Negligence

[1977] 2 EGLR 84

Singer & Friedlander Ltd v John D Wood & Co

QUEEN'S BENCH DIVISION

June 3 1977

(BEFORE MR JUSTICE WATKINS)

Estates Gazette July 16 1977 and July 23 1977

(1977) 243 EG 212 and 295

Decision of importance to valuers--Claim by merchant bank against firm for alleged negligent valuation of development land--Loan by bank to developers of £1,500,000 based on valuation by defendants--Loss of money lent on collapse and liquidation of developers--Judge's observations on valuer's duty and on factors and actions in valuing land--"Estates Gazette" article referred to--Valuer fell below standard reasonably to be expected of a competent valuer using reasonable care--Judgment for plaintiffs

In this action the plaintiffs, Singer & Friedlander Ltd, merchant bankers, claimed £600,000 and interest against the defendants, John D Wood & Co, for alleged breach of a duty of care in carrying out a valuation of Manor Farm, Eastcombe, Gloustershire. The plaintiffs claimed that, as a result of relying on the defendants' valuation, they had lost money which they had lent to Lyon Homes Ltd, land developers, part of a group which failed and went into liquidation.

A Leggatt QC and J Steyn (instructed by Clifford-Turner & Co) appeared for the plaintiffs; A J Lloyd QC and P Phillips (instructed by Herbert Smith & Co) represented the defendants.

Giving judgment, WATKINS J said: The plaintiffs in this action are merchant bankers who carry on business in and from the City of London. Their chairman is A N Solomons, who is a chartered accountant. The defendants are well-known and highly reputable surveyors, auctioneers, valuers and estate agents. Their head office is in London. They have a number of branch offices in the provinces and in Wales. The plaintiffs claim from them the sum of £600,000 and other sums representing interest, as loss and damage suffered, so it is alleged, as a result of the defendants' breach of duty in valuing 140 acres of land proposed for development for residential use. This land is known as Manor Farm, Eastcombe, Chalford in the county of Gloucester. It was at the relevant time owned by Lyon Homes Ltd, who bought it on April 24 1972 for £620,000 with the benefit of a planning permission for about 39 acres, to which I shall refer later.

Lyon Homes Ltd was part of Lyon Group Ltd. The directors of both companies were Messrs Lyon, Byfield and Winterton. Both companies and their other subsidiaries or associates were in the business of land development. Their projects were financed by substantial borrowings from, among others, merchant banks. Among the many lenders to them were the plaintiffs, Lombard North Central Ltd and Hodge Ltd. Previous dealings between them and the plaintiffs related to commercial property development. These borrowings were usually obtained at a rate of interest of 3, 4 or 5 per cent above normal inter-bank rate. The lenders insisted upon the provision of security for their loans. The form of security varied. So far as the plaintiffs were concerned, they usually obtained a first charge upon the land in respect of which a loan for development purposes was made. The amount of any one loan made was, the year 1972 excepted, any sum up to a maximum of two-thirds of the total value of the land.

In 1972 the plaintiffs, in common with other finance houses, were obliged to raise their limits. This was because much land development and speculation was then going on and inflation was running high. There was a great deal of money in hand; interest rates were low in the first part of the year. Finance houses, or some of them, so it was said, were almost falling over one another in their eagerness to lend it. So the competition between them to lend

money became keener than usual. During this period the plaintiffs raised their limits generally to 70 per cent of valuation, and in about half a dozen instances to 75 per cent. In one of these instances the plaintiffs, on December 28 1972 loaned to Lyon Homes Ltd £1,500,000 at 12 7/8 per cent effectively for prompt payment, which was 3 per cent above inter-bank rate. This figure was based upon a valuation of £2,000,000 for 131 acres of Manor Farm made by the defendants in December 1972. That valuation is claimed by the plaintiffs to have been excessive to such an extent that no competent and careful valuer could possibly have made it. In fact, the plaintiffs' valuation of the land, based upon expert evidence, places the excess at about £600,000, which by any token, and especially when regarded as a portion of £2,000,000, is a substantial sum. The other 9 acres of Manor Farm which the defendants valued at £200,000 was not involved in the transaction between the plaintiffs and Lyon Homes Ltd. This money was borrowed from Hodge Ltd.

In exchange for the loan of £1,500,000 the plaintiffs obtained, on December 28 1972, a first legal charge upon the 131 acres of land. In addition, they received two sureties, namely, Lyon Holdings Ltd and Ronald Lyon personally, in respect of the whole of the capital and interest. For a short while interest was paid on the loan. In the spring of 1974 Lyon Homes Ltd defaulted. The Lyon Group gave a further guarantee. It was to no avail. The Lyon Group soon thereafter made a spectacular collapse accompanied by all its subsidiaries and Mr Lyon himself. In 1975 the group went into liquidation bearing debts amounting to many millions of pounds. Mr Lyon personally has liabilities in excess of £50,000,000. The plaintiffs have lost £1,500,000, the money they loaned to Lyon Homes Ltd. In return, they have 131 acres of undeveloped land in Gloucestershire which is said now to be worth not more than £600,000, although it has the benefit of detailed planning permission for building 800-900 houses upon it. There is no sign of anyone showing an interest in either buying this land or developing it.

The Lyon Group is not the only large group of developers to collapse in recent years with disastrous consequences, which included bringing about a crisis in the world of the secondary banks. The plaintiffs are not the only merchant 85 bank to suffer from those consequences. They are, however, I believe the only finance house which has tried to recover part at least of a loss of money loaned by obtaining damages from valuers on the basis of a negligent valuation. The merit or otherwise of their claim I now proceed to examine, after giving anxious consideration to the serious issues involved for everyone in this litigation, to the evidence and the relevant law and to the most excellent and helpful submissions of learned counsel.

At the very outset of this case Mr Leggatt, the plaintiffs' counsel, stated boldly that three outstanding facts could not be successfully denied and explained away by the defendants. If that proved to be so, he contended, then, regardless of other matters he relied upon, the defendants cannot avoid judgment being given against them. These three facts are that first, the purchase of the whole 140 acres of land early in 1972 for £620,000, a figure agreed in December 1971 by Lyon Homes Ltd, makes ridiculous a valuation placed upon it by the defendants 10 or 11 months later of £2,200,000. Second, two valuations made by Lalonde Brothers & Parham, of Bristol, the first of them in March 1972 in the sum of £865,000 and the other in November 1972 in the sum of £1,500,000, assists further to demonstrate an exceptional overvaluation; and third, Mr Ross relied too much on information he received from Mr Cooper of Lyon Homes Ltd without taking any or any sufficient steps to check that information. What Mr Ross did not do it is my duty to decide. I have heard his version of this affair. I have neither heard nor seen Mr Cooper. Had I heard him give evidence, I have little doubt that his code of business conduct, among other things, would have received the most careful scrutiny by me.

It was, apparently, the practice of some, if not all, finance houses when asked to loan money to land developers to rely upon a valuation of the land provided by valuers engaged for that purpose by the developers. In doing so, the finance house informed the valuer direct that it would be placing reliance upon his valuation. Accordingly, the valuer was made to understand that he owed a duty not only to his clients, the developers, but also to the finance house to use reasonable skill and care in carrying out the valuation. In the instant case it is admitted by Mr Lloyd, counsel on behalf of the defendants, that in circumstances which I shall have to describe in some detail the defendants came to owe such a duty to the plaintiffs. Moreover, Mr Ross, employed by the defendants, who actually did the valuation on their behalf, agrees that he knew when providing the valuation to the plaintiffs that they were relying upon it for the purpose of considering what if anything to lend to Lyon Homes Ltd.

