Neutral Citation Number: 2015 EWHC 2020 (Ch)

Case No: HC13F02112

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 July 2015

Before :

CATHERINE NEWMAN QC

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Between :

CHESTERTON COMMERCIAL (OXON) LIMITED	**Claimant**
- and -	
OXFORDSHIRE COUNTY COUNCIL	**Defendant**

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- -

Mr James Pickering (instructed by Blaser Mills) for the Claimant
Mr Andrew Warnock QC (instructed by Clyde & Co) for the Defendant

Hearing dates: 10th, 11th February 2015

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APPROVED JUDGMENT

CATHERINE NEWMAN QC :

1. On 30th May 2013 the Claimant, Chesterton Commercial (Oxon) Limited ('Chesterton') issued proceedings against Oxfordshire County Council ('the Defendant') for breach of statutory duty and/or negligence.

2. The Claimant is a family run property development company. The Defendant is the statutory highway authority with responsibility for Henley-on-Thames in Oxfordshire. The district council responsible for Henley is the South Oxfordshire District Council ('SODC').

3. The dispute centres on some of the circumstances surrounding the Claimant's acquisition of 94 and 96 Bell Street and 2A Bell Lane, Henley-on-Thames, Oxfordshire. These properties ('the Properties') are registered at HM Land Registry under a single title number ON229067. The title includes some land fronting 94-102 Bell Street comprising a footway, a driveway, car parking spaces (the 'Car Parking Spaces') and a triangular area of land containing 5 trees. A statutory declaration was provided on behalf of the Vendor, Property Management (Henley) Limited, by a director and shareholder, Mr Michael Gunn, confirming that the Car Parking Spaces were controlled by the Vendor and not used by the public.

4. Under the Highways Act 1980 Section 36, each County Council must make, and keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense. That list is to be kept deposited at the County Council office and is to be available for free inspection at all reasonable hours. In England the County Councils must supply to the council of each district in the county an up to date list of the streets within the area of the district that are highways maintainable at the public expense, and that list must be kept deposited at the office of the district council and kept available for inspection by the public free of charge at all reasonable hours.

5. The Highway Plan supplied by the Defendant to SODC no later than the end of 2005 or early 2006 showed that most of Bell Street was maintainable as a highway but the land fronting 94-102 Bell Street, including the Car Parking Spaces, was not maintainable as a highway. The court was shown correspondence going back some fifty years between various officers of the Defendant and local property owners concerning parking in the surrounding area and raising the question of the perimeters of public land. I will not take up time in this judgment delving back into that old history where I do not consider that it has an effect on what I have to decide, interesting though it was, though I would not wish this to signify that either party gave too much disclosure because both were plainly doing their best to assist the court in understanding the background and to set the scene for the essentials of the dispute. What is clear is that in October 2004 the Land and Highways Officer of the Defendant was alerted to and accepted the need to look at whether a triangular area in front of nearby Rupert House School was part of the public highway. The result was that the Department considered that it was not, and had not been since the early 1800s when a turnpike road was diverted away from the frontage of 92-102 Bell Street.

6. A local group called the Henley Society was also concerned to establish whether the land fronting 92-102 Bell Street and Rupert House School was in fact highway maintainable at public expense or not. In 2005 its Chairman, Mr Nic Rutherford, was corresponding with the Town Clerk of Henley-on-Thames Town Council to raise a detailed reasoned case for reviewing whether the land fronting 92-102 Bell Street was not land maintainable at the public expense. He pointed out that stopping up was a legal process the absence of which could not displace the maxim 'Once a highway always a highway'. Beyond that the details of the case raised by the Society are not relevant to the matters I have to decide. The Defendant remained of the view that the frontage to 92-102 Bell Street was not highway maintainable at public expense and wrote to the Henley Society in 2005 saying so quite firmly, but not ruling out the possibility that further evidence might emerge which could have a bearing on the position. Unsurprisingly, the Henley Society asked the Defendant to carry out further research. By September 2005 the Defendant had agreed to undertake further research. By no later than September 2006 the Defendant had accepted that the principle of 'once a highway always a highway' applied and if the frontage of 92-102 Bell Street had ever been a highway then there was a possibility that it so remained and the old record maps would have to be marked to show this.

