



Why a property's transaction and valuation history remains an important tool for valuers

The Court of Appeal has recently reversed the first instance finding of a negligent overvaluation of commercial property in the widely reported case of *Titan Europe 2006-3 PLC v Colliers International UK PLC (in liquidation) [2015] EWCA Civ 1083*. This decision highlights that while previous transactions are not conclusive evidence of a property's value, they cannot be ignored. It also considers the importance of market conditions at the time of a valuation.

First instance finding of negligence

Titan v Colliers concerned the question whether Colliers' valuation of a large commercial property in Nuremberg, Germany in 2005 was negligent. The property was at the time solely occupied by Germany's then biggest mail-order company, Quelle Aktiengesellschaft ("Quelle"), and consisted of mainly warehousing space, as well as some offices and a department store.

The valuation evidence was complex, and the first instance court was not helped by the fact that the parties' experts were highly critical of one another and their valuation opinions were a long way apart. Part of the evidence included six potentially relevant transactions and valuations of the property between 2000 and 2005, which included an arm's length transaction for €127m six months before Colliers' valuation.

While the first instance judge accepted the relevance of these transactions and valuations, he found that the property's correct value at the time of Colliers' valuation was €103m from evidence regarding its rental value and applicable yields at the time. The judge also found that a 15% margin of error was permissible for a property of this nature, which was more difficult to value than most. However, as Colliers' €135m valuation fell outside that margin, it was held that the valuation was negligent.

Court of Appeal decision

The Court of Appeal considered the true value of the property was €118m, meaning Colliers' valuation of €135m fell just within the permissible 15% margin of error.

It held that the first instance judge had not attached sufficient significance to previous transactions concerning the property, including the open market sale for €127m just six months prior to Collier's valuation. As the €127m transaction had been carried out at arm's length, the Court of Appeal found it inconceivable that the true value could have been as low as €103m just six months later. While the Court of Appeal did not take into account in the rapidly rising property market in 2005, it stated that if it had, this would also have worked in Colliers' favour.

The Court of Appeal accepted Colliers' argument that the first instance judge's reasoning was inconsistent. The judge had held that a €100m valuation would not have carried any credibility in the market at the time. However, the judge also fixed the true value of the property at €103m with a non-negligent bracket of 15% either side of that figure. This meant that a non-negligent valuation could have been provided below €100m. The Court of Appeal consequently held that any non-negligent valuation, i.e. the entire 15% margin of error, had to be above €100m.

Comment

Valuers will welcome the Court of Appeal's willingness to acknowledge the importance of previous sales information at the time of a valuation. While it explicitly warned that such information cannot be conclusive evidence of value, the Court of Appeal highlighted that ignoring such information, and relying instead on more abstract calculations, could lead to an unreliable "correct" value.

The Court of Appeal's consideration of the rising market at the time was also a positive indication that it would not allow its post-credit crunch knowledge to distort its view of the information available to a valuer in 2005.

However, this decision may not be the end of the matter, as Titan's solicitors have indicated that Titan will apply for permission to appeal to the Supreme Court.

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