The duty owed was of the nature described in the case of *Hedley Byrne & Co Ltd* v *Heller & Partners Ltd* [1964] AC 465. I quote from the judgment of Lord Reid at p 486:

> A reasonable man, knowing that he was being trusted or that his skill and judgment were being relied on, would, I think, have three courses open to him. He could keep silent or decline to give the information or advice sought: or he could give an answer with a clear qualification that he accepted no responsibility for it or that it was given without that reflection or inquiry which a careful answer would require: or he could simply answer without any such qualification. If he chooses to adopt the last course he must, I think, be held to have accepted some responsibility for his answer being given carefully, or to have accepted a relationship with the inquirer which requires him to exercise such care as the circumstances require.

Lord Hodson, in the same case agreed with Lord Morris of Borth-y-Gest who said:

> If in a sphere where a person is so placed that others could reasonably rely upon his judgment or his skill or upon his ability to make careful inquiry such person takes it upon himself to give information or advice to, or allows his information or advice to be passed on to, another person who, as he knows, or should know, will place reliance upon it, then a duty of care will arise.

It is this duty which Mr Ross is stated to be in breach of by acting negligently in valuing Manor Farm, and for this breach of duty the defendants are liable as employers of Mr Ross. They concede that if a breach of duty there was they, as employers, are liable for any damage caused by it to the plaintiffs.

The valuation of land by trained, competent and careful professional men is a task which rarely, if ever, admits of precise conclusion. Often beyond certain well-founded facts so many imponderables confront the valuer that he is obliged to proceed on the basis of assumptions. Therefore, he cannot be faulted for achieving a result which does not admit of some degree of error. Thus, two able and experienced men, each confronted with the same task, might come to different conclusions without any one being justified in saying that either of them has lacked competence and reasonable care, still less integrity, in doing his work. The permissible margin of error is said by Mr Dean, and agreed by Mr Ross, to be generally 10 per cent either side of a figure which can be said to be the right figure, ie so I am informed, not a figure which later, with hindsight, proves to be right but which at the time of valuation is the figure which a competent, careful and experienced valuer arrives at after making all the necessary inquiries and paying proper regard to the then state of the market. In exceptional circumstances the permissible margin, they say, could be extended to about 15 per cent, or a little more, either way. Any valuation falling outside what I shall call the "bracket" brings into question the competence of the valuer and the sort of care he gave to the task of valuation. So, for example, if the right figure in December 1972 for the value of 131 acres of Manor Farm was £1,500,000, the sum of £2,000,000 would fall well outside the bracket, given that exceptional circumstances governed the valuation. With these views those who advise the plaintiffs agree, or at least do not dissent from.

The way in which a valuer should conduct himself so as to fulfil his duty to a merchant bank, or any other body or person, varies according to the complexity or otherwise of the task which confronts him. In some instances the necessary inquiries and other investigations preceding a valuation need only be on a modest scale. In others a study of the problem needs to be in greater depth, involving much detailed and painstaking inquiries at many sources of information. In every case the valuer, having gathered all the vital information, is expected to be sufficiently skilful so as to enable himself to interpret the facts, to make indispensable assumptions and to employ a well-practised professional method of reaching a conclusion; and it may be to check that conclusion with another reached as the result of the use of a second well-practised method. In every case the valuer must not only be versed in the value of land throughout the country in a general way, but he must inform himself adequately of the market trends and be very sensitive to them with particular regard for the locality in which the land he values lies. Whatever conclusion is reached, it must be without consideration for the purpose for which it is required. By this I mean that a valuation must reflect the honest opinion of the valuer of the true market value of the land at the relevant time, no matter why or by whom it is required, be it by merchant bank, land developer or prospective builder. So the expression, for example, "for loan purposes" used in a letter setting out a valuation should be descriptive only of the reason why the valuation is required and not as an indication that were the valuation required for some other purpose a different value would be provided by the valuer to he who seeks the valuation. It might, however, be an indication that the valuer,

knowing the borrowing of money was behind the request for valuation, acted with even more care than usual to try to be as accurate as possible.

If a valuation is sought at times when the property market is plainly showing signs of deep depression or of unusual 86 buoyancy or volatility, the valuer's task is made more difficult than usual. But it is not in such unusual circumstances an impossible one. As Mr Ross said, valuation is an art, not a science. Pinpoint accuracy in the result is not, therefore, to be expected by he who requests the valuation. There is, as I have said, a permissible margin of error, the "bracket" as I have called it. What can properly be expected from a competent valuer using reasonable skill and care is that his valuation falls within this bracket. The unusual circumstances of his task impose upon him a greater test of his skill and bid him to exercise stricter disciplines in the making of assumptions without which he is unable to perform his task; and I think he must beware of lapsing into carelessness or over-confidence when the market is riding high. The more unusual be the nature of the problem, for no matter what reason, the greater the need for circumspection.

The factors and activities which a competent valuer will consider and undertake in valuing land cannot be composed in such a way as to indicate an unvarying approach to every problem which confronts him. But a collection of them from which he will choose at will in a given circumstance must include the following:

(a) The kind of development of the land to be undertaken.

(b) The existence, if any, of planning permission in outline or in detail as to a part or the whole of the land. And if permission be for the building of houses, the situation and acreage of part of the land excluded from planning permission because, for example, of a tree preservation order, the need for schools and the lay-out of roads and other things. Furthermore, the number of houses permitted or likely to be permitted to be built by the planning authority is a relevant, indeed a vital factor.

(c) The history of the land, including its use, changes in ownership and the most recent buying prices, planning applications and permissions, the implementation or otherwise of existing planning permissions, the reason for the failure, if it be the fact that a planning permission has not been implemented.

(d) The position of the land in relation to surrounding countryside, villages and towns and places of employment; the quality of access to it, the attractiveness or otherwise of its situation.

(e) The situation obtaining about the provision of services, for example, gas, electricity, sewage and other drainage and water.

(f) The presence, if it be so, of any unusual difficulties confronting development which will tend to increase the cost of it to an extent which affects the value of the land. A visit to the site must surely find a prominent place among physical activities to be undertaken.

(g) The demand in the immediate localities for houses of the kind likely to be built, with special regard to the situation of places of employment and increases to be expected in demand for labour. This will involve, inevitably, acquiring knowledge of other building developments recently finished or still in progress, especially having regard to rate of disposal, density and sale price of the houses disposed of. In this way the existence, if any, of local comparables, a valuable factor, can be discovered.

(h) Consultation with senior officers of the local planning authority is almost always regarded as an indispensable aid, likewise a knowledge of the approval planning policy for the local area; a study of the approved town or county map may prove rewarding.

(i) Whether ascertaining from the client if there have been other previous valuations of the land, and to what effect, should be undertaken is probably questionable because a valuer's mind should not be exposed to the possibilities of affectation by the opinions of others.

(j) If he is a man whose usual professional activities do not bring him regularly into the locality, or what is more important has never done so, he will obviously need to be especially careful in collecting as much relevant local knowledge as he can, possibly by consulting valuers who work regularly in the area.

(k) The availability of a labour force which can carry out the prospective development.

When this harvest of knowledge has been gathered in by the valuer with, on occasions, as must be accepted, help from a competent member or members of his staff or the firm for whom he works, he must assess the worth of the details of it. Some of it he may set aside either as being unreliable or for some other good reason. Other details may impress him as reliable as facts which speak for themselves or upon which he can, using his best judgment, rest assumptions without the making of which his task is rendered impossible. With these he has to try to penetrate the mists of the future and withal bring to bear upon him his training, skill and experience in order to produce a carefully-achieved conclusion in terms of monetary value.

