisal would fall to be reduced by some £739,000 odd.

199. I consider that the figures provided by Mr Pillinger and applied by Mr Jones in the Determination by reference to the technical submissions made by the parties, and the additional input of an expert engineer, provide the best evidence as to the proper construction cost, rather than a rigid application of BCIS rates.

200. In the circumstances, I consider that the better view is that the residual valuation relied upon by Mr Fourt and Mr Davies would fall to be reduced by this further amount of £739,000 odd.

Developers' profit

201. The complaint is that Mr Fourt has applied a development profit figure of 17.5% on cost. This is said to have been a mistake because he had referred in his report to applying 17.5% on GDV, in circumstances where it had been agreed by the parties to the Determination that Mr Jones should proceed on the basis of an agreed developer's profit figure of 17.5% on GDV. On the other hand, comparing the respective appraisals, Appendix 14 to Mr Fourt's report refers to a development profit of £3,438,879, Mr Jones's residual appraisal refers to a profit of £3,330,514, and Mr Buckingham's appraisal refers to figure of £3,341,723. Consequently, I am not persuaded that any adjustment is necessarily required under this head.

Conclusion

202. The deductions identified above that are, prima facie, deductible from Mr Fourt's residual appraisal total £3,824,160. If one deducts this from Mr Fourt's figure of £8,204,095, one gets a figure of £4,379,935. This compares with Mr Jones's figure, adding back the enhancements accounted for twice, of either £4,686,249 or £4,774,812. Mr Buckingham's figure in his residual appraisal is less than this, namely £4,369,355.

203. The evidence leads me to conclude that a proper residual valuation figure is somewhere between £4.4 million and £4.7 million, and I shall work on the basis of it being £4.55m.

Valuation by reference to comparables

Introduction

204. I would make the following initial observations with regard to valuing the Site as at 14 June 2013 by reference to comparables.

205. Firstly, any valuer complying with their professional obligations and responsibilities valuing in 2016 the Site as at 14 June 2013 would have been bound to have regard to the 2008 RICS Valuation Information Paper relating to the valuation of development property. The 2019 RICS Guidance Note relating to the valuation of development property was yet to be published, although it may be that matters identified therein had become requirements of competent professional practice. However, both such documents recognised the use of comparables by reference to both £ per GDA and £ per plot as being, potentially at least, in accordance with practices to be regarded as acceptable by a respectable body of opinion. Although, one might detect a preference therefrom for the former, I consider that one takes from this guidance that the choice of unit is likely to be a matter of professional judgment for a valuer as to what might be appropriate in the circumstances.

206. In paragraph 82 of his Skeleton Argument, Mr Allen refers to Mr Fourt, at paragraph 5.18 of his report, as having said the following with regard to the carrying out of a

comparable valuation:

> *"A valuer must then analyse the evidence. In relation to comparable property transactions, this is done by comparing the evidence on a common unit basis. In the case of the Property, this would involve seeking to assess the comparable land sale values on a £ per unit basis or per square foot basis. These rates would then be adjusted having regard to the individual characteristics of the comparable land sales (e.g. location, differing features between sites that might affect the costs e.g. if there were significant abnormal costs associated with a particular development, market movement since the date of the transaction)."*

207. This does, to my mind, at least recognise the utility of a comparables exercise carried out on a £ per unit basis, subject to suitable adjustments.

208. Secondly, on the facts of the present case, I consider that there was a relatively strong case for carrying out a comparables exercise on a £ per unit basis, rather than on a £ per GDA basis, for the following reasons:

    i) The Site was recognised as being a low density site. Therefore, comparing a site with a significantly higher density on a £ per GDA would, as I see it, create at least a significant risk of overvaluing the Site. I consider this to be particularly so in the light of Mr Buckingham's evidence, which I accept, that a potential purchaser was likely to be more interested with what they could do with the Site from a development perspective than with the extent of its developable acreage. On this basis, I consider that a comparables exercise carried out by reference to £ per plot rather £ per NDAs would have provided a better comparative guide to what a purchaser was likely to pay for the Site on the open market.

    ii) Further, I consider that a potential developer purchaser's primary concern is likely to have been as to how much to pay in order to make a reasonable profit. I have accepted Mr Buckingham's evidence that such a developer is likely to have used a residual appraisal as a tool for that purpose which would have been arrived at by firstly calculating a GDV by reference to the number of units on the site. This further demonstrates, to my mind, that the price payable by a developer purchaser on the open market is more likely to be determined by what the developer purchaser perceived that they could do with the land by reference to a residual appraisal, rather than a more theoretical consideration as to the value per NDA.

