

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BANK OF IRELAND (UK) PLC

Plaintiff

-v-

BRIAN PATTERSON and others practising as PATTERSON MILLER

Defendant

WEATHERUP]

[1] The plaintiff's claim alleges negligent valuation of property by the defendant valuer on the instructions of the plaintiff lender, who relied on the valuation for the advance of funds to a third party to purchase the property valued. This is a preliminary ruling on the issue as to whether the defendant's valuation lacked reasonable care. Mr Humphreys QC appeared on behalf of the plaintiff and Mr Ringland QC on behalf of the defendant.

[2] The defendant practised as Patterson Miller, Chartered Surveyors and commercial estate agents in Holywood, County Down. In March 2007 the plaintiff instructed the defendant to carry out a valuation of property comprising a development site of about one acre at Moira Road, Lisburn. The site comprised various commercial and residential buildings. A basic concept plan had been prepared by architects which showed a development of 27 units, being 7 townhouses, 2 semi-detached houses, 16 two-bed apartments and 2 one-bed apartments. On 14 March 2007 the defendant provided a report in writing valuing the property at £2.7m. The plaintiff contends that the valuation provided by the defendant was the basis on which the sum of £1.5m was advanced to the borrowers. The borrowers defaulted.

[3] The plaintiff's claim is grounded in negligence and breach of contract and includes the particulars that the defendant valued the property at £2.7m when the

true value was £1.7m, failed to carry out a detailed residual development appraisal and failed to identify and analyse suitable and appropriate comparables. A residual development appraisal is an exercise by which the value of the land equates to the value of the completed units less the costs of development, to include the developer's profit.

[4] The defendant contends that the valuation at £2.7m represented the market value of the property at the date of valuation. The valuation was stated to be subject to an independent report from a town planning consultant or an experienced housing architect as to the viability of the conceptual drawings. The defendant denies that a residual development appraisal was an appropriate valuation method, given the prevailing market conditions in March 2007. It is said that from mid-2006 residual appraisals of residential land became an unhelpful tool in completing valuations as normal assumptions did not fit the market place, which at that time had become saturated with speculators, investors and potential developers, due to the ready availability of finance from banks and the belief that land and property prices would continue to rise. The result, according to the defendant, was that the period in which this valuation was carried out was one of abnormal market conditions in which there was a disconnection between the prices paid for development land and the fundamental economics of development. Therefore, the defendant contends, reliance on the comparable method of valuation was reasonable. In relation to comparables, the defendant identified three development sites in the Lisburn area, of which two were sold without planning permission and with only a conceptual scheme available. The defendant says that as a result of the preparedness of banks to lend it made little or no difference whether a site had planning permission or a reputable planning report.

[5] On 26 February 2007 the defendant received telephone instructions from the plaintiff and completed an instruction sheet which included the identity of the property to be valued, the defendant's fee and stated the purchase price of the site at £2.7m. The defendant responded by letter to the plaintiff confirming the instructions and stating "We have been instructed to provide a valuation and appraisal of this freehold/leasehold property for secured lending purposes and our report will be prepared in accordance with the practice statements of the RICS appraisal and valuation standard and in accordance with the RICS model conditions of engagement and a copy of those conditions are attached".

[6] The defendant carried out an inspection of the property on 5 March 2007 and completed "Commercial Property Site Notes" that set out the details of the inspection. The overall condition of the premises was stated to be site value and location was recorded as an area of mixed residential and commercial use with a frontage on to the industrial estate. Comparable properties were stated to be set out in attached brochures and schedules, although an attachment was no longer available and it is not known what was contained within the comparable material. A valuation analysis provided a valuation based on 27 units at an average of £100,000 per unit providing a price of £2.7m with the comment 'see comparable site sales'.

[7] The defendant completed a report for the plaintiff dated 14 March 2007. The report described the location of the premises as being on the outskirts of Lisburn, fronting a busy main arterial road with housing to the road frontage and Knockmore Industrial Estate to the rear, referred to the basic concept plan for 27 units, stated that the valuation assumed that the proposals as described complied with all necessary planning and roads guidelines and recommended that the plaintiff obtain an independent report from a town planning consultant or an experienced housing architect as to viability. The report referred to 3 development sites in the Lisburn area that had been sold recently, one at Thornleigh, one at Ballymacash and one at Brokerstown and stated that other sales of sites had occurred in the central Lisburn area at between £118,000 and £140,000 per unit. Further the report referred to sales of apartments in the Lisburn area and the range was stated to be £165,000 to £185,000. The comment was made that builders and developers appeared bullish that prices would continue to rise and this was reflected in the prices achieved for the sites. It was said that in view of the comparables it was not unreasonable to assess the value of the site as being in the region of £100,000 per unit, subject to satisfactory planning advice. The valuation was then stated to be £2.7m.

