

Neutral Citation Number: [2015] EWHC 2142 (Ch)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil Justice Centre
Bull Street, Birmingham B4 6DS

Date: 22/07/2015

Before :

HHJ DAVID COOKE

Between :

	John Richard Thorp (1) Elizabeth Belinda Thorp (2)	<u>Claimants</u>
	- and -	
	Timothy John Abbotts (1) Claire Louise Abbotts (2)	<u>Defendants</u>

Andrew Maguire (instructed by **Quality Solicitors Parkinson Wright**) for the **Claimants**
David Warner (instructed by **Whatley Weston & Fox**) for the **Defendants**

Hearing dates: 1-3 June 2015

Judgment HHJ David Cooke:

Introduction

1. The claimants seek damages for misrepresentation, which they allege to have been fraudulent, in answers given by the defendants in the Seller's Property Information Form ("SPIF") completed by them in connection with the sale of a house known as Oakwood Lodge, Pulley Lane in Droitwich Spa in Worcestershire. The sale completed on 14 October 2010 at a price of £625,000. The claimants' case is, in summary, that truthful answers to the questions asked on the SPIF would have revealed proposals for large scale development in the vicinity of the property which would have caused them to withdraw from the purchase. They do not however seek rescission of the contract. The defendants' position is that their answers were true because the only development in prospect at the time of sale was one which does not affect the property and so was not required to be disclosed by them. The possibility, which has since become reality, of development at another site which may affect the property was not such as to require disclosure.

The facts

2. The SPIF was in the Law Society's form TA6, 2007 version. The relevant questions were in section 3, as follows:

“3. Notices

3.1 Has the seller either sent or received any communication or notices which in any way affect the property (for example from or to neighbours, the council or a government department)?

If yes, please supply a copy.

3.2 Has the seller had any negotiations or discussions with any neighbour or any local or other authority affecting the property in any way?

If yes, please give details.”

Both questions were answered "No". The first page of the form contains a statement that it "should be completed and read in conjunction with the explanatory notes available separately", but I was not referred to those notes. There is in the bundle a copy of a set of notes relating to the 2013 edition of form TA6, but it seems to me I cannot assume that these are materially the same as those in use in 2010.

3. I note in passing that the current version of form TA6 (3rd edn, 2013) is substantially amended. The form is now 16 pages long, whereas the 2007 version had only 6 pages. The corresponding section now reads:

“3 Notices and proposals

3.1 Have any notices or correspondence been received or sent (e.g. from or to a neighbour, council or government department), or any negotiations or discussions taken place, which affect the property or a property nearby? If Yes, please give details:

3.2 Is the seller aware of any proposals to develop property or land nearby, or of any proposals to make alterations to buildings nearby? If Yes, please give details:”

It may be said that this expanded language addresses more directly the sort of concern the claimants have in this case. However, neither the fact of alteration nor the nature of the changes subsequently made to this form can affect the construction of the version in issue before me.

4. Oakwood Lodge is on the North side of Pulley Lane. The lane is effectively the southern boundary of the developed area of Droitwich town. To the South is mostly Green Belt farming land; immediately opposite Oakwood Lodge is a farmhouse called Pulley Farm but just to the East of the farmhouse is a small group of four properties, including Old Pulley Well, to which I refer later. Pulley Lane is agreed to be a quiet road with little traffic. However to the West, about 100m or so from Oakwood Lodge, is the A38 which is a major traffic route between Birmingham and Worcester. Oakwood Lodge is set in a strip of woodland owned by the Woodland Trust, which runs along the North side of

Pulley Lane from the A38 junction behind Oakwood Lodge and continues approximately 250m further along Pulley Lane to the East. Mr. Thorp estimated that the woodland was about 10-15m deep behind Oakwood Lodge. Mrs Thorp said that Oakwood Lodge was not affected by traffic noise from the A38 because of the screen of trees (approximately 100m) between it and the junction. Mr & Mrs Abbotts however said that when in the garden it was possible to hear traffic both from the A38 and from the M5 motorway, which is about one mile to the East of Oakwood Lodge.

5. Immediately behind (ie to the North of) the Woodland Trust land is a large housing estate known as The Ridings. Houses on that estate therefore back onto the Woodland Trust land and those immediately behind Oakwood Lodge can be seen from it through the trees, at least in winter. The Ridings Estate continues for what must be about half a mile to the East along Pulley Lane, and beyond the Woodland Trust land the estate houses back directly on to the lane. There is however no road access from Pulley Lane to any of those houses or to the Ridings Estate roads, so the presence of the estate must have only a minimal contribution to traffic in Pulley Lane. Beyond the estate, from a point about half a mile to the East of Oakwood Lodge, the land to the North of Pulley Lane is presently undeveloped farmland or open land, though not Green Belt.
6. In or about 2006, a planning and consultation process was put in train by three local authorities in the South Worcestershire area, referred to as the "South Worcestershire Joint Core Strategy" or "JCS". Among other things, it considered the government's strategic assessment that more housing development was required and what land in the South Worcestershire area might be designated in planning terms to receive such development. The process, and the proposals under consideration, were described in documents published on a JCS website, which invited comment from any interested person. There was also a programme of public meetings at which the issues under consideration were described and discussed with those attending. This process extended over a considerable period. I was told that it was effectively paused for a time around the General Election in 2010, but resumed thereafter when it became known as the "South Worcestershire Development Plan" or "SWDP". The eventual aim was the adoption of a formal development plan which, inter alia, would have set out policies for the strategic allocation of land for housing, including identifying specific areas in which housing growth would and would not be permitted.
7. In relation to housing, a considerable number of possible sites for additional housing were identified in and around Droitwich and views were invited as to whether they should be approved in policy terms or not. Most of these appear to have been put forward by interested landowners and developers through a process known as the Strategic Housing Land Availability Assessment, so that the mere fact they were referred to in the JCS documents did not necessarily reflect any view, provisional or otherwise, on the part of the local authorities or their planning officials as to whether they should eventually be approved, but only that having been put forward it was necessary that they formed part of the consultation and policy development process.
8. The JCS identified three potential sites for major housing development in the vicinity of Oakwood Lodge. These were:
 - i) Copcut Rise, an area to the North East of Oakwood Lodge on the far side of the

A38. The nearest houses built on that site would be behind an earth bank and shallow screen of trees running along the A38, and were estimated to be about 250 or 300m from Oakwood Lodge.

- ii) South Pulley Lane, an area of Green Belt farmland to the South of Pulley Lane, including land immediately opposite Oakwood Lodge.
 - iii) Yew Tree Hill, an area to the East of the Ridings estate presently consisting of farmland and open land used for amenity purposes such as walking. That site would front to Pulley Lane. The nearest point of any development would, Mr. Thorp agreed, be about half a mile from Oakwood Lodge.
9. As part of the process, the councils produced a "Preferred Options" document. A summary of this, apparently prepared for the purposes of consultation beginning in September 2008 (p1295) said:

“7.8 Droitwich Spa

Due to limited land being available within the existing built up area, nearly all the growth will need to happen outside the existing development boundaries. We believe there are some locations which meet our criteria without jeopardising the role of the Green Belt.”