209. Thirdly, I prefer the logic of Mr Jones and Mr Buckingham to that of Mr Fourt and Mr Davies so far as the location of the Site is concerned. Mr Buckingham's evidence was that he had ascertained through Rightmove that equivalent houses in a village location such as Adderbury have commanded a premium over the Site. There is logic in this if one considers the sites on Aynho Road and Milton Road in Adderbury. One can see from the aerial photographs and maps that have been produced that these sites are within distinct North Oxfordshire villages lying to the south of Banbury, with ready access to the village and its amenities. On the other hand, although the Site lies to the southerly side of Bodicote, and although Bodicote is a village physically separated (just about) from the sprawl of Banbury, the Site is not an integral part of the village of Bodicote and does not connect directly therewith other than via the arterial road out of

Banbury. Access to the site is via a separate road, past a garden centre, off the main arterial road. To this extent, I accept Mr Jones's evidence, supported by that of Mr Buckingham, that the Site is very much more closely analogous to the Bloxham Road comparable than to those in the village locations. Further, I consider that I am entitled to place considerable weight upon the *"feel"* that Mr Jones had for the respective development sites on viewing them in the course of the preparation of the Determination.

210. Fourthly, Mr Fourt and Mr Davies, proceeded on the basis that most if not all of the comparable sites were greenfield, on edge of village sites with similar characteristics, including with regard to s. 106 costs and abnormal costs. Although a table was produced on behalf of Mr Bratt to suggest that the density of the sites made no real difference, and that s. 106 and other costs were broadly equivalent between the sites, so as to make an analysis by reference to NDA the appropriate course, I remain concerned that Mr Fourt's and Mr Davies' approach did not sufficiently recognise the differences between the different sites, and, in particular that the Site was not in a village location properly so called, and had a specific development potential by reference to planning permission obtained, and the costs of development in respect of the Site.

211. Fifthly, so long as there is no evidence that a particular comparable might be some form of outlier or extreme case, for which the valuer should in any event properly test, I see no reason in principle for rejecting other comparable sites in favour of one comparable judged to be very similar to the subject property, before embarking in respect of the latter on a more detailed comparables exercise involving careful adjustments of the kind carried out by Mr Jones in respect of the Bloxham Road and the Site as described in paragraph 28 above. Further, and in any event, I consider it necessary to ask the question as to whether, if other comparable sites ought to have been more carefully examined, anything might have been revealed thereby, after having made appropriate adjustments, e.g. with regard to location and s. 106 costs etc..., suggesting that there was something wrong with reliance solely upon the Bloxham Road comparable.

212. I turn to consider the particular issues that arise in respect of a comparables valuation.

Enhancements

213. As I have identified, there is an issue as to whether the total abnormals and enhancements figure for the Site of £1,870,502 includes £1,053,005 of enhancements, or £1,140,594 of enhancements. At the end of the day, I do not consider that anything really turns on the difference, and so I do need to resolve it.

214. Mr Bratt, as referred to above, maintains that as Mr Pillinger had advised in an email that enhancements should be fully recoverable through the sale price, nothing should have been deducted in relation to enhancements, the allegation being that Mr Jones: *"failed to reflect the inclusion of the equivalent build costs enhancements in the sale price for the development site in the comparable transaction on which the Defendant relied ..."* – see paragraph 27.6.1 of the Particulars of Claim.