[8] The attached terms and conditions stated the basis of valuation as “Our valuation has been carried out in accordance with the Appraisal and Valuation Manual of the Royal Institution of Chartered Surveyors and the following definitions”. There followed a definition of market value as :

“The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arms-length transaction after proper marketing wherein the parties had each acted knowledgably, prudently and without compulsion.”

The expert evidence for the plaintiff

[9] Expert reports were exchanged and expert evidence given. On behalf of the plaintiff a report from Christopher Callan, Chartered Surveyor, in March 2014 included a residual development appraisal. In assessing the value of the completed units the report relied on the University of Ulster/ Bank of Ireland House Price Index for Quarter 4 of 2006 which was published in February 2007. This stated the average prices of certain types of property in Lisburn. The average prices had to be adjusted to reflect the circumstances and location of individual properties. The site was described as a well-established industrial location with semi-rural land use to the south and the close proximity of Knockmore Industrial Estate serving to depress the potential sale value of the dwellings. Having carried out his residual development appraisal the residual price was stated as £1.7m and that figure was adopted as the value of the site at the relevant time.

[10] The defendant's valuation methodology had been completed by reference to comparables and no residual appraisal had been undertaken. Mr Callan believed that the valuation methodology employed by the defendant was not that of a reasonably competent valuer and was inadequate. Residual appraisal was stated to be widely accepted as a very helpful valuation tool in establishing market value for residential development property and therefore not to have undertaken such an appraisal represented a fundamental error in assessing the value of the site. It was noted that the valuer appeared to adopt simply £100,000 per unit and that crucially there should be adjustment to take account of the location beside an established industrial site.

[11] In relation to the RICS rules (referred to as the Red Book) the report commented that one of the most fundamentally important aspects in the definition of market value was an assumption that both the hypothetical vendor and purchaser would act 'prudently'. In March 2007 many so-called property developers were speculators, simply trading or flipping development land as a commodity in the hope of extracting a significant profit when they had no intention of building anything on the land. Mr Callan stated that a reasonably competent valuer would have been cognisant of the over hyped nature of the market and would have undertaken a residual development appraisal, at least as a checking exercise and this would have clearly shown that the prices being paid for development land were completely unsustainable. Such purchases were predicated on substantial growth in housing prices for the foreseeable future. Thus the defendant valuer was said to have made an unacceptable departure from the Red Book in not proceeding on the assumption that the parties would have acted prudently.

[12] Mr Callan's evidence was that some valuers took a more considered approach to valuations. His firm had reduced their engagement in the market in that period. It seems that finance houses would speak to valuers to obtain what were described as 'indications' and if the indications did not correspond with the anticipated price in respect of the property, instructions were not issued and a valuation was not obtained from that valuer. It is clear that that was not a practice undertaken by this plaintiff and had not occurred in this particular case. The result was that some valuers, and he was one, had not undertaken as many valuations for that reason. He considered that in the market at that time a reasonably competent valuer would have taken a more considered approach and that valuers started speculating and accepting forward projections of house prices as continuing to increase and in those circumstances a reliance on comparables was self-fulfilling.

[13] In relation to methodology for valuations Mr Callan stated that there were a significant number of valuations which were based on comparables as opposed to appraisals and indeed the majority of valuations would have been undertaken on that basis although that did not involve a majority of valuers. In other words the market was held by a small number of valuers who were undertaking a large number of valuations by reliance on comparables. At the same time a large number

of valuers completed residual development appraisals as a check on comparables, although overall that involved a minority of valuations.

[14] The three comparables for development sites relied on by the defendant were first of all Thornleigh, a site of 0.4 acres for 8 apartments with planning permission, which had sold at £1.2m which represented £150,000 per unit. Mr Callan contrasted the industrial location of the present site 1.8 miles from the city centre and that of Thornleigh as a leafy suburb close to Wallace High School and in the centre of Lisburn. Ballymacash was a concept for 8 apartments on a 0.3 acre site selling for £850,000 and was described by Mr Callan as a highly speculative proposal. In his view a reasonably competent valuer would have treated this transaction with a good deal of caution. Brokerstown was £1.6m for a concept of 16 townhouses and apartments on a 1.15 acre site and was described as an area more or less exclusively residential.