What are the final steps to be taken before pronouncing a figure? Having decided upon his basic facts and made his assumptions, he collects together from his own resources,

professional publications, local comparables and elsewhere the current market trends in the selling prices of the houses, the cost of borrowing money in the market, the average value of land per acre on a national basis and on a local basis, and the average value of land per plot on like bases covering a period of a few months preceding the valuation. So the exercise in valuation proceeds in a fairly conventional way, which I call the "discount method," and which is not the only way, of course, as follows:

(a) Assume, if it is not actually known, the number of houses to be built on site--the density.
(b) Assume the rate of building which bears relation to the anticipated rate of sales.
(c) Determine the number of years for the completion of the development.
(d) Adopt a deferment rate; it seems to vary, applied to 1972, according to the evidence, between 8 and 10 per cent.
(e) Alight upon a plot value and/or a value per acre. How? The answer seems to be by using local comparables or median plots values for the area or both; perhaps neither of these aids will be present. A median plot or acreage value means a figure at the mid-point of land values in, for instance, Gloucestershire, excluding those which fall in both top and bottom quarters. What lies in between these quarters is the typical range. The ESTATES GAZETTE for April 7 1973 demonstrates the method of achieving the median point and typical range. But how reliable this information is depends upon the number of sales taken into account. In my opinion information of this kind is dependable only if the number of sales taken account of is known. I believe I am right in saying that prices in Gloucestershire per acre were for 1972 based upon three samples only: see the *Digest of Building Land Prices* for 1972 published in January 1973.
(f) Take special account of, or refuse to, such special items as the provisions of trunk water mains, the value of a school site, and other items possibly.
(g) Bear in mind, or decline to, that the first year's development will be that of the 9 acres in the instant case in computing the number of years for the completion of the development, and place a value on the 9 acres.
(h) Place a value also upon land reserved, for example, for a school.

Various methods of arriving finally at the value of a site have been described to me by a number of able and experienced valuers. The painstaking route, that is, the discount method allied to local comparables, if available, which I have set out as a sort of formula, I regard as the most reliable upon the evidence which I prefer. Other methods involve less detailed analysis and maybe are suitable in straightforward tasks and as cross-checks upon the discount method. Examples of these other methods are demonstrated by Mr Ross in one of the exhibits. In one instance he contents himself by valuing an acre of land and multiplying it by the number of houses to be built. In the other he did a somewhat identical exercise based on the value of a plot. The resultant figures he reduces by a percentage referable to the discount factor. Both methods have the merits of brevity, accompanied by the demerit of inscrutability. So much or so little is hidden behind a simple arithmetical statement.

Mr Costeloe, called by the plaintiffs, a partner in Lalonde Brothers & Parham, estate agents, valuers and auctioneers, revealed another method, based on a price per acre of different amounts for various parts of the site, which has been criticised by Mr Dean as somewhat primitive and anyway is derived from other people's opinions. Yet another adopted by Mr Costeloe is to apply to a previous valuation by his firm of the same site a percentage increase to account for the market rise in land values. This Mr Lloyd in his closing argument dismissed as crude and, therefore, very unsafe, if not valueless. The experts I have heard all command respect for academic distinction and experience, or at least two of these qualities. All of them have some acquaintance of the area in which the site is situated. The plaintiffs have relied upon the evidence of Mr Owen, the managing director of Herring Son & Daw, chartered surveyors. He has considerable experience in valuation, including the residential field. He is familiar with the area, having at one time lived near Cirencester. In 1975 he valued the site as at December 1972 at £1,195,000 using the discount method, and £1,148,000 using another method as a check. This latter method involved accepting the true value of the land when bought as £620,000: assume an increase in 1972 of 100 per cent and deduct the value of the 9 acres. Mr Costeloe, although, unlike the others I mention, not a qualified surveyor, is an experienced valuer. In 1972 he was an associate partner and in 1974 became a full partner in the firm of Lalonde Brothers & Parham. Other partners in that well-known West Country firm include Mr Lalonde and Mr Thomas. Mr Costeloe knows the site better than any other valuer I

heard. His firm were well equipped to assess the value of land in North Gloucestershire, since among other parts of the West Country they knew that part intimately. Furthermore, at the request of Lyon Homes Ltd, they, in 1972, valued the site on two occasions, firstly, as I have said, on March 14 1972 at £865,000, and secondly, on December 14 1974 at £1,525,000. On both occasions they informed Mr Cooper that their values were for "loan purposes," which expression Mr Costeloe explains as indicative of a more demanding standard of care in valuation, although he declared that he would expect in the result that this valuation figure would not differ very much from the valuation figure provided for any other purpose. What I believe to be incontestably true is that Lalonde Brothers & Parham carried out on each occasion an in-depth and very careful exercise in valuation before providing the answers. The first valuation is especially noteworthy in this context. Moreover, they knew the staff of the planning authority whom they did not fail to consult. Be it noted that the second valuation figure is almost double that of the first, a recognition--whether in degree sufficient or as a method of the up-dating of valuation permissible as safe is another matter--of the rapid rise in value of land in 1972.

Mr Cypher is a very experienced town planning and local authority officer whose knowledge of the site outrivals that of anyone elses I have heard. I thought he was a reliable witness, expressing his opinions with frankness and circumspection. Mr Cypher had in 1972 an assistant, namely Mr Ashley. He is still in local government. He was not called to give evidence.

On the defendants' side I heard from the well-qualified and experienced Mr Dean, a partner in the firm of Savills. He is in charge of their valuations department. He has visited the site on three occasions since being asked some time ago to give evidence. He has, like Mr Owen, gone to a great deal of trouble to try to put himself in the position of one asked to do a valuation in 1972. As he and other experts have acknowledged, this is a difficult task, but is nevertheless one which is not outside the bounds of accomplishment. He was supported by Mr Hampton, whose services were enlisted very recently. He is a partner in Cluttons. He is also well-qualified and experienced. He knows Gloucestershire intimately and in fact visited the site in 1971 to inform himself about it. Both Mr Dean and Mr Hampton support the valuation made by Mr Ross. He is as well-qualified and experienced as them. He is now the manager of the Peabody Trust. He was with the defendants from 1961 to 1974, and became an associate and the head of a department, with a staff of six, concerned with valuation, sales and planning matters. He visited the defendants' branch office regularly. He claimed to know the West Country well, where he valued, for example, land which Heron Ltd developed, or contemplated developing, at places not far removed from the site in the spring of 1972. He composed and kept for his own use a summary of reports gathered from the ESTATES GAZETTE and his knowledge of private treaties. This enabled him to keep abreast of land values.

When asked by Mr Cooper to carry out the all-important valuation, he did not visit the site. He sent his assistant, Mr Hobden, from whom I have not heard, to do so. But he maintained he knew the site by then because he had visited the area of it many times. Moreover, he knew that the defendants had been concerned with it previously. In particular, he was, he said, aware of the contents of an internal office letter which passed between Mr Scott, then his assistant, and Mr Reynolds, a partner, neither of whom have I seen, or heard. In this letter Mr Scott, who obviously from the contents of it had made a fairly thorough appraisal of the site, gave vent to his feelings upon a number of matters in relation to it. I quote from page 2:

> It would appear that the site is at present too far removed from Gloucester and Cirencester whilst Stroud would not be able to absorb the additional labour force available. Chalford is a good residential area but not the best and the future would seem to be in the outcome of the North Gloucestershire Study which we have not inspected.
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> Certainly if this land was developed it would become a satellite village of Stroud and as such would not be required by Stroud to cover its own population increase or provide a labour force increase. Without asking we were told of this area of land and the fact that it was purchased some time ago by a Midland developer who has been willing to sell the land for the past 10 years, we therefore advise as follows: that if the proposal to purchase the land proceeds then only 38 1/2 acres with outline consent should be considered at present. This area should be phased over the next five years, which phasing could be varied with demand. The development within phases should be staged to build one cul-de-sac at a time.

> In any event we are of the opinion that because of the highly speculative nature of this development, this parcel of 38 acres is not worth more than £100,000 or thereabouts, and quite frankly we feel that even this area of land is quite sufficient to cope with foreseeable demand over the next 5 or 6 years.