Two sites were referred to; Copcut Rise (said to be suitable for 1500 homes plus 10Ha of commercial development) and Yew Tree Hill (said to be suitable for 250 houses). South Pulley Lane was not referred to, no doubt because it was in the Green Belt. These two sites must therefore have been regarded as "preferred" options to some degree, though it is clear from the subsequent process that no decision had been taken and that the options identified might be changed.

10. Inevitably, the possibility of development attracted local opposition and (at least) two vocal campaign groups were established. One concentrated on Copcut Rise. The other, which adopted the name "SOGOS" standing for "Save our Green Open Spaces", focussed on South Pulley Lane and Yew Tree Hill. Leading lights in the latter were Mr. & Mrs Kennedy, retired teachers living in Sandles Road on the Ridings estate, who both gave evidence for the claimants.
11. Mr. & Mrs Abbotts bought Oakwood Lodge in August 2008. They moved from Epsom, selling a substantial house there for over £1m. Mr. Abbotts is a chartered surveyor and had worked for a major firm in central London. Their evidence was that they made a lifestyle choice to move away from London to South Worcestershire where Mrs Abbotts had been brought up and where her family still lived. They had sold "well" in an expensive area and were looking for a larger property with land attached but had been unable to find what they were looking for when they searched in the early part of 2008. They viewed Oakwood Lodge in April 2008 when it was in the process of being rebuilt by a builder who was asking £715,000 for it. They regarded it as a suitable stopgap property for a period while they continued the search for their ideal. They had decided not to rent as they wanted their own property and were up against time pressure as Mr. Abbotts had given notice to leave his job and their daughters were enrolled in a school

(close to Oakwood Lodge) to start in September. They negotiated a price of £697,500 including some changes in the builder's specification. Although they had ample equity from their sale to have paid the full price in cash, they chose to carry forward their existing mortgage with a view to having greater liquidity on any subsequent purchase. Mr. Abbotts was not sure of the amount of the mortgage at that time, but said it was relatively small. I note that the amount required to redeem when they sold in 2010 was about £128,000. For that purpose Mr. & Mrs Abbotts obtained a homebuyer's valuation in June 2008 which came out at £650,000. That report noted that "a degree of traffic noise was evident at the time of our visit, the M5 motorway being not too far away". They decided nevertheless to proceed at the agreed price, completing in August 2008. It would thus appear that they bought at or about the very peak of the housing market which, as is well known, declined substantially from about that time, particularly after the collapse of Lehman Brothers in September 2008.

12. The JCS was therefore in progress at the time Mr. & Mrs Abbotts purchased Oakwood Lodge, although their evidence was that they were not aware of it or that it might have any implications for Oakwood Lodge until after they moved in. No doubt the fact that it was under way would have been disclosed in general terms by normal searches and enquiries, and Mr. Abbotts as a chartered surveyor might have been alerted to enquire further if he considered it relevant, but he did not. Mrs Abbotts has family living in the Droitwich area, but did not hear anything about the JCS process from them until after they had moved in. Shortly thereafter however they did learn of it, and were sufficiently concerned to enquire further. Mr. Abbotts said he principally did so by looking at the JCS website.
13. On 29 October 2008 Mr. Abbotts made an online response to the JCS consultation (CB22) in which he objected to residential and commercial development to the South of Droitwich on the grounds that it would put pressure on the Green Belt and cause loss of amenity land, threaten the rural character of the area and the natural buffer to development constituted by Pulley Lane and lead to additional traffic on the A38. He urged that brownfield sites be developed in preference. His evidence was that he did not make these points because he thought that development on these sites would affect Oakwood Lodge, but because he was concerned about loss of amenity land at Yew Tree Hill that he used for walking and for his children to play and because of his professional interest in development matters. It would be naïve however to think that he did not consider that to some extent development, if it proceeded, would adversely affect his quality of life and the character of the area he had moved to.
14. On 27 January 2009 Mr. Abbotts attended a consultation meeting held at St Andrew's Parish Centre in Droitwich. He does not recall how he became aware of this, but says it was probably through the JCS website. He says he was told at that meeting by a planning officer that the South Pulley Lane site had been dismissed as an option because it was in the Green Belt. That would be consistent with the Preferred Options document. He says he was further told that the only site that planning officers supported was Copcut Rise. He also attended a later meeting at the same venue, though he cannot recall the date, at which Yew Tree Hill was specifically discussed and:

“It was made clear that Yew Tree Hill was not a preferred option for the council. Concerns were raised as I recall about flooding and water retention... I was satisfied from this meeting that there was nothing of

concern that might affect Oakwood. ”

He also said that in response to questions about access to Yew Tree Hill if any development materialised, a planning officer was unable to give a specific answer but said that alternatives were being considered including a possible new road across fields. Although Mr. Abbotts said this specific point made him sure nothing could affect Oakwood Lodge, I do not see how he could have gained much reassurance from such a vague reply.

15. Mr. Abbotts attended one further public meeting, in June 2010, which specifically concerned Copcut Rise. The proposed developers produced plans showing that the road access to that site would be from a new roundabout on the A38 approximately half a mile away from the junction of the A38 and Pulley Lane. He concluded that the development itself and the access arrangements for it would therefore have no effect on Oakwood Lodge.
16. Mr. Abbotts received a letter dated 11 February 2009 from the JCS Project Manager (CB 25). It is addressed to him but clearly was sent to a considerable number of people who had expressed an interest in the JCS process. It refers to an earlier letter of 21 January 2009, but Mr. Abbotts has no recollection of receiving that and the only copy produced (CB 23) is addressed "Dear Sir/Madam". It is said to be sent to people "already on our consultation list" and there is no way of telling whether this included Mr. Abbotts, although one might have expected that he would be on such a list, having provided his address with his online comments the previous October. The January letter said that consultation responses to the Preferred Options paper had been considered and "as a result some changes have been suggested by planning officers". These included "Increase the number of homes north of Pulley Lane..." (ie the Yew Tree Hill site). The letter went on to say that these proposed changes would be discussed at "a series of workshops", ie public meetings. I assume the meeting Mr. Abbotts attended a few days later on 27 January was one of these. It would be surprising if he had been told at that meeting, as he recalls, that the planning officers only supported Copcut Rise when they had circulated a few days previously a letter stating their support for an increased allocation at Yew Tree Hill.
17. The 11 February letter was written "to provide clarification about the purpose of the recently publicised 'suggested changes' to the emerging strategy and ongoing public consultation. Feedback received since my earlier letter suggests the role of the 'suggested changes' may have been misunderstood." It went on to say that all consultation responses would be considered, that officers had no power to make changes to the Preferred Options document, and that any changes would have to be approved by the three councils before the next ("pre-submission") version was prepared, which was expected to be published in December 2009 for final consultation before it was submitted to the Secretary of State in April 2010. It also referred to changes in government guidance which might lead to amendment to the JCS to include "strategic sites for development", a process which would require collection of "evidence of stakeholder views" during the consultation. This letter may indicate that planning officers were backtracking from their "suggested changes" in response to public reaction. In any event it is clear that the process of policy formation was both extended and fluid.