[15] Mr Callan's residual development appraisal valued the 27 units as producing sales revenue of £4.56m. The construction costs and ancillary matters were £1.77m, professional fees at 8% were £130,000, marketing and disposal fees totalled £78,000 and finance costs were assessed at £250,000 giving total costs of £2.88m. Profit was stated to be £595,000 which represented a 15% return on cost. With acquisition fees of £30,000 the acquisition cost of the property was stated to be £1.71m.

The expert evidence for the defendant

[16] The defendant obtained a report from Robert Watson, Chartered Surveyor, who gave a description of the property market in March 2007. According to the index the average house price in Northern Ireland had risen by 32% in 2006. The first signs of a slow-down were in Quarter 2 of 2007 but with the time lag for transactions to complete, prices did not peak until Quarter 3 of 2007. In 2006 and 2007 Northern Ireland experienced what he described as something of a land grab mentality. Traditionally development land was bought by builders and developers who required some sort of assurance that they could secure planning permission for their preferred schemes. They undertook appraisals to ensure that they could develop the land profitably. However, as the bull market gathered pace different breeds of purchasers entered the market and economic and development fundamentals were abandoned in the rush to acquire land. Novice developers entered the market as did pure speculators who viewed land as a commodity to be traded and who lacked the desire and skills to develop the land. Demand far outstripped supply and prices rose dramatically. In tandem with rising prices other features of the market were that purchasers and lending institutions became very relaxed about risks such as location or planning permission. There was an assumption that housing prices would continue to increase so that even if the land could not be profitably developed today it could be in the not too distant future. Development appraisals based on current house values often did not support the price paid for land. Many purchasers were investors and not developers. Thus valuations were carried out in abnormal market conditions. There was said to have

been 'a disconnect' between the prices paid for development land and the fundamental economics of development.

[17] Mr Watson regarded valuation as an estimate of price where valuers must reflect the market, even if that market is behaving irrationally. In relation to the use of residual appraisals Mr Watson agreed that, in normal market conditions and where planning permission was secure, residual appraisals would be the primary approach to identifying market value and this approach should be cross-checked on a price per acre or site value or as a percentage of gross development value. Pre-boom he would have expected site value to be in the region of 30% of gross development value but in 2006/2007 it was common for site values to be in the region of 50% of gross development value. Therefore, the comparable approach became the primary method of valuation and the buoyant market provided a plentiful body of comparable evidence. Nevertheless it was said to be the responsibility of valuers to ensure that they had all the facts possible about the transaction so that they could use their skill and judgment to compare one site with another and there were many factors to take into account including location and planning permission.

[18] This led Mr Watson to consider the comparable method to be the primary approach to the valuation which, in his view, was appropriate at that time. There were two main methods of comparing the site to be valued with comparable sales, namely the price per acre or price per unit. Mr Watson looked at the three development sites relied on by the defendant and he also extracted data on dwellings sold around Lisburn in 2006/2007.

[19] Mr Watson commented that the only detracting factor in relation to this site was that it was beside the Knockmore Industrial Estate, an estate characterised by workshops and warehouse units. He felt that it would be possible to orientate the units in a way that would minimise the impact. In any case he said it was a feature of the boom market that purchasers became ever more relaxed about negative aspects of deals in favour of the prize of acquiring development land. Mr Watson's evidence was that the market was not pricing for certain risks such as the absence of planning permission, less favourable locations, limited site lines, higher density or confined access. He stated that 'these subtleties went out the window, largely they did not feature'. He acknowledged that the market consideration of risk was inadequate at that time with very little difference between the prices for different types of locations. He considered that disregard of location was irrational but it was an irrational market at that time.