This letter was an appreciation of the site and the development possibilities of it. Mr Ross had asked his assistant to make the appreciation at the request of Mr Reynolds. Having regard to its contents, it could properly in my opinion have been headed with the words "proceed with caution."

Nothing came of whatever brought about this appreciation. What notice, if any, Mr Ross took of it in December 1972 and what value, anyway, he placed on it was not satisfactorily explained by him to me. I am bound to say I am left with the clear impression that he paid no regard to it in December 1972. Whether that was prudent of him I shall comment upon later.

Whether Mr Cooper, had he given evidence, would have been revealed to be experienced in valuing land, I know not. The correspondence shows him to express without reservation opinions on the value of the site, especially to those, namely, Lalonde Brothers & Parham and the defendants, whose professional services he enlisted on behalf of Lyon 88 Homes Ltd. Possessor of expertise in valuation he may or may not have been, but the possessor of certain facts which could have helped me towards a number of crucial findings he undoubtedly is. This applies especially to his talks with planning officers and to his dealings with Mr Ross. Furthermore, it would have been of interest to discover by what process of thought he regarded the purchase of the site at £620,000 as a bargain, meaning by that, of course, that he obtained it for Lyon Homes Ltd for less than its true worth. So it is that upon matters of fact I have had in the main, in assessing the worth of the defence evidence, to be content with what help the documents provide and with the testimony of Mr Ross.

I have already made a fleeting observation about the difficulties experts inevitably encounter in trying to do a 1972 valuation in 1975 or 1977. Those difficulties could hardly be more strikingly illustrated than is apparent from the difference there is of something in the region of £1,000,000 between the valuations of Mr Owen for the plaintiffs and of Mr Dean and Mr Hampton for the defendants. Accordingly, it might be said that little or no weight should be attached to the expert evidence I have heard. To regard such evidence in that way would, in my opinion, be wrong, since it is not only the final conclusions which they provide which are pertinent, but also their views upon the kind and extent of approach work which a careful and competent valuer can reasonably be expected to do according to standard practice and the method he employs so as to produce from a mass of knowledge, of the like I have already referred, a reliable valuation.

Mr Justice McNair said in *Bolam* v *Friern Hospital Management Committee* [1957] 1 WLR 582, this case being a medical negligence case, that a doctor who had acted in accordance with a practice accepted at the time as proper by a responsible body of medical opinion skilled in the particular form of treatment in question was not guilty of negligence merely because there was a body of competent professional opinion which might adopt a different technique. Therefore, what the experts tell me is standard practice is obviously invaluable to the completion of my task in deciding whether Mr Ross was in breach of duty, or in another word "negligent." Where the views differ, if they do, about what the standard practice is, I must rely upon my judgment for deciding which expert I prefer in this respect, or decide that although the versions of standards differ, providing one or other of them is followed by a valuer, he cannot be criticised for adopting that one.

In another medical negligence case, namely *Vancouver General Hospital* v *McDaniel and Another* (1934) 152 LT 56 at page 57 it was stated:

> Not only do these medical men approve in terms of the appellants' technique, but they affirm, as will be observed from the passages cited sup, that the technique challenged by the respondent is in accord with general if not with universal practice today in Canada and the United States. If that be so, it is, in their Lordships' opinion, again difficult to affirm that negligence on the part of the appellants is proved. A defendant charged with negligence can clear his feet if he shows that he has acted in accord with general and approved practice.

That was a case of alleged medical negligence in the treatment of smallpox.

Fortunately I am in a position to say that there is no diversion of opinion, save as to some details, about what in valuation is a general and approved practice between the valuers who have given evidence. The practice, as they agree, is that which I have already tried to piece together into a recognisable pattern. It consists of four fairly distinct stages of activity, namely,

firstly, the sometimes tedious and laborious but vital approach work; secondly, analysing the information thereby gained, and so be enabled by the exercise of experience and judgment to accept facts and make assumptions; thirdly, applying the detailed discount method with comparables or some other justified by the circumstances as an alternative, or as a check, to the findings, and thereby produce the valuation; and fourthly, informing the client of it.

The disagreement on details is really confined to such as how far it is necessary for a valuer to proceed by inquiry to complete stage one? Is it, for instance, necessary for a valuer who is informed by the client or someone in the local planning department that all services are available to inquire of, for example, the Water Board to check whether this is really so? In stage four is it enough to give the client simply the figure of valuation, or should this be accompanied by some explanation of how it has been arrived at, whether any reservations are felt about this or that matter, and whether some previous acquaintance with the site ought to be revealed along with some relevant knowledge gained, or opinion then formed? Mr Owen and Mr Dean differ upon the last-mentioned matter. Mr Dean seems in favour of supplying the figure of valuation only on the basis that that is all the client needs; what lies behind it is the exercise of experience, skill and judgment, of which no explanation is required.

Mr Solomons told me that he expected valuers to check the facts independently of anyone else before supplying him with a figure of valuation, but that it was the figure he was interested in, leaving to his solicitors, as he did, to inquire into any matter which merited inquiry with the valuers. Mr Solomons would have been very interested to learn, before the plaintiffs loaned money to Lyon Homes Ltd, of Lalonde Brothers & Parham's second valuation since, given two valuations of the same site, the plaintiffs' policy was to lend on the lower of the valuations. He was ignorant of it, a fact which I think is discreditable to those running the affairs of Lyon Homes Ltd. I venture to suppose, although he was not asked about it, that he might have had more than a passing interest in the contents of the domestic letter of Mr Scott. He was equally unaware of that. Mr Ross has given an explanation why he did not see fit to refer to it in the letter in which he provided the value of the site. Whether I find it acceptable I shall say later.

Mr Ross has also said that he conformed in every way with general and approved practice. I must now, therefore, relate what he says he did in this behalf before passing into that realm where my judgment, doing its best, informs me whether he cleared his feet. But before doing so, and so as to provide a backcloth to his evidence, I return briefly to the site to provide a little more information of its relevant past. The history of planning applications and permissions relating to Manor Farm, or parts of it, goes back as far as 1958, but it is only of interest to begin the telling of it with a permission in outline to build a neighbourhood unit. This was dated December 8 1965. It excluded from residential development 11.5 acres to be used as a school site and 23 acres of woodland, Frith Wood, upon which there was and is a tree preservation order. No action was taken pursuant to this permission. However, following the acquisition of the site by Lyon Homes Ltd, this permission was on May 3 1972 renewed by the planning authority. In the meantime, additional planning permission had been given on June 29 1971 in respect of 39 acres of it, upon which 213 dwellings were permitted to be built, a density of about six per acre. Both these permissions were subject to many conditions, among which was that imposed upon the developer to provide a spine road. This and a few of the other conditions were matters which a valuer should, in my opinion, take account of in his valuation without, possibly, making any specific acknowledgment of having done so. The planning authority insisted upon adherence to what was called the "Radburn" principle, that is, segregation of pedestrian and vehicular ways, until some time in 1972, when it was abandoned. I mention this only to dismiss it, save to remember its abandonment lay in between the two valuations of the site made by Lalonde Brothers & Parham.

On September 29 1972 the owners sought a further detailed permission in respect of 9 acres only upon which 49 dwellings were to be built. A sub-committee of the planning authority approved this at the beginning of December 1972. It was actually granted on March 2 1973. The density was approximately five and a half houses per acre. It is right to say, therefore, that when the defendants valued the land, it was highly probable that this permission would be forthcoming and that a part of the spine road would have to be laid. Furthermore, I should say that these 9 acres formed part of the 39 acres already mentioned. There have been a number of planning applications since 1972. The effective result of them is that on October 15 1975 permission for development in outline was renewed, permitting 835

houses to be built, thus increasing all previously permitted density to about 8.65 dwellings to the acre.

