

Is it really worth it?



Valuing property can be a tricky task.

In *Bratt v Jones [2024] EWHC 631 (Ch)*, the High Court provided a helpful reminder as to the test for determining liability in valuer negligence cases.

Background

The Claimant, Mr Bratt, owned a piece of farmland in Oxfordshire ("the Site") in respect of which he had entered into an option agreement with a developer ("D") entitling D to purchase the Site for 90% of the market value ("the Option"). On D exercising the Option, the market value was to be determined, if not agreed, by a third party valuer.

When D exercised the Option, the Defendant, Mr Jones, was jointly appointed to determine the value pursuant to the option agreement. He valued the Site at £4.075m. After planning permission was granted, D purchased the Site based upon Mr Jones' valuation.

The Claim

Mr Bratt disagreed with the valuation and argued that Mr Jones had significantly undervalued the Site and had acted negligently, thus entitling him to damages. He argued that the true value of the Site was £7.8 million, with a 10% margin of error, i.e. between £7m and £8.6m.

Whilst Mr Bratt did plead some relatively limited failings in respect of Mr Jones' methodology, the focus of his claim was very much on the valuation figure itself. In this regard, Mr Bratt asserted that the test for establishing negligence against a valuer was as follows:

1. Firstly, the Court should conduct its own valuation in order to determine the correct value of property;
2. Secondly, the Court should determine if the valuation falls outside an acceptable margin of error. Mr Bratt contended that the relevant case law provided for a 10% margin of error.

If the two requirements were met, he said, the Court could conclude that the valuer had acted negligently. Arguing his case, he relied on Judge Langan QC's reasoning in *Legal & General Mortgage Services Ltd v HPC Professional Services [1997] 2 WLUK 351* that: "*Many, perhaps most valuation cases, can be approached on the bracket basis. This further suggested that once established that the valuation is outside the bracket, "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.*"

Mr Bratt further relied on the Court of Appeal's judgment in *Merivale Moore PLC v Strutt & Parker [2000] PNLR*, in which Buxton LJ remarked that "where the valuation is shown to be outside the acceptable limit, that may be a strong indication that negligence has in fact occurred".

Mr Jones adopted the opposite approach, arguing that the Court should focus on the methodology and apply the Bolam test, i.e whether the defendant has acted in accordance with practices which are regarded as acceptable by a respectable body of opinion in his profession. He argued, if he was found to have acted competently in his approach to the valuation, then regardless of the result of the valuation he could not be found to have acted negligently.

The Judge's Findings

Acknowledging that the authorities are not "entirely easy to reconcile", HHJ Cawson KC found that a valuer's liability in negligence cannot be established simply by reference to the margin between the value of the relevant property as determined by the Court and the valuer's valuation. Rather, he clarified, in order to establish negligence claims against valuers, a claimant is required to establish both:

1. That the defendant acted in a way that would not be regarded as acceptable by a respectable body of opinion in the profession; and
2. That the valuation in any event falls outside the permitted range.

The Court accepted that the proper legal enquiry was that set out by Dove J in *Barclays Bank Plc v TBS & V Ltd*. This is summarised as follows:

- 1) The Court must form its own view, based on the evidence and its own evaluation, of the correct value of the subject property as at the valuation date;
- 2) The Court must then determine the appropriate margin of error by reference to the facts of the case and guided by the principles in *K/S Lincoln v CB Richard Ellis* (which provides that regard should be had to the complexity of the valuation);
- 3) If the valuation falls within the margin of error, then liability cannot be established; or
- 4) If the valuation falls outside the margin of error, then the competence of the valuer must be assessed by application of the Bolam test to establish liability.

On the evidence, HHJ Cawson KC found that the correct value of the Site was £4,746,860, some 14% above Mr Jones' valuation. The only expert evidence provided on the margin of error was for Mr Jones, which asserted that a margin of 15% was appropriate. The Court agreed with this in view of the characteristics of the Site, and the wide range of valuation opinions that had been expressed in the proceedings.

In the circumstances, Mr Jones' valuation was found to be within the acceptable margin and it was not necessary for HHJ Cawson KC to make findings as to whether Mr Jones' valuation had been negligent. Nevertheless, he did proceed to comment on this issue, criticising elements of the valuation.

CPB Comment

The Courts recognise that valuing property is not an exact science, and the mere fact that professional valuations vary, in some cases substantially, does not mean that either valuer is necessarily negligent. On the contrary, the case makes clear that the Bolam test remains a fundamental requirement in order to establish liability.

Falling outside the permissible margin of error will be highly persuasive as to liability. It was essential to Mr Jones' avoidance of liability that the Site was unusual in its nature. There were only a few suitable comparables. This complexity resulted in a larger margin of error than may otherwise have applied.

It is also notable in this case, that the only expert evidence on the applicable margin of error before the Court was on behalf of the Defendant, which, in the absence of any evidence to the contrary, was accepted. Further, the Court considered only the pleaded allegations of negligence whilst noting that additional unpleaded failings were alleged in the Claimant's expert evidence or referred to in legal submissions. The importance of ensuring that all relevant elements of the claim are properly pleaded, and where appropriate, supported by expert evidence, cannot be underestimated.

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Any questions

If you have any questions regarding the issues raised in this article, please get in touch with Dean or Lisbeth.



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