[20] Mr Watson referred to valuation reports that had been carried out by Mr Fred Dalzell, another chartered surveyor, who in 2007 reported values for this site of £1.95m and £2.25m with detailed planning permission for 16 apartments and 9 town houses. The latter valuation, based on a slightly different scheme than the defendant's valuation, equated to £90,000 per unit. In Mr Watson's opinion Mr Dalzell's valuations were cautious and not based on sufficient consideration of

the large number of comparable sales that were available at that time. He disagreed with Mr Dalzell that there would have been a difference in the valuations depending upon whether the site had the benefit of planning permission or not. He stated that, while logically that would be the case, his experience at that time was that there was no real difference between the presence or absence of planning permission and the market was in what he called a frenzied state, with little or no pricing of risks. Market value in the case of development land was the price that could be agreed regardless of whether the site could be developed economically at that time. In relation to the concept of prudence it was his opinion that Mr Callan was taking the word 'prudently' out of context. It had to be considered in the context of the market.

[21] Mr Watson carried out his own residual appraisal. The assessment of the sale value of the dwellings is an important element of that exercise. Mr Watson's appraisal indicated that the revenue from the sales of the dwellings would be £5.44m. The construction costs and ancillary matters were £1.62m. Professional fees at a rate of 6% were £89,000. Marketing and Disposal fees were £89,000. Finance costs were £203,000. The costs amounted to £2m. Profit of £494,000 represented a 10% return on cost. Acquisition fees were £126,000 and the acquisition value was stated as £2.8m.

[22] The Callan and Watson appraisals differ in a number of respects. First the revenue to be produced by the sales, which depends on the values to be attributed to each of the four types of dwellings to be built on the site, where the Watson revenue was £5.44m and the Callan revenue £4.56m. Secondly the use of the internal dimensions of the dwellings by Mr Watson producing construction costs of £1.62m, as opposed to the external dimensions for the calculation of construction costs used by Mr Callan and costing £1.77m. Thirdly the professional fees based on 6% by Mr Watson being £89,000, as opposed to 8% by Mr Callan on the basis that the planning process still had to be undertaken and the cost was £130,000. Fourthly the level of profit at 10% of cost by Mr Watson amounting to £494,000 whereas Mr Callan adopted profit at 15% of cost, being £595,000.

The defendant's evidence

[23] The defendant did not agree that, when he undertook the valuation in 2007, some of those seeking to purchase development land were acting imprudently. He was undertaking valuations in accordance with the market, there was strong demand, there were many people in the market, there were people who were new in the market with new money from the banks and there was a buy to let culture. If a development site sold for more than it could profitably be developed for at that time that may have been imprudent but it was what the market determined at that time. Of the three development site comparables he had relied on he knew something of Thornleigh but could not say if he had looked at the other two development sites before he completed his valuation. He had produced a schedule of comparable sales of dwellings at the time he was undertaking the valuation but that was no longer available. His training was primarily in the use of comparables. However up to end

of 2006 he also would have undertaken residual appraisals as did other members of his office. The younger valuers were more attuned to residual appraisal and he agreed that he may have been over confident and did not undertake a residual appraisal.

The RICS documents

[24] The RICS Appraisal and Valuation Standards 5th Edition at paragraph 3.2.4 refers to the “willing buyer” as neither over eager nor determined to buy at any price but as one who purchases in accordance with the realities of the current market and with current market expectations rather than on an imaginary or hypothetical market which cannot be demonstrated or anticipated to exist. Paragraph 3.2.8 refers to the parties acting knowledgeably and prudently and it is stated that prudence is assessed by referring to the state of the market at the date of valuation not with the benefit of hindsight at some later date. It is not necessarily imprudent for a seller to sell in a market with falling prices at a price that is lower than previous market levels. In such cases, as is true for other purchase and sale situations in markets with changing prices, the prudent buyer or seller will act in accordance with the best market information available at the time.

[25] Appendix 3 to the Red Book contains a Protocol for Valuation and Appraisal of land and buildings for commercial secured lending. The Protocol was agreed between the RICS and the British Bankers’ Association and is applicable where the member is to provide services for a client who is considering whether to lend or extend commercial loan facilities on the security of land or buildings. Paragraph 3.1 states that market value is the appropriate basis of value which should be used for all valuations or appraisals undertaken for secured lending. The Protocol includes at paragraph 4 a guide to the matters that should be included in reports for secured lending and that includes comment on past, current and future trends in the property market in the locality and/or demand for the category of property as well as details of any significant comparable transactions relied on and their relevance to the valuation.

[26] Valuation Information Paper No:12 was issued by RICS in March 2008. Mr Callan stated that it had been issued to reflect the position which he felt was being applied by reasonable valuers in March 2007 and was formulated by the RICS as a result of the crash in 2007. The paper refers to the two approaches to the valuation of development land, that is, the comparable method and the residual method. It is stated that in practice it is likely that a valuation would utilise both approaches and the degree to which either or both were relevant depends upon the nature of the development being considered and the complexity of the issues.