18. Whatever the position of officers in relation to Yew Tree Hill may have been at the January meeting, it does appear that their view, and that of the relevant councils, subsequently changed to one of opposition to development on that site. The defendants produced a document headed "South Worcestershire Development Plan- Preferred Options 2011- Schedule of issues and recommended responses". This document is evidently generated by planning officials and appears to be a working document amended over time. The version in the bundle (CB243) was apparently produced in May 2012. It is a summary of the various representations made in the consultation process, collecting together those with common themes and providing the response of officers to each theme. It summarised at line 40 the views of some 31 respondents that "Yew Tree Hill should remain free from development and [be designated] as a Special Landscape Area or similar, eg country park". The response was "Noted/Agree" but that the view of officers was that no formal designation was required because once the SWDP (as it had then become) was adopted its "policies relating to the protection of Green Infrastructure and open space are strong enough to safeguard open countryside".
19. In contrast at line 41 the view of two consultees, perhaps interested landowners or developers, was recorded as being "Yew Tree Hill should be allocated for a strategic housing allocation... site should be reinstated along the lines of the SWJCS proposals." The officers' response was "Disagree. The increased housing allocation is being met [elsewhere] without the need for a strategic allocation at Yew Tree Hill". It would appear from this that at some point the site at Yew Tree Hill must have been removed from the Preferred Options document and that officers were opposed to the attempt to have it reinstated. In combination with line 40, it is clear that their view must have been that there should be no housing development there.
20. It is not clear when this change of view came about, but it is entirely possible that it had done so by the date of the second meeting that Mr. Abbotts attended, and therefore that his recollection that it was made clear at that meeting that Yew Tree Hill was not a preferred option by the council is accurate.
21. Mr. & Mrs Abbotts also came to be aware of SOGOS and its activities, in which they took part to some extent. At some point in early May 2009 Mr. Kennedy walked along Pulley Lane intending to speak to each occupier about what he considered the threat of proposed development. He spoke to Mr. Abbotts across his garden fence, who already knew about the issue. Mr. Kennedy explained that a campaign group was being formed and agreed to drop in a copy of a leaflet it was preparing.
22. According to Mr. Kennedy, Mr. Abbotts said he had moved from the South East "to get away from that sort of thing", ie development, which he said he remembered clearly as he had gone home and told his wife that the "poor man" had moved to get away from development only to find himself faced by it in his new home. Mrs Kennedy remembered that conversation. Mr. Abbotts denied saying anything to that effect, not least because that was not the reason for his moving to Droitwich. I am not satisfied that Mr. Abbotts did say that. There is no evidence to contest his account as to the reasons for their move, and I do not think that Mr. Abbotts, particularly given his profession, is likely to have believed that a move to Droitwich would escape from all likelihood of any development. Mr. & Mrs Kennedy are very committed and passionate about their cause, and I think it is quite possible that Mr. Kennedy has over- interpreted some remark by

Mr. Abbotts expressing general sympathy with that cause.

23. The leaflet delivered by Mr. Kennedy appears to have been that at p 54C of the bundle, which is a flyer for a meeting on 14 May 2009 to address what it said were proposals for "over 800" houses on each of the South Pulley Lane and Yew Tree Hill sites. It appears the name "SOGOS" had not then been hit on, as it is not mentioned. A note made by Mr. Kennedy dated 2 June 2009 (54L) refers to that meeting, which he says was attended by over 250 people, and to further meetings at a public house planned on 3 and 10 June for those interested in forming a campaign group. Later (Mrs Kennedy said in August 2009) a further leaflet was prepared which refers to a meeting on 3 September 2009. Mr. Abbotts attended two SOGOS meetings, though he is not sure of the dates. One may have been the meeting of 14 May. The other was in a public house and so may have been one of the ones held in June. According to Mr. Abbotts there were only six or seven people there. I think it unlikely that this second meeting was the one in September, since (a) Mr. Kennedy said he specifically looked for Mr. Abbotts at that meeting and was surprised not to see him there and (b) that meeting was at a community hall not a public house and was attended by 150 people on Mr. Kennedy's account, neither of which would fit with Mr. Abbotts' recollection.
24. SOGOS also organised a petition opposing development on the Yew Tree Hill and South Pulley Lane sites, which was signed by about 2500 people and delivered to Wychavon District Council. There is no precise date for this in the evidence, but the petition was evidently in existence by early May 2009 since it is referred to in the leaflet advertising the 14 May meeting, and according to Mr. Kennedy's answers in cross examination must have been delivered (at the latest) at or about the time of the meeting on 3 September 2009. Mr. & Mrs Abbotts' names appear on this petition, although according to Mrs Abbotts she had not signed it and her husband must have done so in both names. Mr. Abbotts agreed he had signed it and that he supported the petition, though he did not consider that the development it objected to would affect Oakwood Lodge. He made the point that it is possible to object to development even though it does not affect your own property.
25. Mr. Kennedy agreed in response to questions from Mr. Warner that of the three potential sites the only one with any support from the council was Copcut Rise. That he said was "done and dusted" and the land had been bought by a building company, William Davis. South Pulley Lane had been quickly dismissed by Wychavon District Council because it was in the Green Belt. It was put to him that Yew Tree Hill was also not favoured, to which he said it was being "presented as a possibility". He agreed it was not a possibility supported by the council, because, he said, of the public opposition to it. He also accepted that SOGOS activity had effectively been suspended after September 2009. From then until 2011 there were no further meetings organised or publicity material produced. By that stage he said the petition had been delivered and was "in the bag". He agreed that the council had said they did not support development at Yew Tree Hill, though the possibility was still "extant". He agreed there was nothing further for SOGOS to do unless and until an application was made which revived it.
26. Mrs Kennedy emphasised that the possibility of development had not been ruled out, and would not have been unless a formal policy had been adopted to that effect. Until then Yew Tree Hill was still "vulnerable" and for that reason SOGOS had not been disbanded. But she agreed that its activity had abated after September 2009 as from then on they

were awaiting the outcome of the consultation process, and that nothing further had happened until after the sale of Oakwood Lodge in 2010.

27. Mr. Abbotts said he dropped out of involvement with SOGOS once it became clear that there were no specific proposals being considered which in his view affected Oakwood Lodge. I infer that he did so prior to September 2009. By that stage, he said, it was clear that the council did not support any development at Yew Tree Hill. The possibility that it might nevertheless happen was in his view "nebulous". It was one of many possible sites identified as possibilities. The process to a decision was in his view likely to be long. Even if the site was eventually developed he did not consider it would affect Oakwood Lodge.
28. Mr. & Mrs Abbotts contacted the Woodland Trust after they had moved in and obtained agreement that the builder had placed the rear fence of their garden too close to the house and that it could be moved back by about a metre. They also asked whether the Trust would sell a small piece of land to expand their garden, but this was eventually refused. It was suggested that in doing so they were trying to obtain a ransom strip to prevent widening of Pulley Lane if development proceeded. Mr. Abbotts denied any such thought, and having looked at the correspondence with the Trust and the plan showing the patch they wished to buy it is hard to see that their motive could have been anything other than to increase their garden space as they said.