215. Mr Jones explains in paragraph 25 of his witness statement, in essence, that he would have expected any figures in relation to enhancements at Bloxham Road that the developer purchaser had included in the offer letter to have been provided to him by Savills in their email of 4 March 2016. As no details were provided, and as there was no information available (given that there was only outline planning consent) to form a subjective view in respect of enhancements, he did not consider that it was appropriate

to add any figure in respect of enhancements to the headline figure in respect of the acquisition cost of Bloxham Road. On the other hand, he had been provided with a figure for enhancements so far as the Site is concerned.

216. This explanation provided by Mr Jones does not engage with the point that if the value of the enhancements would be recovered through an increase in the sale price, enhancements ought to be a neutral consideration, and so no deduction in respect of the same ought to have been made as there was no provision for the same in the headline figure.

217. Nevertheless, Mr Jones goes on at paragraph 38 of his witness statement to say that he had already considered whether any of the enhancement items identified in Mr Pillinger's report, such as railings, false chimneys, slate roofs and stonework would affect the value of each property in assessing the GDV of the house to be built and concluded that they did not necessarily affect value. As he put it: *"Merely because they are items of cost does not necessarily affect value. The best example in this instance being the provision of false chimneys to some of the houses."*

218. The solution suggested by Mr Buckingham is, as referred to above, that it would have been possible to infer that some similar enhancement costs would be incurred at Bloxham Road, and so some adjustment could have been made to take account of this, Mr Buckingham suggesting an adjustment of anything between 25% and 75% of the enhancement cost.

219. I clearly need to be careful in accepting the explanation provided by Mr Jones, now, some years after the event. I consider that Mr Jones was probably wrong to, in effect, wholly ignore what Mr Pillinger had said about the recoverability of enhancements through an increase in price. However, Mr Pillinger was a quantity surveyor and not a valuer, and I consider that Mr Jones was entitled to take the view that enhancements would not <u>necessarily</u> be recovered through the purchase price. However, I consider that some provision properly was required, either to reflect the fact that there might have been enhancements at Bloxham Road, or that the whole of the enhancement cost would not be recovered through an increase in purchase prices. I consider that the appropriate course would have been for Mr Jones to have deducted something in the region of 50% of the enhancement costs provided by Mr Pillinger, rather than the whole amount thereof to reflect these considerations. There is no exact science in this figure of 50%, but I consider this to be the best way of reflecting the considerations that I have identified.

<u>Addition in respect of deferred payment</u>

220. The issue here is as to whether Mr Jones was right to apply a rate of interest of 9% per annum in considering the benefit to be obtained from the deferred payment negotiated by the purchaser of Bloxham Road. The additional sum applied was £610,242, which was deducted in arriving at the headline figure. It is submitted on behalf of Mr Bratt that the interest rate applied in Mr Jones's own residual appraisal in respect of finance costs was 6% per annum, that interest rates were at historic lows in 2013, and therefore that a rate of 9% per annum was plainly excessive.

221. I agree with this criticism in the absence of evidence that developers were typically paying interest on monies borrowed of up to 9% per annum in 2013. I consider that the appropriate rate to have applied for this purpose would have been 6% per annum, which, if applied, would, on my calculations, have reduced the additional sum applied from £610,242 to £407,242[4], a difference of some £203,000.

Comparable by reference to NDA or plot?

222. For the reasons that I set out in paragraph 208 above, it is my judgment that comparing other sites with the Site on a £ per plot basis rather than on a £ per NDA is the approach more likely to have arrived at the correct open market value of the Site as at 13 June 2013, and therefore the method that I should adopt in seeking to arrive at a value for the Site as at that date.

223. I note that comparing Bloxham Road with the Site on a per £ per NDA basis in the manner contended for by Mr Fourt and Mr Davies would have led to a valuation of at least £9.8 million. This is where, in my view, a cross check as against the residual valuation that I have determine is of assistance. On any view Bloxham Road is a good comparable, properly compared. Such a cross check does, to my mind, demonstrate that the application of a £ per NDA in the circumstances of the present case, when compared as against the residual valuation of the Site that I have arrived at as referred to above of between £4.4 million and £4.7 million, produces a result that is manifestly in excess of the true value of the Site as at 13 June 2013 given that it bears no real relation to the residual valuation.