Section 4 deals with valuation by the comparison method. Typically, comparison may be appropriate where there is an active market and a relatively straightforward low density form of development is proposed. Generally high density or complex

developments, urban sites and existing buildings with development potential do not easily lend themselves to valuation by comparison. The difference from site to site for example in terms of development potential or construction cost may be sufficient to make the analysis of transactions problematical. The higher the number of variables and adjustments for assumptions the less useful the comparison.

Section 5 deals with valuation by the residual method. It is stated that where the nature of the development is such that there are no or limited transactions to use for the comparable method, the residual method provides an alternative valuation approach. However, even limited analysis of comparable sales can provide a useful check as to the reasonableness of a residual valuation.

The residual method is expressed as a simple equation: (value of completed development) - (development costs plus developers profit) = land value.

The legal principles

[27] In Webb Resolutions Ltd v E. Surv Ltd [2012] EWHC 3653 (TCC) Coulson J set out the legal approach. For present purposes the relevant principles may be stated as follows -

First, Jackson and Powell on Professional Liability states that in common with other professional persons and in the absence of an express term in the contract the standard required of a surveyor is that of the ordinary skilled man exercising the same skill as himself. He is variously described in the cases as 'reasonably skilled', 'competent', 'prudent' or an 'average surveyor' (para. 5).

Secondly, the use of the word 'prudent' does not put a gloss on or make more onerous the ordinary duty at common law because prudence is one of the tests against which the duty of a professional at common law has been measured. As a matter of dictionary definition 'prudence' means wisdom or knowledge or skill in a particular subject or area and does not necessarily mean conservative or erring on the side of caution (para. 11). The Oxford English Dictionary includes sound judgment in practical affairs, to be circumspect, to be sensible.

Thirdly, the defendant was not obliged to carry out valuations on a resale basis. In the absence of special instructions it is no part of the valuers duty to advise on future movements in property prices. The belief among buyers and sellers that prices are likely to move upwards or downwards may have an effect on current prices and to that extent such belief may be reflected in the valuation. However the concern is with current prices only (para.13).

Fourthly, the right approach is to focus on the result, that is to say the valuation itself. It does not follow that, if a valuation was outside the reasonable margin, the valuer was automatically negligent, however it spotlights the way in

which the original valuation was performed and provides a prima facie case for the valuer to answer (para.23).

Fifthly, there is a permissible margin of error or bracket. In cases concerned with complex calculations for investment purposes where variable figures are used in set formulae it is usual for the bracket to be assessed by reference to each of those variables. For residential valuation there ought to be just one bracket, calculated by reference to the correct valuation figure (para.25).

[28] For present purposes it was agreed that the appropriate bracket was plus or minus 15%.

[29] A number of observations may be made that bear on issues debated in the present case.

First, the measure of valuation was market value as defined by RICS.

Secondly, the valuer should determine the current value of the property. The valuer is not projecting future prices or future trends in relation to the property. However the present value will take account of the current movement in prices. For example an overheating market, such as the market in the present case was described, may lead the valuer to a belief that a plateau has been, or is about to be reached, or has passed, or indeed that prices have fallen or will fall, but in each case such movement will be reflected in the current value. The valuer is not predicting what the price will be on some other occasion.

Thirdly, valuers are exercising their skill and judgment in assessing the current value of the property. The exercise is not just a reflection of any offer that has been made for the property. If that were so the surveyor would only be concerned with the genuineness of the offer.

Fourthly, the parties have to act knowledgeably and prudently. Prudence does not necessarily indicate caution but it does suggest some circumspection.

Fifthly, the valuation of a development site is a more complex matter than the valuation of a single dwelling. An appraisal of the economic development prospects for the development site may be taken into account. Where it is believed that the market in development sites is predicated on future increases in value that would ultimately render development profitable that belief would be reflected in the current value.

Sixthly, if the market were considered to be irrational that would be a matter to be taken into account in measuring current value, so that, for example, the misplaced confidence of bidders in an ever increasing market would be reflected in the assessment of the current value of the property.

Seventhly, the variables relating to comparable sites are factors to be taken into account in assessing current value. Variations cannot be disregarded on the basis that future increases will cover any variable that might diminish current value. For example, the character of the location and the absence of planning permission will be taken into account in assessing current value.