The sale process

29. The defendants' evidence was that they decided to put Oakwood Lodge on the market in about April 2010 in order to look for the larger property they wanted. Mrs. Abbotts said that by this time they had concluded they would not be able to buy a suitable older property in a fully refurbished and modernised condition and so had reconciled themselves to buying a "project". They contacted Knight Frank, the agent who had sold the property to them, by telephone at the beginning of June. Mrs Abbotts arranged to meet Mr. Pickard of Knight Frank (he had not personally dealt with the sale in 2008) at Oakwood Lodge for an inspection on 10 June. He sent them some marketing information and filled in a "Property Inspection Form" (CB 39), which is Knight Frank's own form gathering information for themselves for the purpose of a "pitch" to prospective clients. It is not intended to be shown to buyers. The contents presumably represent what he was told over the telephone. The reason for selling is recorded as "want project".
30. On 11 June Mr. Pickard sent a marketing and fees proposal. It was not taken up immediately; Mr. & Mrs Abbotts said they had agreed with Mr. Pickard that it would be best to market the property in September when prospective buyers would have returned from holiday. They went on holiday themselves in July and got back in touch at the beginning of August, when they negotiated fees and agreed to instruct Knight Frank. Mrs Abbotts went to their office on 2 August when Mr. Pickard went through with her and filled in a "Property Information Form" (CB 39). This again is an internal Knight Frank document, intended to gather information the agent might need in the selling process and not for disclosure itself to prospective buyers.
31. Under the heading "General & Viewings" the form asks "Please list any defects with the

property or problems such as new road schemes, proposed developments in the vicinity, etc, that you feel we should draw to the buyer's attention?". Under this is written "Local Plan?". Mr. Pickard said this was his writing; he could not recall whether it was he or Mrs Abbotts who had posed this as a question, but said they had a discussion which "confirmed the only development that might continue was Copcut". He had not himself heard of SOGOS or of any proposal for development at Yew Tree Hill or South Pulley Lane. The local plan he thought was "pretty much up in the air" though he was aware that the Copcut site was likely to be proposed for development. He had discussed that with Mrs Abbotts and they both felt it was not relevant as any development would be on the other side of the A38. His opinion was that this did not have to be disclosed. He was not, of course, considering the question that would later be asked on the SPIF, but only what a seller or agent should properly disclose in marketing the property.

32. Mrs Abbotts said that this entry had probably come about because she had showed Mr. Pickard when he visited the house a flyer sent by the council in connection with proposed development at Copcut Rise, asking residents what sort of community facilities they would like to see included. That had been the only potential development she had discussed with Mr. Pickard and they had concluded it had no effect on Oakwood Lodge. She had not mentioned the possibility of development at Yew Tree Hill, which she thought had been dropped and would not have affected Oakwood Lodge in any event as it was half a mile away at its nearest point, with approximately 50 houses of the Ridings estate between it and Oakwood Lodge.
33. Mr. Pickard advised an asking price of £650,000 and steps were put in hand to prepare a brochure with a view to marketing at the beginning of September. As it happened however Mr. Pickard was already in touch with Mr. & Mrs Thorp as potential purchasers. They had viewed other properties on Knight Frank's books over a period since about February 2010 and asked to be informed of anything coming up that might meet their requirements. Mr. Thorp had renewed this request in July 2010 when he told Mr. Pickard that they had been interested in a house at Hartlebury but had discovered that there was a proposal for an incinerator in Hartlebury "and we are now therefore not sure about the house we are buying" (p807).
34. Mr. Pickard sent Mr. Thorp the address and pictures taken for the brochure on 10 August 2010. Mr. & Mrs Thorp attempted a "drive by" viewing the same day but could not find the property. They arranged a viewing on 14 August however, which Mr. Pickard conducted on his own. They immediately made an offer of £575,000, which was rejected. Later that day the offer was increased to £625,000 (confirmed by email at p868) which was accepted.
35. Matters proceeded fairly swiftly after that. The Thorps had a mortgage offer and obtained a valuation for mortgage purposes from a local valuer who confirmed the price of £625,000 to be reasonable. Their solicitor received the draft contract and other documentation, apparently including the SPIF, on or about 6 September and sent it on to Mr. Thorp (p 402) with no comment other than to ask whether he had any concerns with the answers. An enquiry was made to the Abbotts' solicitor as to why they were selling relatively soon after their purchase, to which the response was that they wished to upsize to a property with more land. Mr. Thorp asked some questions about planning and building approval for the work done in 2008, but nothing about possible future

developments in the area (p408).

36. Replies to the normal local searches disclosed both the local plans in force at the time, ie the Wychavon District Local Plan 1996-2011 (p415) and that

“[the SWJCS] is being prepared in accordance with the Local Development Framework...[On] adoption in 2011 it will provide for the strategic planning framework for South Worcestershire... up to 2026... This will include allocated sites for significant residential and employment development... Further information on the preferred locations for development and emerging draft policies can be found via www.swjcs.org...

Alongside the SWJCS the three partner authorities are also preparing an Allocations Development Plan Document to identify smaller residential sites within towns and villages, along with other sites for development, eg hospitals, schools etc...” (p 417)

The solicitor did not apparently send the search results themselves to Mr. & Mrs Thorp, but sent an email on 10 September saying "Your searches have arrived with me today and are perfectly satisfactory". This suggests he was not aware of any anxiety expressed by Mr. & Mrs Thorp about possible nearby development, or he might have advised them to look at the JCS website to identify any that might concern them.

37. Contracts were exchanged on 23 September and completed on 14 October 2010.

After the sale

38. On 29 November 2010 a planning application was submitted in respect of the development at Copcut Rise. The claimants' evidence is that they became aware of this in January 2011, when Mrs Thorp contacted the parish council to express her opposition (p556). On 31 January Mr. Thorp sent an email to his solicitor asking "how a planning application for 740 mixed dwellings to be built within 300 yds of Oakwood Lodge did not show up on the searches" (p554). He spoke to the solicitor on 2 February; a file note records that the solicitor explained that the search would not necessarily have revealed an application, and that there might not have been an application in place at the time. Mr. Thorp said he would speak to his wife and come back, which he did on 4 February. A file note of that date says that Mr. Thorp was annoyed with the vendor but "not saying...the property will be detrimentally affected in value or that he would not have purchased it if he had known about the development...". He said he would speak to his wife again, and after doing so emailed on 7 February (p562) to say that if "the planning application" had been disclosed they would not have bought, that they now had "a house which may drop in value and be difficult to sell and be in a disruptive environment for many years with increased traffic and risk of crime" (the last being a view he apparently held because the Copcut Rise development would include social housing). He asked to be put in touch with a litigator. He appears to have discussed the matter with a litigator, but did not however immediately take the matter any further.
39. On 17 May 2011 an application was submitted for outline planning permission on the

Yew Tree Hill site for 800 houses, a care home and other development (p578). The Thorps must have become aware of this quite quickly. An email to their solicitor on 6 June 2011 (p576) refers to this application and says that though they had not taken things further with the litigator in February they now wished to do so because Mrs Thorp had spoken to Mr. Kennedy and been told that he had spoken to Mr. Abbotts in "autumn 2009 or spring 2010...it is clear the Abbotts knew full well about the planning application and we have a witness to this...".