Blended price per unit?

224. Mr Fourt and Mr Davies have, in the exercises that they have carried out to compare other sites with the Site on a £ per plot basis, done so on a blended basis, i.e. by dividing the composite headline figure by the total number of units as referred to in paragraph 55(v) above, leading to the following values for the Site, by reference to the following comparables respectively, namely, Bloxham Road (£6,261,592), Aynho Road (£8,977,057), Milton Road (£8,560,161), and Deddington (£7,882,922). In this respect, I note that the price per blended plot figures in respect of Bloxham Road and Aynho Road in Mr Jones's Appendix L correspond with the equivalent figure in Mr Fourt's Appendix 3.

225. There is an issue between the parties as to whether a more reliable valuation is liable to be obtained from a blended comparison, or from one that distinguishes between market units and affordable units. I am firmly of the view that an approach that distinguishes between market units and affordable units is likely to provide a more accurate valuation. I reach this view for the following reasons:

    i) I cannot see that the blended approach properly takes into account the differing percentages of affordable housing units between the various sites, 40% in the case of the Site, 30% in respect of Bloxham Road, and 35% in the case of Aynho Road;

    ii) Further, irrespective of this consideration, as I have identified in concluding that a £ per plot approach is the preferable one, I consider that a very important

[4] Following the circulation of the draft of this judgment, Mr Allen suggested that the correct figure should be £416,915. However, bearing in mind that this makes a negligible difference to the overall valuation figure, I shall work on the basis that £407,242 is the correct figure.

> consideration is the use that a potential development purchaser would be able to make of the Site, and that a potential developer purchaser is likely to have carried out an appraisal in order to work out what to offer to pay in order to make a sufficiently attractive profit. Thus, the potential developer purchaser would, I consider, have been likely to be particularly concerned regarding the value of the market units, rather than the affordable housing in respect of which the potential development purchaser is likely to have obtained a price from an affordable housing provider. This being the case, a blended analysis seems to me to provide a somewhat blunt approach producing a not particularly helpful figure, and one that is not sufficiently related to how a potential development purchaser would view and appraise the Site. As to this, I note, for what it is worth, that all the residual appraisals that have been carried out by the experts, including those of Mr Fourt and Mr Davies, have clearly distinguished between market housing and affordable housing for the purposes of the exercise.

226. In short, I consider that the application of an approach that distinguishes between market housing and affordable housing is more likely to lead to a more accurate value for the Site as at 13 June 2013 than the application of a blended approach.

Selection of comparables

227. Before considering Mr Jones's approach to the selection of comparables, it is first necessary to say something about the approach of Mr Fourt and Mr Davies. As will be apparent from what I have already said above, I consider that there are a number of difficulties with their approach to comparables. Not only the use of a £ per NDA approach and a blended approach to a £ per plot analysis, but also in the reliance placed upon village locations which would, as I see it, for the reasons referred to in paragraph 209 above, require some adjustment to reflect their different village location before been capable of being used as a helpful comparator. Once these considerations are taken into account, I do not consider that the blended £ per plot figures for Bloxham Road (£6,261,592), Aynho Road (£8,977,057), Milton Road (£8,560,161), and Deddington (£7,882,922) do, on proper analysis, lend support to a valuation significantly in excess of Mr Jones's valuation in the Determination, and I consider that they certainly do fall a long way short of supporting the valuation of some £8 million contended for by Mr Bratt.

228. So far as Mr Jones is concerned, I can understand why he might have regarded Bloxham Road as not only the best comparator in the hierarchy of comparators, but the only one that provided anything approaching a close comparator with the Site given its location in contrast to the village locations of the other relevant comparators. However, it is necessary to have regard to the fact that Mr Buckingham accepted under cross examination that he would not have focused entirely on the one comparator, albeit recognising that Bloxham Road represented a very helpful comparator, and that he would also have looked further than Mr Jones had done at Anyho Road, and Milton Road (which Mr Jones had not had regard to).