7. On 23rd October 2006, before the Claimant purchased the Properties, the Defendant wrote an important letter to local occupiers. The court has seen the version sent to the Occupier at 102 Bell Street regarding the 'Extent of the Highway fronting 90-102 Bell Street'. It was common ground that a similar letter must have gone to the Occupier of 96 Bell Street and was passed by the tenant to the solicitors for the freehold owner Mr Michael Gunn since his solicitors, the Head Partnership, wrote to acknowledge receipt on 14th November 2006. Neither the letter nor the information it contained was passed to the Claimant in the conveyancing process.

8. In the letter the Defendant warned the Occupier that although it knew that searches would have revealed that the road fronting the Occupier's property was private, the situation could be 'overturned' and the road made open to the public in future; it was pointed out that the Henley Society and the Henley Town Council were arguing that the section of the road fronting 102 Bell Street was public highway. It was stated that 'material' evidence of this had been provided but there was 'a degree of doubt'. It was explained that the old road fronting the Bell Street properties had been part of the Marlow Road out of Henley until about 1820 and that at that time a turnpike improvement moved the road west onto its then current line making a short section of the old road redundant. However it was acknowledged that if the status of that redundant section as a public highway had not in fact been altered by statutory process then it remained a public highway. The letter concluded with a request for any information which the Occupier might have which might throw light on the matter. It is clear from this and other correspondence at this time that the Defendant regarded the status of the frontage of 92-102 Bell Street as under investigation or at the very least, requiring further consideration.

9. On 30th October 2006 the Defendant's Principal Solicitor (Environmental), Ms Julia Taplin, wrote a letter to a Mr Ashley Hutton, whose elderly mother was a

Bell Street resident and who had written to the Chief Executive of the Defendant insisting that Bell Street was a public highway. Ms Taplin's letter was copied to Mr John Boyd who was at that time the Defendant's Head of Land and Highway Records and responsible for maintaining the list of publicly maintainable streets. In the letter she acknowledged that there was '*very strong evidence'* that Bell Street had been a public highway in the past and that there needed to be an investigation into whether it had been stopped up. Moreover she noted that the existence of signs stating that it was a private road indicated that it was claimed as such and that it would be necessary to '*consult with the owners and occupiers of these properties'.* Ms Taplin's views were supported and reinforced by Counsel's opinion taken in early 2007.

10. I find, and I do not believe this will be controversial, that by no later than 23rd October 2006 and arguably earlier, the Defendant knew that there was a real risk that its records might be inaccurate, and that the frontage to 92-102 Bell Street might be a public highway. However, and this is a further finding, which again ought to be uncontroversial, it was not until 23rd August 2007 at the earliest that a searcher of the Defendant's records would have been able to note that the status of Bell Street and the Car Parking Spaces was being investigated.

11. The Properties were openly marketed from 21st May 2007 by Savills local office. On 3rd August 2007 the Claimant exchanged contracts with the then owner of the Properties to purchase them for the sum of £1,245,000. In advance of the exchange of contracts the Claimant, acting by its solicitors, had, in the usual way, made pre-contract enquiries in respect of the Properties using the form CON 29 Part 1 Standard Enquiries of Local Authority (2002) edition. The enquiries were made of SODC on or about 5th June 2007 and the proper fee was paid. It was common ground at the trial that in answering the enquiries SODC acted as agent for the Defendant. Nothing turned on the Completion Information and Requisitions on Title and I shall say no more about them.

12. The Claimant's intention was to carry out various works to 94 and 96 Bell Street including the building of an extension to one of them and to sell each of them with 2 car parking spaces each. Its intention in relation to 2A Bell Lane was to obtain change of use from commercial to residential and redevelop it as 2 residential cottages and sell them with one car parking space each. The remaining car parking spaces would be sold. It appears that there is a shortage of long-term car parking spaces in the Henley town area and the inclusion of the Car Parking Spaces in the deal by which the Claimant bought the Properties was material to the price paid. The Claimant contends that without the Car Parking Spaces the redeveloped properties would be less attractive to buyers than with them. However these intentions for the future were not made known to the Defendant and it was not argued that the Defendant should have foreseen that the Claimant would have had such intentions.