40. It is common ground that the Yew Tree Hill application was rejected by the planning authority in 2012, consistently with their position that the land should be preserved as open space, but that the developers appealed and their appeal was eventually allowed in 2014. I was not shown the appeal decision but was told that the key basis for it was that although the SWDP was under development at the time it had not been adopted and so there was no planning policy in place at the time of the application that the site should not be developed.

Misrepresentation?

41. The first issue to be determined is whether the representations made in the SPIF were incorrect at the date they were made or at the date of exchange of contracts, it being accepted that if there had been any change of material facts prior to exchange the sellers were obliged to disclose it. The findings I make as to the facts of the potential planning applications are as follows:
 - i) In relation to Copcut Rise, although no planning application had been submitted prior to the date of exchange, it was generally known, and certainly known to Mr. & Mrs Abbotts, that the land was one of the Preferred Options in the draft SWJCS process and documentation, that the relevant planning authority were minded to approve it for large scale development and accordingly that it was highly likely that such an application would at some point be made and approved.
 - ii) In relation to Yew Tree Hill, again no planning application had been made. The site had been put forward as a Preferred Option for development of 250 houses in the original version of the JCS and officers had as late as January 2009 been in favour of an increased allocation. However by some point no later than the end of 2009 the position of the planning authority had changed, probably in response to representations, such that it was not in favour of development on that site and was minded to adopt a policy that it be retained as open space. At some point the site was removed from the Preferred Options document; it is not clear exactly when though it may have been around the same time. Whether or not that had occurred by the date contracts were exchanged, the authority's change of position had occurred before then, probably in late 2009. Mr. & Mrs Abbotts had been told that was the case, and so had SOGOS, which was effectively dormant from September 2009 onwards because it knew the councils had accepted its case. Thus, although there was no formal policy in place to prevent development taking place, there was no likelihood that such development would be favoured, still less encouraged, by the planning authority.

42. The claimants plead the following as matters that should have been disclosed and which, because they were not, render the representations made in answering questions 3.1 and 3.2 of the SPIF false:
- i) That the following were "communications or notices affecting the property or the neighbouring property":
 - a) Public consultation documents inviting them to the meetings arranged by the JCS authorities on 27 January 2009 and 7 June 2010
 - b) Other unspecified similar documents the court is asked to infer were received,
 - c) The SOGOS flyer delivered in May 2009, and
 - ii) That the following were "negotiations or discussions with [a] neighbour or [a] local or other authority affecting the property":
 - a) The discussion with Mr. Kennedy in May 2009
 - b) A discussion with Mr. Porter, the owner of a nearby house on Pulley Lane who made a witness statement stating that he had been approached in 2008 on behalf of Barberry Properties seeking to purchase his house. Barberry are one of the developers who later made the Yew Tree Hill application and so may have been seeking to acquire the house to facilitate road widening for access. However, Mr. Porter in evidence said that though he had met Mr. Abbotts and discussed possible development in the area in general terms, he had not mentioned the approach by Barberry. This allegation was not pursued further.
 - c) Other unspecified discussions the court is invited to infer the defendants would have had with neighbours or the local authority.
43. In closing, Mr. Maguire focussed on the discussions with Mr. Kennedy in May 2009 and at later SOGOS meetings, and the SOGOS flyers received. Mr. Kennedy was said to be a "neighbour" on the basis that he lived on the Ridings estate and although his house is approximately a quarter of a mile from Oakwood Lodge, it is the first property reached when walking East along Pulley Lane and through a footpath onto the Ridings. Mr. Maguire submitted that the Ridings estate was in the "neighbourhood" of Oakwood Lodge, and so every occupier on it was a "neighbour".
44. I start by considering what is the scope or proper interpretation of questions 3.1 and 3.2, and therefore of the representations made in answering them. I was not referred to any previous case in which the meaning of these questions had been considered. Question 3.1 refers to "communications or notices which in any way affect the property or the neighbouring property (for example from or to neighbours, the council or a government

department)". What constitutes a "communication", and what amounts to "affecting" the property? Mr. Maguire submitted that this was deliberately wide wording and should be given a wide interpretation. In my judgment however there are a number of indications that the proper interpretation is one that is relatively confined.

45. The starting point in a conveyancing transaction is still "caveat emptor". It is for the buyer to satisfy himself about the state and condition of a property, and as to any other matters he may consider relevant to his purchase, including matters such as the character of the neighbourhood and possible changes to it. For that reason solicitors acting for purchasers make normal searches and enquiries of local authorities, sources of environmental information, the Coal Authority and so on. The buyer may make enquiries of the seller as well, but the seller is under no obligation to answer them and incurs no liability if he declines to do so (though of course a purchaser may equally decline to proceed).
46. Questions such as those on the SPIF are intended to be answered by the sellers themselves, ie for the most part by lay persons, and though no doubt in most cases they will have solicitors or conveyancers acting who could give them advice, in my judgment the questions are to be interpreted in the way that an ordinary lay person would understand them and not in such a way that expert advice would be required to understand the scope of the information required. Further, they should not if possible be interpreted in such a way that it becomes a matter of subjective assessment whether or not information is relevant, because if an element of subjectivity is introduced, for example as to what does or does not "affect" a property, a seller would be at risk if a buyer later seeks to assert his own interpretation. If that were a significant risk, cautious or well advised sellers may simply decline to answer questions whose scope they cannot safely assess.
47. The other questions on the form are consistent with an interpretation that the enquiry is as to matters which are either directly about the property itself or concerning immediately adjoining properties (and which may therefore affect the use made of the property or relationships with immediately adjoining owners with whom the purchaser may have to deal). Thus:
 - i) Questions 4,5,6,9 and 10 deal respectively with guarantees, insurance, utility supplies, council tax liability, building works and expenses incurred at the property itself,
 - ii) Question 1 deals with boundaries between the property and immediately adjoining properties
 - iii) Question 2 deals with disputes "about this property or any neighbouring property" or complaints "about what [a] neighbour has done or not done". Insofar as such disputes or complaints are about neighbours, they could only be reasonable matters for a purchaser to enquire about if they were adjoining neighbours or, at most, the owners of property very nearby. If for instance the owner of Oakwood Lodge had officiously complained about, say, trees being cut down at a house 200m away that is not a matter which would be expected to affect a purchaser since it would not directly affect Oakwood Lodge itself and he

would not run a risk of becoming involved in that complaint simply by virtue of purchasing the house the complainant lived in. Question 2.3 may be wider, in that it seeks information about complaints "about anything the seller has or has not done as owner", without limitation as to who made the complaint. Thus an officious complaint by a nearby householder about tree cutting at Oakwood Lodge may be relevant, since it relates to something done "as owner" and the complainant might be equally officious in future, but a complaint by the same person about, say, the seller's driving would not be.