What has been the practical result of these applications? It is this. Fifteen houses have been built on the 9-acre part of the site. They have been sold. They stand in lonely isolation awaiting the time when further progress, of which there is no prospect, is made. This leads me to reflect upon the evidence of Mr Cypher. He was divisional planning officer for the central division of Gloucestershire. He is now the planning officer for the Stroud District Council. He has known the Manor Farm site for many years. He referred to it as a big area of land "out in the blue," and gave me the impression that he had never looked upon the possibility of its full development with any real optimism. As for the probable permitted degree of density according to the planning authority's view in 1972, I regard as reliable his figure of six houses to the acre, although it is true to say that the Government, late in 1972, was exhorting councils to raise their sights in looking at targets for housebuilding, so that planning authorities were inclined to consider increases in densities. In Gloucestershire, as in other counties, further land feasibility studies were prepared. The site in question was mentioned in that survey, published in 1973, as possibly able to bear about 800 dwellings, an obvious increase in actual permitted densities. Nevertheless, Mr Cypher said that if asked in December 1972 he would have advised, although allowing for some flexibility, an inquirer that a density of about six to the acre was what his authority would have been likely to permit. However, others outside the planning authority were thinking of much more dense development, the sort of "porridge" to which Mr Cypher expressed himself as opposed to, that is to say, dense development of a kind which has no regard for any other consideration than ensuring that as many houses as possible are built upon an acre of land. Mr Dean referred to a number of different estimates or opinions formed at various times prior to December 1972 by people who were interested in the site, including Mr Cooper, about expected permitted density of the site. These were gathered from various sources, none of which do I find helpful nor in the least reliable when compared with the sober reflections of Mr Cypher, who more than anyone knew what he was prepared to recommend to his planning authority about density and what that authority's reaction might be.

This leads me to relate Mr Cypher's views and others' upon the site. I should precede these views by stating that there is no doubt about the following factors: (1) 11.5 acres approximately of it were reserved for a school site, and 9 acres were the subject of a planning application; (2) Frith Wood, an area of 23 acres, could not be developed; (3) consequently, 96 1/2 acres remained for possible development; (4) a new trunk water main had to be laid to serve the site from 7,500 yds away at a cost, Mr Owen thought, of about £132,500. This has never been verified, since the main has not been laid, but fairly recently a figure of £150,000 seems to have been confirmed as a contribution; (5) before 1973 the highest permitted density was a little less than six per acre. Mr Cypher said at one stage that 600-700 houses were being thought of by the planning officers, if not the planning authority. I shall later on need to be a little more expansive about Mr Cypher's evidence on density. He regarded the site as very exposed and difficult--and a difficult sale site too. Environmental factors weighed upon the planning authority, having regard to objections to the kind of development proposed and the nature of the countryside. Moreover, he spoke of the site as being "political dynamite." He said also, "It is so exposed and bleak. It snows more or less from September to May up there. It is a frightful place. I would not go and live there anyway." Some of the valuers do not share Mr Cypher's views. They regard it as an attractive site in lovely surroundings typical of the Cotswold country. Be that as it may, I have no doubt that access to the site was poor, since approach roads are winding, have steep slopes in places and are narrow. Mr Cypher may have painted too grim a picture, but of all those I heard he is incomparably in the best position to make an assessment of the site and I think he, more than anyone, has brought me face to face with the reality of the situation.

Of those I did not hear, I cannot entirely ignore Mr Scott, since he worked in May 1971 for the defendants. Whilst, in the letter I have already referred to, he stated the site in his opinion was good, he also pointed out the difficulties of access to it, especially in winter, and he valued 38 acres of it as worth no more than £100,000. That was, of course, 18 months before Mr Ross' valuation. I do not know Mr Scott so I cannot put a value to his quality and experience as a valuer. I must remember too that Mr Ross told me that he did not altogether agree with Mr Scott's appreciation. But if Mr Scott's valuation of 38 acres was realistic at the

time it was made, it is obvious that if Mr Ross' valuation be right, Manor Farm in 18 months had become about seven times more valuable by Christmas 1972. In the light of that, may it not be apt to remind oneself of what a redoubtable and eminent personage said on a famous occasion. "This is an ill-conceived world, but it is not as ill conceived as that."

Mr Ross was first asked to cast his mind back to his involvement in this affair after the issue of the writ in December 1975. He told me that in the spring of 1972, after spending about a week in the area concerned, he valued the entire portfolio of Heron Ltd, the details of which are shown in Exhibit D1. They consist of four sites in Gloucestershire, each of them large, none of which has been developed. This exhibit also contains details of his valuations later in the year in Gloucestershire, East Anglia and Hampshire. He used these as comparables when valuing Manor Farm. On November 23 1972 Mr Cooper of Lyon Homes Ltd asked him to value the site. The following day Mr Cooper brought a bundle of documents to Mr Ross' office and told him there was urgency in the request. It included Mr Cooper's valuation of the land, some brochures displaying the kind of houses proposed to be built, a large-scale map, a plan from the planning authority indicating the form development would take, the general planning permissions of 1965 and 1972, and the application for permission in detail of the 9 acres. Mr Cooper told him all the services were available and of the application for planning permission for 9 acres. Mr Ross studied the documents over the weekend and made notes of Mr Cooper's visit which appear in Exhibit P2. These contain a reference of £15,000 per acre. On the Tuesday he sent his assistant, Mr Hobden, off to the site and surrounding area. He thought Mr Hobden was a reliable fellow. The following day Mr Hobden returned with a note of his activities. They spoke together almost all that day. He thought it unnecessary to go to the site. He had a good mental picture of it from past experience. Anyway, he was under pressure of work at the time. What Mr Hobden claimed to have done in the limited time available I do not at first hand know.

Mr Ross said he 'phoned the planning department of the Gloucestershire County Council. He asked for Mr Cypher, who was not available and he believes he spoke to Mr Ashley. A long conversation ensued, during which Mr Ashley said Gloucestershire County Council regretted having given planning permission. Mr Ashley asked if the intent to develop was genuine, and confirmed what Mr Cooper had allegedly said that about 800 houses would be permitted to be built. He asked Mr Ashley to confirm that all main services were available; he did so. He said, when cross-examined, that he told Mr Ashley he was aware of the application for developing 9 acres. The discussion included, also, mention of Frith Wood and the school site. When asked how he knew Mr Ashley's name, he said first of all that he had seen it in a letter; then that he thought Mr Cooper had provided it, or he had seen it in a professional handbook; and finally that he had spoken to Mr Ashley previously when dealing with the Heron development. Which of these various explanations is true, if any one is? It was suggested that he could not have spoken to Mr Ashley about the Heron development because he was not responsible for the relevant area in Gloucestershire. The letter he referred to, as being one from which he might have picked up Mr Ashley's name, is one of the exhibits. That letter, as he conceded, could not have been seen by him. He felt sure that he made a note of the telephone conversation, but there is no trace of the note on the file. He was unaware at all times of the detailed planning permission for the 39 acres. Did he speak to Mr Ashley? Did he speak to anyone in the planning department? Did he make a note? Mr Ashley may have been able to resolve all these questions for me. I have been given no explanation for his absence from the witness box.

It is the defendants to whom I think I can reasonably look for an explanation, although I am aware at all times, of course, that the plaintiffs have to prove their case. In the defence at paragraph 7(2), and the particulars given thereof, there is no reference, as one might expect there to be, of a telephone conversation with Mr Ashley or anyone else in the planning department. Indeed, the impression one gets from the pleadings is that reliance was placed upon information supplied by Mr Cooper, which included a plan, which I have not seen, demonstrating how a development of 800 dwellings could be achieved.