13. The response to the enquiries made by the Claimant's solicitors was provided on or about 16th June 2007. It showed that Bell Street was a highway maintainable at public expense but it did not show that Bell Lane and the land fronting 94-102 (including the Car Parking Spaces) was likewise so maintainable. On the contrary,

it expressly said that Bell Lane and the area and the land fronting 94-102 Bell Street being the Car Parking Spaces were not highway maintainable at the public expense. It said nothing at all about the investigation which was, and had for some time, been going on into whether that was indeed the case. Whilst it did point out that further information about public rights of way could be obtained by performing an additional search ('Optional Enquiry 5') which was not done, it was not suggested at trial that the information which would have been given had such an additional search been done would have revealed the investigation or its then status. So to all intents and purposes, the entire title comprising the Properties was stated to be private land.

14. On 9th August 2007, the Defendant decided that in light of the fact that the Properties were for sale, the fact of the investigation should be disclosed on the Highway Plan. That same day an instruction was sent by the Principal Solicitor of the Defendant Ms Taplin, to Mr John Boyd. However nothing was done to implement this instruction until 23rd August 2007.

15. The Claimant completed its purchase of the Properties on 14th September 2007 and began redevelopment work. The first sale was of two Car Parking Spaces to a Mr Jose Goumal. Mr Goumal owns 98 Bell Street. On 22nd August 2008 he bought two Car Parking Spaces which are located outside his property for £45,000. Then, on 25th November 2008 Miss Amanda Chumas, who owns 76 Bell Street, bought two Car Parking Spaces for £40,000. Later, in 2013, each of Mr Goumal and Miss Chumas began proceedings against the Claimant for the return of the price paid and a further sum said to be the difference between the value of their respective properties with and without parking. Those proceedings were not before me.

16. On 7th April 2009 the Claimant exchanged contracts for the sale of 96 Bell Street together with 2 of the Car Parking Spaces.

17. The Claimant was negotiating to sell 94 Bell Street in April 2009 and on or about 21st April 2009 was told by the prospective purchaser about the investigation and the February 2009 report.

18. The sale of 96 Bell Street completed on or about 21st April 2009 without the two car parking spaces as a result of the uncertainty surrounding them, and the sale price was reduced by £45,000 in consequence. Likewise the sale of 94 Bell Street proceeded, on or about 27th July 2009, without the two car parking spaces and at a £40,000 reduction in the price.

19. Although, in an attempt to mitigate its losses, the Claimant applied for a stopping up order, which if granted would have removed the public rights of way to allow a development to be carried out, its application failed when on 8th January 2013 the Department of Transport published its decision refusing the stopping up order. None of the detail of that decision is of any relevance to the questions which I have to decide, but I should mention that the Vendor provided another, fuller statutory declaration about the Car Parking Spaces for the purposes of that application. There was no suggestion that the factual matters stated in those two statutory declarations were untrue.

20. Having regard to its statutory duty set out at paragraph 4 above, plainly the Defendant did not make correct and updated information available to the Claimant when its solicitors conducted searches in June 2007. The information available to the SODC and thence to the public was not corrected until 23rd August 2007. Moreover, after the Defendant began investigating whether or not the 2005 Highway Plan was correct, having had advice from its own Principal Solicitor that there was '*very strong evidence'* that it was not, responses to inquiries were misleadingly firm, representing that the Car Parking Spaces were definitely not land maintainable at public expense, when in fact the Defendant had serious doubts worthy of an investigation.

21. Eventually the Defendant took expert advice from a Countryside Access Consultant, Rhoda Barnett, and obtained a provisional report from her in February 2009 to the effect that the land fronting 94-102 Bell Street was and always had been maintainable as a highway at public expense for the purposes of Section 36. Whilst learned and most interesting reading from a historical perspective, nothing in the report, beyond the conclusion, touches on any of the issues which I have to decide. The agreed chronology prepared by the parties for the trial began with an entry dated 20th August 1799. At this point I should also say that I found the historical analysis of the of the old turnpike road from Reading to Hatfield and of Bell Street set out in the Claimant's skeleton argument most informative and interesting, but I will not be reproducing it here. It is clear from the chronology that the Defendant knew that serious questions were being raised about the status of Bell Street well before the conveyancing search made by the Claimant and in my judgment nothing more than that need be said about the detail of the history of the road itself.

22. Ms Barnett's first, provisional advice, in February 2009, was that the 2005 Highway Plan was wrong 'on the balance of probabilities', was confirmed as 'correct subject to further investigations' in June 2009 and recorded as conclusively correct in the final reports dated December 2009, revised in March 2010. The Defendant then concluded that the land fronting 94-102 Bell Street, including the Car Parking Spaces, was and always had been, maintainable as a highway for the purposes of Section 36.