- iv) Question 7 asks about sharing arrangements for things "in joint use" or "used by neighbours". Examples given are a shared drive, drain or private road. The other parties involved are thus likely to be close neighbours and to have some direct property interest in common.
 - v) Question 8 asks about "formal or informal arrangements which the seller has over any neighbouring property" or "which someone else has over the property". The former could only reasonably be of relevance to a purchaser if he would be likely to need or wish to make use of the same arrangement in his capacity as the new owner, and so to be arrangements with adjoining or very near properties relating to the use of the property and not the personal activities of the seller. It would thus be relevant if the seller had (say) an informal arrangement with the Woodland Trust to have access to Oakwood Lodge over its land, but not if he had an informal arrangement to walk dogs on the land of a farmer a mile away.
48. The other references to "neighbours" therefore relate to owners of property that is either immediately adjoining the property being sold or has some shared service or right with it or is so close that something done on their property may affect the use and occupation of the sale property.
49. Question 3 is headed "Notices" and clearly seeks to address situations where some action may be taken or some event may happen in the future which affects the property. Plainly, where future matters are concerned, there is a range of certainty about what will or will not happen and when. If for instance there is a possibility of a road widening scheme for the road to which a property fronts, it may at one extreme be no more than the opinion of some residents that the road ought to be widened at some stage or at the other end of the range a scheme that has been approved after a consultation process by the relevant authority and is about to be implemented. A balance must be struck in enquiries made if they are to be capable of answer. It would not be reasonable to expect a seller to be responsible for disclosing possibilities as nebulous as local or individual opinions or conjectures that may never be acted on.
50. Question 3.1 in my view seeks to identify the point at which such future possibilities should be disclosed as that at which a "notice or communication" has been given which "affects the property". Both suggest a degree of certainty of intention to do something sufficient to give some formal warning of it to the owner of a property that will be affected. A "notice" will include for instances notices which themselves have some legal effect (eg a rent review notice) or which are legal prerequisites to some action or to the exercise of some right (such as a Party Wall Act notice). In other cases, notice may be required by law to be given, or may be voluntarily given, to persons who may be entitled

to object, or to be consulted. An example would be the notice given to residents of Copcut Lane of the planning application for Copcut Rise.

51. "Communication" in my judgment is aimed at catching less formal notifications, but still notifications of some reasonably definite intention to take some step which affects the property of the recipient. The communication must still be something that "affects" the property. In the case of a notice the delivery of the notice may itself produce an effect on the property (such as increasing the rent payable). But in most cases (whether of matters best described as notices or communications) it will be a notification of something that will or may happen in future which will affect the property only if and when it happens. In such cases for the communication itself to "affect" the property must in my judgment mean that it is a step taken towards implementing some act or intention which will have an effect on the property, and one which indicates a present real likelihood that the event will happen.
52. This in turn means in my view that it must be a notice or communication from someone who is proposing to take some action, or from some regulatory body responsible for authorising or permitting that action. It would, for instance, apply if a householder writes to his adjoining neighbour informing him that he intends to apply for planning permission to extend his house.
53. But Question 3.1 in my view does not apply to communications coming from other persons. If for instance one householder writes to others in his street warning them of his fears that a supermarket will be built at the end of their road, but he is not himself responsible for the proposed development, that would not in my view be a communication "affecting" the properties in the street, even if he turns out to be right and the supermarket when built would affect those properties. Otherwise, sellers would need to disclose matters which may amount to no more than local gossip or ill informed scaremongering, in case the matters feared actually come about.
54. Question 3.1 is not however limited to communications or notices from neighbours, so if for instance an intending supermarket developer itself wrote to householders near to its proposed site stating its intention, that would require to be disclosed if the development itself would affect their properties.
55. Question 3.2 refers to "negotiations or discussions" with a neighbour or local or other authority affecting the property. This in my judgment is aimed at circumstances in which there is some proposal or intention to do something that would affect the property, and the negotiations or discussions are with either the person whose proposal or intention it is or an authority in a position to authorise or permit it to happen. Thus the holding of a negotiation or discussion itself is a step in the implementation of that proposal or intention and an indication that it is likely to happen.
56. A discussion of some possible future event with a person not in a position to make it happen or allow it would however not "affect" the property since the outcome of the discussion would have no bearing on whether that event happened or not. Thus for instance if the seller feared that neighbour A might build an extension, a discussion with neighbour A about his intentions would be potentially relevant. However if neighbour A had not mentioned any such intention but the seller discusses his fears with neighbour B,

that discussion would be irrelevant to what neighbour A might do and the discussion itself (as distinct from the subject matter discussed if and when it happened) could not be said to affect the seller's property. Otherwise, again, sellers would be obliged to disclose matters that may be no more than local gossip.

57. It would of course be possible to ask sellers whether they were aware of proposals for development (as the present version of the SPIF does) or even of possibilities less certain than is implied by the term "proposal", and that may require disclosure of matters of which a seller has become aware without receiving any notice or communication or holding any discussion with the intended developer. But that is not how this form was phrased, and in my judgment this form for good reasons of certainty focuses on identifiable events such as the receipt of notices or other communications or the holding of discussions as indicators of future events which have a sufficient degree of likelihood of occurring such that they should be disclosed.
58. Whether a communication or discussion about some possible future event itself "affects" the property also in my judgment depends both on the nature of the future event and on the degree of probability that it will occur, assessed at the time of the representation. Different people may in good faith make different assessments of these matters on the same information, but since neither the question as printed nor the answer given are framed in terms of the opinion of the seller, I proceed on the basis that the statement is objective, ie as to whether a reasonable person with the seller's knowledge of the facts would consider that the property is affected.
59. Thus for instance if there had been a discussion with a neighbour about whether he intended to build an extension and the neighbour had said he did not, that would not in my view be a discussion affecting the seller's property.
60. "Affecting the property" in my judgment requires that the possible future event will if it happens have some effect on the property itself, or the use or enjoyment of it. A possible effect on its value would not be enough on its own- if it were, the question would require disclosure of discussion with a neighbour about the housing market generally or in the particular locality, or (say) the effects on the market of the outcome of an election or leaving the EU. Nor would a general effect on the locality or the desirability to purchasers of the area or the property itself be sufficient, as for instance might be the case if the seller had received some notice of the closure of a local school or hospital. The effect need not however be a direct physical interference- a material increase in noise or smell or an adverse effect on views from a property would in my view potentially "affect" the property.
61. Applying those considerations to the facts of this case, I conclude that:
 - i) Discussions with Mr. Kennedy, whether over the fence at Oakwood Lodge or subsequently at SOGOS meetings were not "discussions with a neighbour" engaging Question 3.2, because he was not a "neighbour" as that term is used in the SPIF. His own house was too far away for him to be considered a neighbour.
 - ii) Nor were they discussions "affecting the property", since Mr. Kennedy was not

himself putting forward any development proposal that might affect Oakwood Lodge or acting in any official capacity to approve or permit any such development. He and his wife were keenly interested in opposing any development, but the mere fact that the possible event discussed will or may affect the property if it happens is not enough in itself and the nature of their interest does not make discussion with them any more relevant in terms of the effect of that discussion itself on the property than if it had been a conversation with a stranger in a pub.