229. However, I consider that it is then necessary to consider whether, doing so, would have led Mr Jones to a significantly different result. Nobody has, in fact, carried out a comparison exercise as between the Site and Aynho Road or Milton Road on a £ per plot basis that distinguishes, as I consider that any comparison exercise ought to do, between market units and affordable housing units, and also adjusts for village location of the latter. Consequently, I have no proper evidential basis for coming to the conclusion that a comparison exercise so conducted would have demonstrated Mr

Jones's exercise carried out solely by reference to Bloxham Road produced anything but a robust valuation of the Site consistent with prices being obtained in respect of other comparable sites once suitable adjustments were made, subject only to the issues in respect of enhancements and the interest rate applied in respect of the deferred payment that I have identified above.

230. Thus, there is, as I see it, no real evidence to suggest that if Mr Jones had, as he might have done, stepped back and tested the exercise that he had carried out as against other sites on what I consider to be the proper basis referred to above, he would have identified that his valuation was in any sense out of tone.

231. I would add that although Mr Jones ultimately focussed solely on Bloxham Road, the comparables exercise recorded in his Appendix L included, amongst other sites, Anyho Road, and as reflected in his commentary thereon in his report, nothing therein led him to conclude that the valuation that he ultimately came to in relation to the Site was out of skew.

Conclusion

232. Consequently, doing the best I can on the evidence that is available, I am led to conclude that the best evidence before the court as to the value of the Site is Mr Jones's own valuation carried out by reference to the Bloxham Road comparable on a £ per plot basis, distinguishing between market housing units and affordable housing units, a valuation essentially supported by the expert evidence of Mr Buckingham, subject only to adjustment in respect of the rate of interest applied in respect of the deferred consideration, and Mr Jones's approach to enhancements.

233. As to the required adjustments, this involves adjusting Mr Jones's calculations so as to reduce by £203,000 to £407,242 the adjustment of £610,242 that needs to be made to reflect deferred payment on Bloxham Road, and to reduce the deduction for abnormals of £1,870,502 by something in the region of £550,000, being approximately 50% of the enhancements, reflecting the sort of provision that I consider that Mr Jones should have made as referred to in paragraph 215 above. Feeding these figures into the computations described in paragraph 28 above, this adjusts Mr Jones's comparables valuation to £4,746,860. I arrive at this figure with the benefit of suggested corrective calculations provided by Mr Rosenthal KC and Mr Allen following the circulation of my draft judgment. In his calculation Mr Allen suggested that rather than reducing the figure of £1,870,502 referred to in paragraph 28(v) above by £550,000, as I had done in my calculation, the £550,000 should, rather, be included as an additional figure for abnormals in arriving at the headline figure referred to in paragraph 28(i) above. However, this would, I consider, be inconsistent with my finding in paragraph 215 above as to how issues relating to abnormals ought to be reflected in the valuation. Nevertheless, Mr Allen's suggestion does reflect that there are a number of possible differing approaches as to how some provision might be made for abnormals, and a margin of appreciation in respect thereof.

234. I note that Mr Buckingham, at paragraph 6.7.6 of his report, suggests a valuation of £4,181,650, and then identifies what he refers to as a *"reasonable range of adjustments"*, which suggest a range of values between £3,258,398 and £4,694,901. These, in part, factor in the issues identified in sub-paragraphs 56(ii) and (iii) above in respect of which I consider that Mr Bratt has the better case as touched upon in paragraph 175 above. In the light thereof, I will proceed on the basis that the most likely valuation by reference to comparables is £4,746,860, or thereabouts.

Conclusion in respect of the Court's valuation of the Site

235. Keeping in mind that the exercise is not about reaching an immaculate or absolute value, but about reaching the most likely figure on the basis of the evidence before me, for the reasons set out above, I conclude that the most likely figure for the *"correct"* Market Value of the Site as at 14 June 2013 is at the value as determined by Mr Jones by the Determination, subject to adjustment as referred to in the previous paragraph, namely £4,746,860. I am comforted by the fact that this figure is broadly consistent with what I have found to be the most likely residual valuation (£4.55 million).