23. The Claimant seeks damages. It contends that it has lost the difference between the actual price paid by it for the Properties, namely £1,245,000 and the true value of the Properties given that the land fronting 94-102 Bell Street does form part of the highway. This value, it contends, is £845,000, resulting in a loss of £400,000. In addition it seeks recompense for £150,000 in professional fees spent attempting to mitigate its loss by applying for the stopping up order. To these sums the Claimant seeks to add interest in the usual way.

24. The pleaded case sought damages on the basis of breach of statutory duty and in negligent misstatement.

25. It was common ground at trial that at common law the rule is 'Once a highway always a highway' and a public highway cannot be lost by disuse or abandonment. Its status can only be lost by being legally stopped up.

The Law

26. The Defendant contended that the statutory duties imposed by Section 36 of the Highways Act 1980 gave rise to no private cause of action, and that it owed no independent duty of care to the Claimant. It denied any or any actionable negligence. It argued that the only information which it was required to give by Section 36 about highways maintainable at public expense was to identify highways known to be maintainable at public expense. It was not strictly liable for the accuracy of the information and owed no duty at all to identify roads or streets under investigation on its s36 lists or maps.

27. The first question of law raised by the pleadings is whether there is a private right of action for breach of the statutory duty imposed by Section 36. However, at trial, the Claimant retreated from this position and argued that its primary case rested on the action for breach of common law duty. It would only rely on the cause of action for breach of statutory duty 'to the extent necessary'.

28. The question of whether a local authority may be liable to a member of the public in a private action for breach of statutory duty for an inaccurate search result which leads to loss is undecided. The Defendant argued that there is no such right. As matters have turned out, it is not necessary for me to decide whether there is a private right of action for breach of the Section 36 duty.

29. A local authority may be liable to a member of the public in tort: *Coats Patons (Retails) Limited v Birmingham Corporation (1971) 69 LGR 356, Gooden v Northamptonshire CC [2001] EWCA Civ 1744.* In *Gooden* it was held that a local authority owed a duty of care in respect of an incorrect answer to enquiries that certain land was maintainable as a highway at public expense. Arden LJ, who gave the leading judgment, acknowledged that purchasers of property commonly relied upon searches in the form of Enquiries made of highway authorities in deciding whether or not to buy properties, and the law could be criticised if it ignored that reality. She also drew an important distinction between mere foreseeability that that information provided would be used in that way and providing information for that purpose. A highway authority cannot be taken to know for what purpose a particular an enquiry is being made, but it would know that answers to enquiries are provided within a 'well worn' conveyancing framework. Arden LJ reserved the CA's position on whether a breach of the statutory duty to maintain an accurate list would be actionable by a person harmed by a failure to do so. However she also pointed out that just because the statutory list of roads maintainable at public expense was wrong, it did not necessarily follow that the Council responsible for maintaining the list was negligent, and in that case it was no part of the pleaded case that the Council in the case had been negligent. Not so here. The case in negligent misstatement was pleaded, and was the primary case at trial.

30. The Claimant also contends that the Defendant's duty at common law was the same as its statutory duty – namely to cause a list to be made of the streets which are highways maintainable at the public expense, to keep that list corrected and up to date, and to supply each district council within its area an up to date list of the streets within that district which are highways maintainable at the public expense.

31. The Claimant rightly contends that whilst there was a list, it was neither correct nor up to date. Moreover, the Claimant contends, it was negligent of the

Defendant to give an unequivocal reply that the land to the front of 94-102 was not highway maintainable at public expense. It simply should not have done so but should have said that the matter was under investigation. This was negligent.

32. In my judgment, the Defendant owed the Claimant a duty of care at common law with respect to its reply to enquiries for the purpose of the decision which the Claimant made to acquire the Properties.

33. In my judgment the result of the search amounted to a statement by the Defendant that the Car Parking Spaces were not part of the highway and not maintainable at public expense but were private land capable of being used as such and sold on as such and which would pass to the Claimant on the acquisition of the Properties.