Mr Leggatt has justifiably referred to the way in which Mr Cypher was cross-examined upon this issue, to the likelihood of Mr Ashley and Mr Cypher being likely to speak with one voice about density, and of the extreme unlikelihood that Mr Ashley would have said all main services were available. Mr Ross said he would not have spoken to anyone save a senior

officer in the planning department. It was not his practice to rely upon anyone of junior rank for information. He believes he spoke to Mr Ashley, but he has not checked with Mr Ashley to seek confirmation. Nor, so far as I know, has anyone else.

Mr Lloyd submits that Mr Ross should be believed at least to the extent that a telephone conversation did take place between Mr Ross and someone in the planning department, although that someone may not have been Mr Ashley. And even if there was no such conversation, I suppose it could be, even if it was not expressly, argued that what Mr Cooper had told Mr Ross about the planning authority's preparedness to permit 800 dwellings to be built on the site was reliable, since Mr Cypher's evidence about what he would have told an inquirer, when taken as a whole, must lead one to the conclusion that he might well have quoted that number himself.

Learned counsel in their final submissions helpfully collected together quotations referable to the comments I have just made. The interpretation which Mr Lloyd seeks to put upon that evidence I cannot subscribe to. I believe firmly that had an inquiry been made of Mr Cypher by Mr Ross or Mr Cooper in December 1972, or earlier, he would have been extremely circumspect and cautious about trying to foretell what density the planning authority would permit, and would have said nothing to give an inquirer the confidence or right to assume that as many as 800 dwellings would be permitted. So I return again to ask rhetorically the question, was any telephone call made by Mr Ross to the planning authority? Mr Leggatt, with becoming courtesy, did not feel able to suggest that there was not a conversation with someone, possibly someone other than Mr Ashley. I enjoy no such inhibitions and so must meet the question I ask head on, regardless of where the answer may properly lead me and the consequences which flow from it. But I shall put aside that matter for the time being, along with Mr Ross' activities, or the lack of them, under stage one and pass to stage two.

In the course of this mental activity Mr Ross said he talked things over with his staff and with a partner; he took account, among other matters of comparables, assumed a development containing 800 dwellings, assumed a price per acre from his experience of £18,000, and did an exercise by the first of these methods, which resulted in a valuation of £2,160,000 for 120 acres. He then proceeded to apply his second method, based on 800 units at £4,000 per plot. Mr Cooper had conducted an exercise on the basis of £3,000 per plot. The price per plot was gathered from his experience and records which informed him that in rural areas it was safe to assume the worth of a plot to be 25 per cent of the sale price of a dwelling. The price of £16,000 he obtained from Mr Cooper, being a middle figure of several provided. He deferred a multiplication of 800 x £4,000 by 0.68, being the percentage value of £1 for 4 years at a rate of interest of 10 per cent and the equivalent of a deferment of 2-8 years. The result was £2,176,000. Then he turned to his third method, a more analytical one than the other two, he said, which involved the following process:

(1) Assume a rate of sale of 50 of the 800 units for the first year and 100 each year thereafter, ending with 250 in the last year of seven years. This assumption was based on the planning permission of nine acres and rates of sale of other dwellings on other sites which are set out in R1. He set the rate assumed at lower than the average rate of the sites on R1.

(2) Accept that all main services were available.

(3) He took a deferment rate of 10 per cent as he believed was generally done by other valuers.

(4) The result, rounded down, came to £2,200,000, or, excluding the nine acres, £2,000,000 for the remainder.

In none of his work of valuation was he affected by the urgency of the request therefor. He disregarded Mr Scott's valuation of 1971. He gave his final figure to Mr Cooper and thence on request to the plaintiffs; note especially the reference in that letter to 800 units and main services, and the ambiguity, as to which there was investigation by Mr Solomons or upon his request. He knew, he told me, that the plaintiffs were relying upon his valuation.

When cross-examined very keenly, but fairly, upon such matters as local demand, plot values when differing densities are taken account of, for example the density of 5.4 on the nine acres compared with anticipated densities on the assumption that 800 dwellings overall were to be built, his total disregard for Mr Scott's appreciation of 1971, his consideration, if any, of where the demand would come from and for what type of property, and other matters of fundamental importance, Mr Ross looked and sounded as though he was very much on the

defensive and vulnerable. If this was due wholly to the strain of giving evidence and anxiety for his reputation and integrity and the possible consequences to his erstwhile employers, the defendants, of a successful outcome for the plaintiffs' claim, then these reactions are not only understandable but irrelevant to the formation of any judgment I shall make upon the value of his evidence. But if they were due in whole or in part to an attempt to refuse to acknowledge a fault, then obviously different implications may arise.

These observations apply also to the information which was not given to the plaintiffs. This can be studied from his evidence given on Day 7. He asked himself, he said, the question, "Is this likely to be a going concern?" before writing to the plaintiffs. If he did, was he justified in replying to himself in the affirmative then? Had so much taken place within a fairly short while to turn a site with planning consents, stretching back for almost a decade and lying dormant all that while, into a going concern with anticipated building and sale rates of the order generally of about two a week after the first year? Much had, indeed, happened of a kind; the property market nationally was on the boil in 1972. Whether it had steadied down to rest upon a plateau in the late autumn is a matter of dispute, having regard to their differing experiences, between Mr Owen and Mr Dean and others. But was Manor Farm affected by this national movement of expansion in building releases of land and rising prices? If so, to what extent, having regard to its situation in relation to neighbouring Stroud, places of employment, and so forth? At the end of the day did Mr Ross provide the wrong answer by a very substantial margin? Mr Owen and Mr Costeloe say he did. Mr Dean and Mr Hampton say he did not. If he did, it does not follow from that alone that he was negligent.

In the case of *Sutcliffe* v *Thackrah and others* [1974] AC 727 Lord Salmon at p 760 stated:

> My Lords, I desire to make it plain that all I am discussing is whether an action for negligence will lie on the assumption that negligence can be established. Everyone knows that there is no topic about which greater differences of informed opinion may sometimes exist than the value of shares in a private company unless it be the authenticity and value of certain pictures. It by no means follows that a professional valuation or opinion was negligently given because it turns out to have been wholly wrong. Nor does the fact that an architect's certificate was given for the wrong amount of itself prove negligence against the architect. Whether or not there has been negligence is, of course, a pure question of fact depending upon the particular circumstances of each case.

Furthermore, a confirmed value of property, or a valuation, in 1971 is not necessarily conclusive of an excessive valuation having been made of the same property in 1972.

In a case concerning an alleged excessive valuation of a house in Maidenhead, *Baxter* v *F W Gapp & Co Ltd* [1939] 2 All ER 752, MacKinnon LJ at p 755 said:

> *Prima facie*, as it seems to me, the fact that, despite the efforts of the plaintiff, assisted by various advisers, he could in 1937, acting, as I think, reasonably, get no higher figure for this property than £850 is some evidence, and, indeed, is strong evidence, that the valuation of £1,800 two years before was excessive. Of course, the difference might have been explained away if there had been any evidence on the part of the defendant either that, through economic circumstances, property in general had fallen in value between those dates, or that some particular circumstances had affected the value of property in Maidenhead, but it is highly significant that no evidence at all of that sort was given either on behalf of the defendant or by the defendant himself.

Du Parcq LJ at p 758 said:

> Gross overvaluation, unless explained, may be strong evidence either of negligence or of incompetence. I have no doubt that there was in this case gross overvaluation, and one looks to see whether or not there is any explanation of it, and whether or not it can be seen that the defendant has failed to take any steps which he ought to have taken, or to pay regard to matters to which he ought to have paid regard. I think that, upon investigation, one finds that it is quite plain that he paid no regard to matters which were of the most vital importance. I think that it is an important feature of the case that Mr Gapp admittedly had no special knowledge of the value of property in Maidenhead or that district, although no doubt he is an experienced valuer generally speaking. It is plain enough, I think, that, if one can imagine a valuer being taken blindfold to some destination unknown to him and then led into a house and asked to value it, he would quite properly say: "Before I value this house, you must tell me where I am."