Application of the bracket/margin

Applying the appropriate bracket/margin to the court's valuation

236. Having arrived at a valuation of £4,746,860, I consider that it is necessary to first consider whether Mr Jones's valuation at £4,075,000 falls within a bracket of the kind identified by Coulson J in *K/S Lincoln v CB Richard Ellis* (supra) at [183], without further consideration, at this stage, as to whether Mr Jones has, in any respect, not has acted *"in accordance with practices which are regarded as acceptable by a respectable body of opinion in his profession"*, i.e. having regard to the *Bolam* type considerations referred to above.

237. As to the brackets identified by Coulson J in *K/S Lincoln v CB Richard Ellis* at [183], I am mindful that it was there suggested that the margin of error will usually be plus or minus 10%, but that if there are exceptional features of the property in question, the margin of error could be plus or minus 15%, or even higher in an appropriate case. The only expert evidence on the point is from Mr Buckingham, who supports a margin of error of 15% on the basis of the Bloxham Road comparable being a good comparable. I am satisfied that, in the circumstances of the present case a margin for a non-negligent valuation of anywhere between 10% and 15% is entirely appropriate. In reaching this conclusion, I have taken into account, amongst other things, the following factors:

    i) The wide range of opinions expressed as to the Market Value of the Site as at 14 June 2013 in the present case, and the variety of issues that have arisen in the present case concerning the correct approach to the valuation of the Site, involving a number of questions of judgment, does, to my mind, point to a margin higher than the norm, albeit that it might not be possible to properly describe the present case as exceptional;

    ii) As I have identified in paragraph 233 above, there is scope for a significant margin of appreciation as to how provision ought to have been made for abnormals;

    iii) The cases do show that the margin applicable for a non-negligent valuation is likely to be higher in the case of a development plot with certain unique characteristics than a standard residential property – see, for example, *Dunfermline Building Society v CBRE Ltd* (supra) as referred to in paragraph 88 above. I note that this case involved a valuation of a site for residential development where the experts had agreed on a margin of error of +/- 15%. This is consistent with the only expert evidence on the point in the present case, namely Mr Buckingham's evidence that the appropriate margin was 15%; and

    iv) A comparison with the residual valuation suggests that a valuation of £4,746,860 is more likely to be too high than too low.

238. Based on Mr Jones's valuation of £4,075,000, and the valuation that I have arrived at of £4,746,860, Mr Jones's valuation is within 14.15% of the *"correct"* valuation. Although 14.15% is towards the top end of what I have found to be the appropriate bracket, having regard to the above, I consider that I can, in the circumstances, safely conclude that Mr Jones's valuation in the Determination is within the margin of error allowable in respect of a non-negligent valuation. On this basis and having regard solely to the result rather than how one gets to the result, I consider that Mr Bratt has failed to establish his claim in negligence against Mr Jones because Mr Jones's valuation is within the appropriate margin or bracket.

239. It is therefore not strictly necessary to move on to consider whether Mr Jones has, in any respect, not acted *"in accordance with practices which are regarded as acceptable by a respectable body of opinion in his profession"*.

240. Had it been necessary to move onto this stage, then I consider that, in doing so, I would have been bound to limit the exercise to the specifically pleaded allegations of negligence in paragraph 27.6 of the Particulars of Claim. In the present case, this would have been limited to the allegations regarding Mr Jones's deduction of enhancements in paragraph 27.6.1. The allegations in paragraphs 27.6.2 and 27.6.3 relate to Mr Jones's residual valuation, and I do not regard them as having any causative significance given that Mr Jones's comparables valuation prevailed over his residual valuation and so any errors in the latter would not have affected the ultimate valuation figure in the Determination.