34. It was the Defendant's proper role, as required by statute, to answer the inquiries made on the search accurately. It did not do so. The Defendant argued that it was sufficient that the result of the search showed accurately what was on the Highway Map. I do not accept that submission. It overlooks the fact that the statute requires the list of streets which are highway maintainable at public expense to be kept corrected up to date. Had the list been correct and up to date it would have been marked as showing that there was an investigation going on. I entirely accept that the Claimant did not make known to the Defendant that it was buying for development and re-sale, but that matters not where the Claimant is not arguing for prospective development losses to be paid by way of damages but relies on diminution of value from pre-existing use.

35. I find, on the evidence, that if the reply had been accurate, the Claimant might not have proceeded at all, and would definitely not have proceeded at the same price.

The Witnesses and the Proof

36. Each party called one witness of fact. The Claimant called Gill Bryant ('Mrs Bryant') one of the directors of the Claimant and the owner of 50% of the issued share capital of the Claimant. She and her husband (also a director and 50% shareholder of the Claimant) but who was not available to give evidence at the time of the trial (the Defendant did not criticise his absence) had conducted the transaction on behalf of the Claimant. Mrs Bryant was a good witness who although sometimes hesitant was, in my judgment, having seen her in the witness box, hesitant when she was thinking carefully about the limits of her actual knowledge at the time. She was ready to accept that not all of the issues which would arise in the course of the Claimant's proposed development had not been fully thought through at the time of the Claimant's acquisition of the Properties. In my view this in no way detracted from the quality of her evidence. She accepted that it was obvious from the fact that there was a footpath in front of the 94 Bell Street all the way to 102 Bell Street that the members of the public must have had a right of way, and that the Car Parking Spaces were tight and not very easy to get in and out of. She was clear that she was fully aware that the title to the Properties included the Car Parking Spaces and that the Claimant acting by her husband and herself had relied on the local search for the fact that the Car Parking Spaces were not a public highway. She pointed out that having had a firm answer on the local search they did not consider it necessary to make a further check with the Highways Authority since there was nothing '*to alert us that there was any*

issue in this area'. Asked what the Claimant would have done had it been told about the investigation she said ' *I think we would have offered just for 2A Bell Lane. Parking was important for the rest'.* Pressed as to whether the Claimant would still have bought the Properties albeit at a lower price she fairly answered '*Possibly. Or not gone ahead at all'.* In my judgment the pleaded case on reliance was not shaken by the cross examination of Mrs Bryant and I rule that the Claimant has established that as a matter of fact it relied on the local authority search as an express representation that the Car Parking Spaces were not public highway.

37. The Defendant called Caren O'Sullivan ('Ms O'Sullivan'), the Defendant's Highway Records Manager. Ms O'Sullivan was also a good witness. She is an experienced, bright and sensible person with a straightforward and honest demeanour. She gave her evidence well and was open and frank about the fact that she could only do so from her understanding of the records having not been in post at the material time. Ms O'Sullivan had been the Highway Records Manager for two years at the time of making her witness statement, though she had been working in the department for 13 years. The Claimant did not criticise the Defendant for not calling Mr Boyd, who had retired in 2008 and whose immediate successor, Sue Parker, had retired in 2012.

38. Ms O'Sullivan said that the fact of an investigation would not routinely be written on to the Highway Plan maps, unless it was '*quite big'.* She herself though had decided to make a note of an investigation in at least one other case, appreciating that the fact of the investigation would then come up on a local search. In her other case, no legal opinion had been taken. Shown Ms Taplin's letter to Mr Hutton, copied to Mr Boyd, and asked if she would have marked this investigation had she been the officer at the time armed with this opinion, she said '*I may have marked it'.* It was pointed out to her that an investigation had begun in 2004, letters had gone out to local occupiers in 2006, Counsel's advice had been taken. Had not a tipping point been reached by the time of the local authority search made on behalf of the Claimant? Her telling response was: *We have learned a lot from this case so yes I probably would have'* marked it. She readily accepted that the purpose of marking the Highway Plan was to protect purchasers. She accepted that the answer given to the local search was neither ambiguous nor unclear, though she did point out that there was an anomalous feature in that the highway would normally run from boundary to boundary but in this case it did not appear to do so on the maps available at the time. She accepted, in cross examination, that a conveyancing solicitor acting for the Claimant would have had no reason to make any further inquiries following receipt of the clear and unequivocal answer on the local search.