- iii) For similar reasons, any flyers or similar documents put out by SOGOS were not "communications... affecting the property" such as to engage question 3.1.
 - iv) Mr. Abbotts did however receive "communications" from the JCS authorities about the JCS process, in the form (at least) of the letter of 11 February 2009, and engaged in "discussions" with them in the form (at least) of his discussions with planning officers at the two public meetings he attended, such as were capable of engaging question 3.1 and 3.2.
 - v) As at the date of exchange of contracts however these were not matters "affecting the property", because for reasons expanded on below the reasonable person would have concluded, as I find Mr. & Mrs Abbotts did, that the likely development of Copcut Rise would not affect Oakwood Lodge and that the JCS process as it then stood was not such as to show any sufficient risk that Yew Tree Hill or South Pulley Lane would be approved for development.
62. The JCS process was not of course in any way specific to Oakwood Lodge. Its purpose was to formulate broad policy, and as part of that to identify areas to be designated as strategically suitable for development. It was not considering particular development proposals for those areas, which would only happen as and when individual planning applications were made. I accept of course that if the JCS process had made such a designation for an area, or was known to be likely to do so, it could reasonably be expected that development proposals consistent with that designation would in due course be made. In those circumstances, if such development would when built itself affect Oakwood Lodge, it could be said that the JCS process itself affected that property because the actual development would thereafter be in practice inevitable. But if the JCS process did not identify, or reasonably seem likely to identify, an area as suitable for development, there would be nothing in existence that could be said to have an effect on Oakwood Lodge. No doubt there would still be a possibility that a planning application could be made for development in that area, but it would be one outside, and possibly contrary to, the planning policy of the authority. Such applications may in principle be made in respect of any area at any time, and the likelihood of their succeeding depends on the strength of the planning policy in force at the time. But any such application would be entirely separate from the JCS process and the JCS process itself would not have led to its being made, or make it more likely to succeed.
63. So far as Copcut Rise is concerned, the position at the date of exchange of contracts was that no actual planning application had been made, but it was known the JCS process was likely to designate the area for large scale development so that such an application or applications could be expected. It would not have been a surprise to the defendants

that such an application was made a few weeks later, or that it was approved.

64. Mrs Thorp's evidence was that the development had already affected her because increased traffic on the A38 had caused her delays in driving on that road. But an effect on the owner of a property in driving on nearby roads is not an effect on her property itself. She said she feared dust dirt and noise for years while the development was being built, but I am not persuaded that these fears are realistic. The nearest point of the development is about 200m away on the far side of a busy road and behind an earth bank. No doubt the construction process will generate some noise and dirt, and perhaps dust, on site, but the likelihood of any appreciable effect as far away as Oakwood Lodge is in my view remote. There may be additional traffic on the A38 either from construction vehicles or new residents when the houses are built, but there is no evidence this will add appreciably to the noise perceived at Oakwood Lodge. As I have said above, an effect on the value of Oakwood Lodge by reason of the locality being more developed, or that fact that development is going on nearby, or that there is more traffic on the A38 would not itself be sufficient, but in any event both experts agreed there would be no such effect caused by the Copcut Rise development.
65. It follows that although the position reached in the JCS process at the date of exchange was such that a successful application to permit development was likely, that fact did not affect Oakwood Lodge because the development when it eventuated would not itself affect Oakwood Lodge.
66. In relation to Yew Tree Hill I accept that the development that has now been approved will affect Oakwood Lodge, though only (as I find) because of the increased traffic on Pulley Lane it will generate. In that respect, the most recent evidence is of a traffic assessment on behalf of the developers, referred to in a letter from the claimants' expert Mr. Paul (6/2109) that traffic movements along Pulley Lane will increase from 42 per hour to 412 per hour in peak periods. If right, that would turn it from a quiet lane into a moderately busy road, which is bound to cause additional noise at roadside properties such as Oakwood Lodge.
67. However, no such application had been made at the date of exchange of contracts, and the discussions and communications Mr. Abbotts had had which might have called for disclosure in response to question 3 were not about any such application, but about the JCS. The position in relation to the JCS was that it was not likely to lead to an outcome that would encourage, let alone make inevitable, such an application, still less that the development would be approved and come to fruition. So far as was known to Mr. Abbotts (and SOGOS took the same view) it was likely to result in a policy against development on the Yew Tree Hill site. The planning policy formally in force was still the Wychavon District Local Plan adopted in 2006, under which development was to be concentrated within existing urban areas, which did not include Yew Tree Hill. The purpose of the JCS was to develop a policy to supersede this, but given the position reached there was no reason to think the new policy would increase the possibility of development at Yew Tree Hill. There was therefore no effect on Oakwood Lodge at that date arising from the JCS consideration of Yew Tree Hill as a possible development site, and the answers given to question 3 were correct.
68. It is of course true that the possibility of development had not been ruled out, and

SOGOS, whose concern was that it should be ruled out as firmly as possible, were no doubt justified in continuing to keep an eye on the situation. But the SPIF did not ask whether there was any possibility of development nearby or whether present and future planning policy ruled out such a possibility. Mr. & Mrs Abbotts were under no duty to warn the Thorps of such a possibility, even if they considered it to exist. If the Thorps had been concerned to avoid any such risk of nearby development at all, as they now state, it is in reality hard to see how they could safely purchase anywhere. If they wanted to evaluate the degree of risk in the vicinity of Oakwood Lodge, they could and should have made their own enquiries into the planning position and possible future planning policies.

69. I find therefore that the defendants' answers in the SPIF were not misrepresentations, and as a result the claim must fail. In case the matter goes further however I state briefly my conclusions on other matters raised before me.

Other issues

70. If I had concluded there was any misrepresentation, I would have found it to have been neither negligent nor fraudulent, but that the statements made represented the defendants' honest opinion reasonably held at the time. The claimants attempted to paint a picture of the defendants rushing to sell with the implication they were seeking to get away before the risk of development could be realised, but the evidence did not support that. If that had been their motive, they would have acted sooner since they were aware of the JCS process and the "Preferred Options" in early 2009. It was said they were tied until 2010 because their mortgage was at a fixed rate and a penalty would be incurred if they sold earlier, but Mr. Abbotts' evidence, which was not contradicted, was that only a small part was so fixed, and that they had retained the whole mortgage in order to carry funding over to any future property, which was what they in due course did. If so no penalty would have been incurred whenever they had moved. If there had been such a penalty, the amount would be reducing as the two years went by and unlikely to have been an obstacle to an early move if they really feared a substantial drop in value by reason of potential development.
71. If the defendants had been desperate to move as soon as the two years expired, they would have put the property on the market earlier with a view to the earliest completion. But they did not; although there is nothing in the documents to confirm that they had decided to sell in April, their sales process with Knight Frank once begun in June 2010 was quite leisurely and it is clear from the correspondence that any rush once the Thorps had become aware that Oakwood Lodge was on the market was on their part and not the Abbotts'.
72. I accept the Abbotts' evidence that their motive for moving was to buy the larger property they had originally wanted; they were in contact with Knight Frank looking for such a property at the time they put Oakwood Lodge in their hands for sale, and in fact they identified such a property a few days after the Thorps made their offer, which they went on to purchase simultaneously with the sale of Oakwood Lodge.
73. It is true the relatively short period of ownership of Oakwood Lodge cost the Abbotts a substantial amount, over £100,000 if the loss on sale and the costs of buying and

reselling in terms of stamp duty and fees are aggregated. But the majority of this is the difference in price on resale, and there is no evidence that this was out of line with market changes generally in the post-crash period.