[30] The defendant's valuation assumed planning permission and compliance with all the regulations. There was no planning permission. There is no need for adjustment of the defendant's valuation in this respect. The valuation was predicated on there being planning permission and the plaintiff was informed that that was the basis of valuation. If there was some adjustment to be made because planning permission had not been obtained, that was for the plaintiff to address.

The comparables

[31] There were three development comparables. In relation to Thornleigh there is a clear difference in location between that leafy suburb and the industrial estate. In relation to Ballymacash it was a small site of 0.3 acres and it was described by Mr Callan as a highly speculative development. In relation to Brokerstown, more like the present site with an area of 1.15 acres and a concept development of 16 apartments but again with an issue about location. The three comparables were a limited basis on which to determine the market value especially as the defendant had agreed that he had limited knowledge of the details of the second two sites.

[32] The dwelling comparables were not relied on by the defendant, although he may have had some of this information in the schedules referred to and which have been lost. The experts produced a table of 15 dwelling comparables from the Lisburn area in 2007. Garvey Court, Belsize Road, an apartment, 2 beds, sold for £219,000 in February 2007 as a scheme for over 55s near the city centre as opposed to being adjacent to an industrial site. In March 2007 two apartments, 2 beds, sold for £255,000 and £260,000 in Lambeg in a Georgian house conversion, are of a different character in a different location. A townhouse, 3 beds, sold for £250,000 in June 2007 in the Belsize area, an exclusively residential area. In June 2007, a 3 bed semi-detached house on Ballinderry Road sold for £320,000, similar to a further sale for £317,500 in September 2007, described as a good quality residential area. Three houses being former public housing sold in the summer of 2007, two 3 bed terraces at £178,000 and £157,000, and an apartment on the Moira Road agreed at £131,000. In September 2007 an apartment, 2 beds, sold for £225,000 at Longstone Street, described as a modern city centre development. Also in September 2007 a semidetached, 3 bed and integral garage, sold for £245,000 in a rural setting close to Moira Road. In October 2007 a townhouse at Belsize Road sold for £250,000 and in November 2007 2 larger townhouses in a residential area north west of the city centre sold for £340,000.

[33] Thus two apartments in Lisburn centre sold for around £220,000 in 2007, with the former public housing apartment probably not being representative of the type

proposed to be built. Two townhouses sold in the Belsize area for around £250,000 in 2007, with the former public housing terraces probably not being representative of the type proposed to be built. The November sales are of larger dwellings of 1350 and 1500 square feet while the proposed townhouses were valued on a floor space of 1000 square feet. The dwelling comparables I have found to be of limited assistance in relation to the value of an out of centre site adjacent to an industrial estate in March 2007.

[34] The defendant's report in March 2007 declared the value of apartments in the Lisburn area at £165,000 to £185,000. There were no specific comparables identified. The range quoted may have been stated by reference to the brochures and schedules mentioned in the site inspection report that are no longer available.

The residual appraisals

[35] A residual development appraisal would have provided important information on the value of the proposed development site. The values of the proposed types of dwellings at the site in March 2007 would have been an important element of the appraisal. The defendant had assessed apartment values at £165,000 to £185,000, which could not possibly have supported his valuation of the site at £2.7m. The dwelling comparables available for the relevant period are limited as discussed above.

[36] Mr Callan relied on the index for Quarter 4 of 2006 for the house prices to be applied to the revenue potential in completing the residual appraisal. Mr Ringland criticised him for relying on that index because it reflected prices that had been agreed in 2006 and therefore were already out of date. At that time, as an example, the average price for apartments in Lisburn was stated to £162,000 and of townhouses £172,000. The index for Quarter 2 of 2007 gives the average price of apartments in Lisburn as £226,000 and of townhouses as £212,000, showing the extraordinary increases that are recorded as taking place.

[37] There were to be 7 terrace houses, 2 semi-detached houses, 16 two bed apartment and 2 one bed apartments. The terrace houses/townhouses and 2 bed apartments were therefore to make up the bulk of the proposed development. The sequence of appraisals was as follows -

The index for Quarter 4 of 2006 valued townhouses at £172,000 and apartments at £162,000.

Mr Callan's valuation relying on the Quarter 4 of 2006 index gave the values of the four categories respectively as £185,000, £205,000, £160,000 and £150,000, producing the revenue from the project of £4.56m.