39. Although the correspondence showed that a Mr David Mytton of the Defendant had emailed the Claimant on 14th February 2013 referring to contact having been made by the Defendant with the agents for the Vendor, Savills, informing Savills that the status of Bell Street was under investigation, there was no record of this contact in the disclosure given by the Defendant to the Claimant, and I accept the Mrs Bryant's unchallenged evidence, that even if the Vendor's agents were told, they did not pass the information on to the Claimant.

40. Accordingly, it was acknowledged by the Defendant's witness in evidence that purchasers would rely on the results of searches in making decisions about property purchases. More specifically, in this case, it is clear that the Defendant knew that a purchaser of the land comprised in the title I am concerned with would inevitably want to know if the land comprised within the title was private land or public highway, or highway maintainable at public expense.

41. The conditions for the creation of a duty of care in tort are therefore present, as are the conditions for liability for misstatement: see *Gooden v Northamptonshire County Council [2001] EWCA Civ 1744* citing *Caparo Industries Plc v Dickman [19909] AC 605* and the *Hedley Byrne* case *[1964] AC 465.*

42. Reliance has also been proven. I did not understand Mrs Bryant to be seriously challenged on the matter. In any event, I find it proven.

43. In my judgment it was entirely foreseeable by the Defendant that if the result of the search was wrong, a purchaser might go ahead at a price which was higher than if an accurate response had been given. This is because a purchaser would believe that the Car Parking Spaces were private land as the title suggested and would not know that they were in fact highway. The difference between the price paid and the value without the Car Parking Spaces is a foreseeable head of loss: see *Banque Bruxelles SA v Eagle Star [1997] 2AC 191 at 214F* per Lord Hoffmann, *South Australia Asset Management Corporation v York Montague Limited [1997] AC 191.*

Loss

44. Each party called one expert witness in the field of property valuation. The Claimant called Michael Carr of Kempton Carr and Croft and the Defendant called Stephen Power of Dunster & Morton.

45. Mr Carr's report of 22nd December 2014 and Mr Power's report dated 23rd December 2014 having been exchanged, the experts met and produced a joint statement dated 29th January 2014 (Mr Power) and 30th January 2014 (Mr Carr). The expert evidence was confined to the issue of the alleged diminution of value of the Properties as a result of the loss of the benefit of private car parking on Bell Street. The experts agreed that the date for the valuation should be 14th September 2007, the date of the completion of the sale to the Claimant. They also agreed that there would be a diminution of value, but differed in the amount. Mr Carr considered that the diminution would be £342,500. Mr Power believed the diminution to be £240,000. Mr Carr applied a percentage diminution of the overall prices applicable to 94, 96 Bell Street (two spaces each) and 2A Bell Lane (two cottages with one space each). Mr Power valued the Car Parking Spaces individually. I prefer Mr Power's method as being closer to what actually happened.

46. Both were cross-examined.

47. Both experts admitted that local contemporaneous evidence of actual sales in the market is most valuable. Neither expert produced documentary evidence of relevant comparables, though Mr Power did refer to one sale of a car parking space in a gated development at £30,000. Mr Carr pointed out that persons living in Bell Street were special purchasers of Car Parking Spaces and likely to pay a higher price than someone who did not live there, not least because private parking near the house would enhance the value of the house. Mr Power did not dissent from that general proposition, but said that '*there is a limit'* to the additional value which could be achieved. He also accepted that there was a possibility that active marketing could have achieved higher prices, perhaps £30,000 for a single space or £40,000 for two, but not necessarily. Indeed, whilst there might be two or three buyers willing to pay £30,000 for one space, there would not be 8 or 10, and some of the spaces were awkward to get in and out of, and less attractive as a result. This last factual point was not challenged. Thus Mr Goumal might well pay £30,000 for a first space, right outside his front door, but Mr Power thought he would probably pay much less for a second space, maybe as little as £10,000. Most buyers, however, he thought, would pay around £22,000. He agreed that what he was saying, in effect, was that two of the 10 Car Parking Spaces were worth £30,000 each, and the other 8 were worth £22,500 each in an independent sale. To achieve £30,000 each would have taken a long time but was not impossible.

48. Pressed, Mr Power conceded that four spaces sold with 94 and 96 could go for £30,000 each, potentially, but would not agree that the remaining spaces could fetch the equivalent of £37,000 each because the cottages were small and one space each would be adequate for the remaining properties.