Alternative approach

241. I have given consideration to the alternative approach that I have referred to in paragraph 166(ii) above of taking a more analytical approach to the identification of the appropriate bracket by reference to the various steps taken in the valuation process involving a consideration as to whether Mr Jones has acted otherwise that in accordance with practices regarded as acceptable by a respectable body of opinion within the profession, i.e. applying *Bolam* principles. However, the present facts do not, as I see it, lend themselves to doing so, and doing so does not really add to the exercise that I have carried out. Having reached the conclusions that I have with regard to Mr Jones's use of a £ per plot basis for the application of comparables, Mr Jones distinguishing between market units and affordable housing units rather than adopting a blended approach, and with regard to the use that Mr Jones made of the Bloxham Road comparable, matters that go to methodology rather than numbers, it is difficult to apply any margin thereto by reference to *Bolam* type considerations, because, in the light of my findings, it cannot seriously be suggested that, in these respects at least, Mr Jones's actions were actions that are not to be regarded as acceptable by a respectable body of opinion in his profession.

242. Although I have found that Mr Jones was in error in applying an interest rate of 9%, rather than 6%, in respect of the addition of a sum to represent the deferred payment terms in respect of Bloxham Road, this does not form a pleaded allegation against Mr Jones, and, in any event, I find it difficult to accept that such an error would fail the *Bolam* test. This leaves the question of Mr Jones's treatment of enhancements, which is really the only effective pleaded allegation of negligence against Mr Jones. However, given that the application of an overall margin to the difference between Mr Jones's valuation in the Determination and the *"correct"* valuation shows Mr Jones's valuation to fall within the appropriate margin, it is strictly unnecessary to consider the allegation further.

If Mr Jones's valuation had been outside the appropriate bracket

243. However, I consider, briefly, the position should I be wrong as the correct valuation and/or as to the correct margin or bracket to apply thereto, with the result that Mr Jones's valuation in the Determination does, contrary to my finding above, fall outside the appropriate bracket. It would then be necessary to consider whether Mr Jones's actions were, in any material respect, negligent, being otherwise than in accordance with practices regarded as acceptable by a respectable body of opinion within the profession

244. Had I been required to do so, I would have been inclined to conclude that Mr Jones did act otherwise than in accordance with such practices in failing, in the course of carrying out his Determination, to really get to grips with the enhancements question, and in failing to make some reasonable provision of perhaps 50% of the relevant figure for the cost of the enhancements being recovered through sales, or for there having been some enhancements factored into the Bloxham Road figures. His failings to this extent were, as I see it, consistent with the mistake that he made in respect of the double counting of enhancements in his residual valuation, which, to my mind, further demonstrates a failure to have got to grips with the question of enhancements and apply a consistent approach, albeit recognising a margin of appreciation as to how provision might have been made for abnormals.

245. I note the Mr Jones relies upon Mr Davies as having accepted under cross examination that the error made by Mr Jones in respect of enhancements was the sort of mistake that any valuer might have made. However, I understood Mr Davies's remarks to be directed at the double counting error rather than failing to make provision for the recovery through the purchase price of the cost of enhancements. Further, merely suggesting that a mistake is a sort of mistake that any valuer might have made is not, as I see it, a recognition of the fact that Mr Jones's actions were not negligent.

246. I consider that Mr Bratt would, in these circumstances, be limited to the sole live pleaded allegation of negligence in paragraph 27.6.1 of the Particulars of Claim. Given that Mr Jones's valuation was not provided to enable Mr Bratt to take any decision concerning the sale of the Site, but rather to enable the price that he was entitled to receive on the exercise of the option by Banner to be determined, I consider that damages would be likely to have been limited to the effect on the purchase price that Mr Bratt received of Mr Jones's failure to make the provision of the £550,000 in respect of enhancements in arriving at the value of the Site. This would, as I calculate it, have served to increase the price by 90% of £550,000, i.e. £495,000. This would, I consider, have been the appropriate measure of damages. However, I did not hear argument on this point, and had I got to it, then I would have required further submissions thereon.

Overall conclusion and result

247. For the reasons set out above, I do not consider that Mr Bratt's claim in negligence is established, and I consider that his claim should therefore be dismissed.