Mr Watson on the other hand, carried out a first appraisal with valuations respectively of £240,000, £300,000, £179,000 and £150,000 giving the revenue total for the project of £5.44m.

The index for Quarter 2 of 2007 valued townhouses at £212,000 and apartments at £226,000.

Mr Watson carried out a subsequent appraisal relying on Quarter 2 of 2007 index prices where the valuations were respectively £210,000, £240,000, £220,000 and £150,000 and produced total revenue at £5.88m.

[38] The index prices are average prices, applying to all apartments and townhouses in the Lisburn area at all locations. The extent of each sample is not stated. The experts trawled for sales in the period and produced the schedule discussed above. The value of apartments in the 2007 index corresponds with the two city centre sales in February and September 2007, being prices achieved for prime sites. The analysis of the actual sales does not indicate how the average 2007 index price might have been arrived at. Nor does it bear much resemblance to the defendant's assessment of the price range at that time.

[39] I accept the evidence of Mr Callan that by reason of the location of the site the figures in Quarter 2 of 2007 do not reflect the value of apartments on the site in question in March 2007. Certainly the significant industrial setting for this development places it towards the lower value of apartments around Lisburn at the relevant time. The experts' comparables for 15 dwellings in 2007 do not upset that conclusion because of the limited assistance they provide for this particular development. The value range of apartments suggested by the defendant indicates that the values of the proposed properties would have been well below the index prices recorded in Quarter 2 of 2007.

[40] I consider Mr Callan's values of the terrace houses and two bed apartments for March 2007 to be on the low side. I consider Mr Mullan's first appraisal values of the terrace and semi-detached houses for March 2007 to be on the high side. At that stage the values of the two bed apartments were £160,000 from Mr Callan and £179,000 from Mr Mullan. I consider Mr Mullan's subsequent appraisal values of houses and two bed apartments for March 2007 to be on the high side, failing to take proper account of the location. Taking all the available evidence into account I conclude that the prices for the four categories of property would be approximately £190,000, £215,000, £180,000 and £150,000. The main elements are the terrace houses and the 2 bed apartments. The terrace house value at £190,000 reflects a location reduction on the second Watson appraisal value of £210,000 based on the 2007 index. The 2 bed apartment value of £180,000 reflects a conclusion that the 2007 index price for apartments must in any event apply to top end property and requires a location reduction. The prices set out produce revenue from sales of approximately £5m.

[41] In relation to the development costs there were a number of matters in respect of which Mr Watson and Mr Callan differed. One was the external/ internal measurements for construction costs and I find the proper measure of the cost is the external measurements, which are about 10% higher. Secondly, I find that the professional fee should be 8% rather than 6% because there was no planning permission and the associated costs of obtaining planning permission would have to be incurred. Thirdly, I am satisfied that the appropriate rate for profit would be 15% rather than 10%.

[42] The variations to the development costs produce a total cost of some £2.23m. With 15% profit being some £650,000 and agent's fees, legal fees and outlay at £35,000 the grand total is £2.915m. With revenue of £5m the land value would be £2.085m. The valuation is outside the agreed range of +/- 15% and prima facie it is a negligent valuation.

[43] The defendant's methodology was inadequate. The unit price alone was an incomplete basis for valuation of the site. Residual development appraisals were being carried out by the defendant prior to 2007 but were not undertaken by the defendant on this occasion. I conclude that the defendant appreciated that a residual development appraisal conducted in the present case could not have supported the valuation provided. The character of the trading in development sites at that time was such that current development would not have been economic and in some instances development appraisals ceased to be used as a measure or a check in the valuation of development land. I am satisfied that the market had become what was described as irrational. I accept the description of the nature of the market in 2007 as offered by the experts. That description demands a level of circumspection in the valuation of development sites. The defendant's valuation did not reflect the approach to be taken by a prudent buyer. A residual development appraisal would have been an appropriate check on any proposed valuation. Such an appraisal would not have supported the valuation provided by the defendant.

[44] To abandon residual development appraisals when speculators had entered the market with ready cash to promote purchases that would have involved development that could not then have been economic was not the exercise of reasonable care and skill in the valuation of property. Past, current and future trends in the market may bear on present values and cannot be disregarded. The irrational nature of the market cannot be disregarded. The currently uneconomic proposed development of the site cannot be disregarded. Variables such as the location of the site cannot be disregarded. I conclude that the defendant's valuation lacked reasonable care.