49. Mr Power relied heavily on the sales to Mr Goumal and Miss Chumas to support a valuation of between £20,000 and £22,500 per space in August and December 2008. The two 2009 transactions support that valuation. Mr Carr argued that by late 2008 the property market was in a downturn following the global financial crisis, and contended that there is good reason to think that in September 2007 the value would have been more. However, despite some suggestion in the questions put in the cross examination of Mr Power that there might have been some pressure to sell quickly, the Claimant did not offer any evidence to the effect that the Claimant had had any difficulty at all in selling the Car Parking Spaces because of the global downturn in the market, or was itself under pressure to sell as quickly as possible even if that meant the sale was cheap, and in my judgment there was no real factual basis for Mr Carr's speculations that the prices achieved on these sales were at less than market value in September 2007. He is unconvinced of the importance of the 2009 numbers, and points out that the figures do not appear to have reflected valuations.

50. Projections made by Mr Bryant for the Claimant at the time when it was considering the acquisition suggested sale prices for 94 Bell Street and 96 Bell Street of £595,000 and £680,000 respectively following works of renovation and with two Car Parking Spaces each. However 94 Bell Street sold at a 10% discount to that price (£490,000), and 96 at an 18% discount (£607,000). Mr Power did not accept that the percentage fall in value of residential properties between September 2007 and July 2009 could be applied so directly to the numbers to identify the loss attributable to the loss of the car Parking Spaces. He also took the firm view that in relation to the Bell Lane cottages, which were small properties, the loss of a second space would have only a nominal effect.

51. The experts also differed on their views about the effect of the global financial crisis in 2008 on the valuation exercise. Mr Carr took the view that it would have had a substantial effect on the values and that transactional evidence from 2008 and 2009 was not indicative of the values prior to the financial crisis in 2007, whilst Mr Power believed the effect to be negligible as Henley purchasers are affluent and more sheltered from the vicissitudes of global economic sentiment.

52. In summary, Mr Carr gave a figure of £342,500 as the loss in value based on an application of a 10% discount to the prices of the four properties developed and sold, covering 94 and 96 Bell Street and 2A Bell Lane, and £30,000 per space for the remaining four spaces which were sold independently. Mr Power took the view that the spaces were worth £22,500 each but added a premium for the second spaces offered with 94 and 96 Bell Street bringing them in at £30,000 each.

53. Given that the Defendant was not told that the Claimant was buying to redevelop and sell, I find that any measure of loss which would import a loss of development profit is too remote to be recoverable.

54. I find that, given the lack of comparables, the best evidence of the value of the spaces sold is the price paid for them in arms' length sales. A very substantial decline in the value of the spaces sold from their September 2007 value to their actual sale dates in 2008 and 2009 is mitigated by the scarcity of private car parking in the Henley town area and the general affluence of local buyers.. I therefore prefer the valuation evidence of Mr Power to that of Mr Carr and find that at the valuation date the first two spaces sold to the buyers of 94 and 96 Bell Street would have been worth £30,000 each and the remaining 8 spaces £22,500 each, a total of £240,000.

55. The Claimant has been successful at the trial. It seeks damages under 5 heads of loss:

    a. The difference between the actual price paid on the purchase and the true value of the asset acquired. I find that the correct measure of loss in the circumstances is referable to the value of the 10 Car Parking Spaces in September 2007, which I have found to be £240,000.

    b. The professional fees incurred by the Claimant in seeking to mitigate its loss by applying for the stopping up order. I find that it was clearly foreseeable that the Claimant would seek to mitigate its losses and the most obvious way of doing so would be to apply for a stopping up order.

Mrs Bryant was not seriously challenged on this when she gave her evidence. In her witness statement Mrs Bryant claimed that these expenses were in the region of £150,000. This claim was supported by invoices from Solicitors and a schedule of expenditure. However those invoices include VAT which, unless convinced otherwise, I would be minded to disallow.

c. The increased professional fees incurred by the Claimant in dealing with the purchasers of 94 and 96 Bell Street following the discovery of the uncertainty as to the highway status of the Car Parking Spaces. The Claimant estimated these to be £1000, on which VAT was paid. I find that this head of loss is too remote to be recoverable.

d. The professional fees incurred and to be incurred dealing with the claims from the purchasers of the Car Parking Spaces. Again, I find this too remote.

e. The increased costs of funding incurred by the Claimant for its purchase given that in the circumstances it overpaid for the property. I find that his head is recoverable and invite the parties to provide a schedule of the loss suffered along the lines of the draft schedules provided at trial.