The reference in this last quotation to the necessity for acquiring special local knowledge is particularly apt to the instant case. It is one of the features of stage one of his work which Mr Ross is accused of neglecting, if not altogether then of making a much too superficial and transient a study of the locality of the site, among other matters.

So I am led to an assessment of the expert evidence which has been given to me with, understandably, such a wealth of details and references that I hope I can be forgiven to do no more than summarise it and highlight its most telling features as I tell what impressions it has all made upon me.

I deal with Mr Costeloe's evidence first, only because he valued the site on two occasions with the assistance of two partners of his firm, namely Mr Lalonde, the senior partner, and Mr Thomas. He, by 1972, had accumulated a lot of experience of land deals, large and small, in a fairly extensive area, partly surrounding Bristol. He had carried out a check on the defendants' valuation of the Heron sites at Yate and Painswick Road, Gloucester, and arrived at different figures, both plus and minus, from those of the defendants. He gave reasons why these sites could not be treated as safe comparables in relation to Manor Farm. He was standing on common ground there in my opinion, since I did not take any other witness to say that there was an exact comparable to Manor Farm. If anyone had tried to say it, I should not have accepted that point of view on the totality of the evidence. His views upon Manor Farm as a site were not as vigorously expressed as Mr Cypher's, but they were almost as penetrating upon such topics as accessibility, weather conditions and the gathering of a building labour force. Of course, these comments have to be read side by side with his praise of the beauty of the surrounding countryside and the attractiveness of the landscape generally, as expressed in the first valuation, although those comments were accompanied by some guarded concluding statements. He was able to and did speak of talking with other estate agents and land agents after first being asked by Mr Cooper to value the site.

Mr Costeloe's contribution to my task has been noteworthy in at least one impressive instance, his evidence which, especially since most of it is supported on the documents, I accept unreservedly. In the few weeks during which, with help from Mr Lalonde and Mr Thomas, he performed the tasks involved in the four stages I have spoken about, he, or perhaps it would be more accurate to say his firm, provided a model of how an exercise in valuation in all its stages should be performed. It was a painstaking, thorough and dependable performance. I am not going to rehearse all that was said and done, but among much else there were close consultations with the local authority and inquiries of the providers of main services. Mr Ashley was one of their communicants. He spoke, in the spring of 1972, of a density of six to the acre. Mr Lloyd made determined but unavailing efforts to persuade Mr Costeloe that Frith Wood was taken account of in arriving at that density. His submissions to me to a like effect have met with a similar fate. The method--the third stage--used has met with criticism in that it does not obviously accord with that regarded as the conventional, or the most reliable, one, but when analysed through the medium of Mr Lalonde's notes I find the two methods to be not essentially dissimilar.

The second valuation was an updating of the first, based on Mr Costeloe's views of the percentage increase in price of property between March and December. However, it must, in fairness to him be said that Mr Thomas' different method was used as a cross-check, so that what has been described as a crude approach was not in its result excessively different from the Thomas product. Mr Owen regards the products of them both on the high side.

Other views of relevance emerging from Mr Costeloe's evidence, apart from his knowledge of that part of the West Country, are: (1) in relation to the median price bracket he regarded Manor Farm as outside it, and in the lowest quarter; (2) the cost of the provision of the water main he allocated, without expressly saying so, to the last 67 acres to be developed; and (3) there was a number of competing sites being developed, or in contemplation of being developed, which would have been more attractive as dwelling places for people working in Bristol, Stroud, Gloucester, Cheltenham and Cirencester. He did say in the first valuation that a demand of 50-100 dwellings per year might be found. As a footnote only to Mr Costeloe's evidence, I record that 15 houses only have been built at Manor Farm. He sold them. It took him a year to do that.

The evidence of Mr Owen, Mr Dean and Mr Hampton is not easily summarised, since it contained a plethora of opinion and a mass of detail. I do not criticise them for that. They were inevitably bound to expand their views beyond generalities before propositions could become understandable. But what they have said must somehow be reduced to manageable proportions, if only for the reason that otherwise not only do sensible conclusions become impossible of achievement, but the exercise of valuation will be made to appear a good deal

more complex than it is. So I recite their views upon a selection of subjects, by no means all, which were touched upon, in an abbreviated form under appropriate headings.

The site: Mr Owen described it as isolated, with difficult access, although set in attractive surroundings.

Before the sale to Lyon Homes Ltd he said the highest offer was £520,000. This, I believe, was in November 1971. But no bargain was struck. The price paid by Lyon Homes Ltd in his opinion was not too high. Mr Costeloe thought it was a bargain. Mr Dean said it was attractive, although he agreed access was poor, but could be improved. He said that the failure of attempts to sell was due to the site being badly or insufficiently advertised. He regarded the price paid as probably modest. He said there were no sales to form exact comparables. He also said, although this was very much hearsay evidence, that Mr Jenkins, the previous owner and vendor to Lyon Homes Ltd, was obliged to sell because of his financial situation, but he did remark at one stage that he regarded the site as rather unusual and exceptional. He admitted that when looking at a site location is everything.

Mr Hampton, in contrast to Mr Cypher, claimed he would be happy to live on the site, and he said that to him the Cotswolds was a great place to be in.

Services: Mr Owen said that water main charges and others for the site were of such a size as to warrant special provision in a valuation. Mr Dean and Mr Hampton were of the opinion that these could be swallowed up in the process of development. Therefore they could be safely ignored in a valuation.

Likely demand to live on the site and the rate of sales: Mr Owen referred to a figure of about 50 dwellings a year, and said that Lalondes were being optimistic. He said a density of six was a reasonable deduction taking account of all factors.

Mr Dean worked upon the basis that 50 units would be built in the first year and 100 a year thereafter. Mr Hampton put the figure at about 75 units.

Density: Mr Owen took his stand upon six dwellings to the acre. He said there were no contemporaneous indicatiors to the contrary.

Mr Dean assumed the site as holding 800 dwellings. Mr Hampton merely commented that Mr Ross was told 800, and pointed to the feasibility study.

Length of building programme: As to this, Mr Owen said it would be over 10 years, that is to say building about 600 or slightly more dwellings and taking the housing start of nine acres in the first year into account.

Mr Dean wished for a nine- or ten-year programme, but at a faster building rate and density. Mr Hampton seemed to agree with him.

Value of a plot: As to this, Mr Owen put it at £3,500 or less. Median figures, he said, are unreliable in relation to this particular site. Mr Dean thought £4,000 was reasonable. He said national trends were applicable, so that it was right to make use of those median figures, which are to be seen among the exhibits which have been given to me. Mr Hampton too did not disagree with £4,000.

Deferment rate: This was put by Mr Owen at 10 per cent, by Mr Dean at 8 1/2 per cent, and Mr Hampton at 8 1/2 per cent.

Comparables: All three are not in a position to provide close comparables to a site of that size and in such a location. A number of smaller sites in the locality were referred to, but none identical enough to form a reliable comparable.

The increase in land value during 1972: Mr Owen put this at 100 per cent. Mr Dean said it was much higher, so high in fact that towards the end of the year punitive legislation was being contemplated on profits made by speculation.

Mr Hampton did not really express a view in precise terms, but said inflation was rising steeply.

Mr Owen said there was a lull in the autumn of 1972. This was Mr Costeloe's view, expressed in one of the exhibits; I think it is an article in the ESTATES GAZETTE.

Valuations by Lalonde Brothers & Parham: Mr Owen was of the opinion that they were slightly on the high side. Mr Dean said the firm was much too cautious.

Information to the bank: Upon this subject Mr Owen maintained that the letter should at least have included a recital of the existing planning consents and reference to water mains.

Mr Dean approved of Mr Ross' attitude.

Mr Ross' performance generally: Mr Owen, was highly critical of it. Mr Dean said it was a reasonable standard of performance, and likewise Mr Hampton.

Conclusions drawn: (1) The unusual rise in prices in 1972 needs to be put into perspective. It was not a situation in which competent professional men could be excused for conducting themselves other than in accordance with settled and well-recognised practice.

(2) The Manor Farm site was not typical of any other site to which I was referred as a possible comparable. Anything remotely comparable tends to support the plaintiffs' case. The rise in values in the area of the site was reliably placed by Mr Owen and Mr Costeloe at about 100 per cent during 1972. Whether there was a lull in activity during the autumn of 1972 I am not sure about, but I believe there was lively activity in the early months of 1973. Then the market began to go into reverse very rapidly.

(3) The site had a dismal development record. It had, in spite of planning permissions, attracted little if any interest for about a decade.

(4) Mr Cypher looked at it with a jaundiced eye. I have no doubt that he found the site an embarrassment in the sense that he had no optimism in its future as a residential area. The eventual planning permission for between 800 and 900 houses is no indication in my opinion of the density which may have been permitted in December 1972. I do not believe that Mr Cypher at that time would have told anyone that he would recommend a density of that dimension. He is a realist, and I do not regard his forceful condemnatory language of the situation of the site as unwarranted. I know of no reason why he should so express himself unless the remarks made were genuine expressions of his own views.

(5) The criticism of Lalonde Brothers & Parham's two 1989 valuations has not been condescending, but those who have made it have paid too little regard to the advantages of practising locally. Their efforts in acting with thoroughness and care in the first valuation are highly commendable in my opinion. Their local knowledge is probably superior to that of anyone else involved in this case. However, that is not to say that other firms with a central base, in London for instance, could not with equal success acquire sufficient knowledge to produce as reliable a result as Lalonde Brothers & Parham were capable of. If they are open to criticism, it can only be, in my view, to the effect that they were a trifle optimistic of the prospects for this site.

(6) There has been among the witnesses in this case, with one or two exceptions, a failure to acknowledge the isolation of this site and its fairly remote chance of competing with other sites in the Cotswolds and areas surrounding Bristol in attracting buyers of houses, be they people working in the locality or retired people.

(7) Mr Dean and Mr Hampton are both erudite and experienced men who possess a command of the art of valuing which they have demonstrated in sophisticated expositions of that expertise. But Mr Owen is at least intellectually their equal, and in command of this art likewise their equal. I believe him to have a more realistic appreciation than either of them of the rather unique position of this particular site and all the factors which should have commanded attention in a study of its value in December 1972. Mr Dean's assertion that national trends could be applied to Manor Farm was erroneous. So was the attempt to apply the median figures to the valuation of this site. The article in the ESTATES GAZETTE by Mr McAuslan, and the figures it contains, claims that 1972 was a record year for the number of auction sales. That may be so, but without in any way denigrating the usefulness of the article, it has to be said that it neither seeks nor gives any assistance upon the value of land which falls outside the median range, that is to say, either below it or above it.

(8) I accept Mr Owen's evidence as the most reliable, although that provided by Mr Costeloe was on the whole almost as dependable.

(9) It is suggested that the plaintiffs became inspired to bring this claim a long time after the relevant events concluded. The letter before action was sent in March 1975. So it is contended that I should view it with suspicion for that reason alone. There is, with respect, no force in that submission. The question of damage would hardly have arisen in lively form until the Lyon balloon burst.

(10) It is said that valuation is a matter of judgment, opinion and "feel," a word used by the experts which might, I suppose, be equated with intuition. I hope I have said sufficient in the course of this judgment to demonstrate my acceptance of that matter. Of course, I do not for a moment neglect to keep in mind where the burden of proof lies. I appreciate fully that failure to take some precautions which might have been taken does not automatically put the defendants on the wrong foot, but with the contention that a valuation of £2,200,000 was one which a competent valuer acting with reasonable care could have made in December 1972, I cannot agree.

(11) It is my painful duty to say of Mr Ross that he fell, in acting upon them after receiving the instructions by Mr Cooper to value Manor Farm, well below the standard of conduct which could reasonably be expected of a competent valuer using reasonable care.

(12) Apart from sending his assistant off to the Cotswolds for a time insufficient for that young man to become acquainted with the journey there and back, Mr Ross contented himself with a hurried paper exercise which was founded upon very little that proper observance of stage one would have informed him. Mr Hobden returned with very little information of real use, so far as I have been able to gather.

(13) The trivial errors in Mr Ross' first calculation I overlook, save to the extent that they afford some indication of undue haste and carelessness.

(14) The fact is that he relied upon what Mr Cooper told him, and, what is far more grave, he failed to persuade me that he at any time telephoned the planning department of the Gloucestershire County Council. I assure him that I have not formed this drastic conclusion without being driven to it by the evidence. He has, I regret to say, in an effort to avoid a finding of professional negligence yielded to the temptation of doing that which I am sure is contrary to his usual inclination and standard, that is to say, he claims to have done that which he did not do. To put it bluntly, he has told me an untruth. From this it must follow that there is no note of the telephone conversation on the file because he did not make one.

(15) He ignored altogether the fallible characteristics of this site, ignored without justification in my opinion the contents of Mr Scott's letter, assumed too much from little or nothing, and produced a valuation which cannot be excused even by the euphoria of the times, if that could be an excuse, which it is not.

(16) I hesitate to add more by way of criticism of Mr Ross, but I should fail to pay observance to the duties of frankness between bank and valuer if I did not add that a bank, although interested mainly in a figure or valuation, is entitled to be made aware by the valuer of the whole of the circumstances of the planning history of the site, including his firm's previous acquaintance with it, and to be able to rely upon the valuer to check himself the accuracy of any information which comes his way. This much, to say the least, the plaintiffs were denied.

I return to *Bolam's* case to quote again from the judgment of McNair J at p 586. Having said what in his consideration was the test of reasonable care in relation to the ordinary man, he passed to the test in relation to the ordinary skilled man and said:

> The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art.

On the following page, at p 587, quoting from the Scottish case of *Hunter* v *Hanley* and the judgment of Lord President Clyde, he went on:

> "In the realm of diagnosis and treatment there is ample scope for genuine difference of opinion and one man clearly is not negligent merely because his conclusion differs from that of other professional men, nor because he has displayed less skill or knowledge than others should have shown. The true test for establishing negligence in diagnosis or treatment on the part of a doctor is whether he has been proved to be guilty of such failure as no doctor of ordinary skill would be guilty of, if acting with ordinary care."

Mr Ross had the necessary special skill. He knew, I am sure, what the accepted practices of expert valuers were, but he fell well below accepted practice to such a degree that he produced negligently a valuation which could not have been produced by a valuer of average competence using the reasonable skill and care which could reasonably be accepted of him. So he is in breach of the duty to the plaintiffs he admitted he owed them. For this breach of duty the defendants, whose reputation generally is high, are responsible.

The parties agree, and I find, that the damages which the defendants by my judgment have to pay to the plaintiffs are the difference between 75 per cent of Lalonde Brothers & Parham's second valuation and what was actually loaned as 75 per cent of the defendants' valuation. This is because, had the defendants' valuation been lower than that of Lalonde Brothers & Parham, Mr Cooper without doubt would have sent the latter to the plaintiffs. The exact figure is £491,250. I give judgment to the plaintiffs for that figure, with interest. So far as interest is concerned, I am open to argument.

90 Judgment for the plaintiffs for £491,250, with interest at 9 per cent from the date of service of the writ, December 17 1975. Stay of execution granted pending consideration of an appeal.