74. I also accept their evidence that they believed both that any development at Copcut Rise would not affect Oakwood Lodge and that the JCS was likely to result in Yew Tree Hill being rejected by the planning authority as a development site. Both such opinions were reasonable; the first I have found to be correct and the second was based on what officers told Mr. Abbotts and not only proved to be a correct assessment of the views of the authority but was shared at the time by SOGOS, which as a campaign group was perhaps the most sensitive of interested parties.
75. The claimants do not seek rescission but only damages, for which they must show that they would not have bought but for the misrepresentation alleged and that the market value of the property they bought was less at the date of purchase than the price they paid. If that is the case, the difference is in principle recoverable, even if it is not related to (or not entirely related to) the misrepresentation. This is because the damages are calculated to put the claimant in the position he would have been if there had been no misrepresentation, on which hypothesis he would not have bought.
76. I accept that if the Thorps had been told specifically that development at Copcut Rise was likely they would not have purchased. That is consistent with their reaction once they became aware of the actual development application. I am not persuaded that they would have taken the same view if told only that development at Yew Tree Hill was opposed by the council but could not be ruled out (and they could have been told no more at the date of exchange). Their attitude to that is in my view coloured by the knowledge that it is now a reality, whereas had they merely been assessing the risk in light of the likely opposition of the planners, they might have been prepared to accept it. It is said they were risk averse as shown by their earlier withdrawal from purchase of a property near to a proposed incinerator, but an incinerator raises different issues (such as fear of effects of emissions) and the application in that case appears to have been an actual one supported by, rather than a mere possibility which would be opposed by, the relevant local authority.
77. As to quantum if I had found in favour of the claimants, there is no direct evidence of the value of Oakwood Lodge in the market, since the claimants have not themselves sought to sell or obtained any valuation from agents with a view to sale, as distinct from reports in these proceedings.
78. The claimants relied on a report by Mr. Robert Paul of Strutt & Parker, whose opinion was that the open market value of Oakwood Lodge at the date of purchase was £540,000 (2/149). In oral evidence he explained that his opinion was that although some purchasers at that date may have been put off by the prospect of development at Copcut Rise, others would not and would be prepared to pay a price unaffected by that consideration. On the other hand in his view the possibility of development at Yew Tree Hill would be a deterrent to many purchasers, amounting to what he referred to as a "major blight" and resulting in a reduction in market value which he assessed at 10%. In the absence of that blight he would have valued Oakwood Lodge at £600,000, which of

course was less in any event than the Thorps agreed to pay.

79. The defendants relied on a report of Mr. Jason Clines of Halls, whose opinion was that the price paid by the Thorps (£625,000) was a fair indication of the market value at the date it was agreed, and that the possibility of development at Yew Tree Hill would not have had any material effect on this value (2/208).
80. For a number of reasons I would have preferred the opinion of Mr. Clines and found that the market value was £625,000. First, the weight of Mr. Paul's opinion was substantially undermined when it was shown that he had first expressed a view on valuation on the basis that the application for development at Yew Tree Hill was an established fact, which of course it was not at the date of sale, and that this would cause a fall in value of 10%. When it was pointed out to him that his valuation should be based on what was known at September 2010 when contracts were entered into he amended the text of his report but kept to the same value. In oral evidence he said the mere possibility of development would in his view have a depressing effect on valuation of the order of 10%.
81. In his report at para 3.9.5 he said:

“I am of the view that any prospective purchaser of the Property would have taken note of the Yew Tree Farm proposals, so that despite this not being submitted as at 2010 the existence of the planning proposals would have a serious effect on the value of the Property... for the purpose of this valuation I anticipate that there is a strong likelihood that the proposals will be granted consent. In that anticipation, potential purchasers of the Property will be highly likely to be deterred.”

This in my view shows that despite being reminded that he should look at matters as they were known in 2010, Mr. Paul was still doing so with hindsight. As at September 2010 there was no planning proposal for Yew Tree Hill, no planning application having been made. Insofar as it was known that there was interest in the site being developed, it was manifested only in that it had been put forward for consideration for strategic allocation in the JCS, and by that date the planning authorities had made known they were of the view that it should be rejected. There is no evidence that it was, or could have been, anticipated that notwithstanding this such an application would be made, or that if made it would be allowed on appeal. It is incorrect therefore to refer to the "existence" of planning proposals and unrealistic to say that in the circumstances at that date purchasers would have considered that there was "a strong likelihood" that consent would be given for development.

82. Instead, the possibility of development was as Mr. Clines said no more than "embryonic". If purchasers had considered the risk, they would probably be advised that it seemed unlikely the approval would be given, though no doubt the position could not be guaranteed and the views of the planners might change again in future.
83. Both valuers agreed that it was difficult to find reliable comparators for Oakwood Lodge because of its unusual nature and location. Those that were provided required extensive adjustment in order to derive a price for Oakwood Lodge, which was inevitably a matter

of art rather than science. Mr. Clines sought to analyse his comparables in terms of a price per square foot of accommodation, which Mr. Paul suggested was not useful though it is a basis of comparison (subject to adjustment for factors such as location) that I have seen in other cases and Mr. Clines said that he and other valuers routinely use. The ranges of values it produced however were such that it was difficult to derive any firm result from them. Mr. Paul referred to a number of properties as comparables, but his report gave no indication how he had used their prices to derive a value for Oakwood Lodge or, where he has included them because they were potentially affected by nearby development, how he evaluated that effect.

84. The key question is the extent to which purchasers might be deterred by the possibility of development. In that respect in my judgment such pointers as there are go towards Mr. Clines' view that any effect would be negligible. Firstly, as Mr. Paul accepted, it would be likely that any local valuer in 2010 would have been aware of the evolving strategic planning process, and of any effect it was having on buyers at the time in areas that might be identified for development. It was public knowledge, and the campaigns of opposition by SOGOS and its equivalent in relation to Copcut Rise in pointing up concern about development risk were widely known about and reported in the local press. The Thorps may not have been aware of them, but other potential buyers and local valuers and other advisers would have been, such that if buyers were likely to be put off, the effect in the market should have been already noticeable. And yet neither Knight Frank nor the mortgage valuer who acted for the Thorps made any reference to such an effect. Mr. Paul accepted that this was so, but could only account for the fact it had not affected the mortgage valuation by assuming the valuer had been negligent.
85. Both experts referred to a property called The Byre in Copcut Lane, close to the Copcut Rise development, as a comparable. It sold for £325,000 in July 2010 (before the formal application for Copcut Rise but at a time when it might have been anticipated), again for £383,000 in May 2011 (after the application and with the benefit of an estimated £50,000 of improvements) and again in February 2013 for £395,000. One cannot tell from that to what extent buyers had regard to the possibility of development on the first sale, but the subsequent figures support the view that the actuality of the planning application and even the commencement of the development have not had any significant deterrent effect since then.
86. Most relevant in my view was the evidence Mr. Clines gave about Old Pulley Well, a semi detached property in the small development immediately opposite Oakwood Lodge. That sold for £385,000 in December 2011, after the Yew Tree Hill application had been made but before it had been approved, and the adjacent and similar semi detached property sold for £425,000 in March 2013. Agents who valued the latter property told Mr. Clines they had made no adjustment for effects of the Yew Tree Hill development. Old Pulley Well is presently on the market again; Mr. Clines understood the asking price to be £465,000. These figures suggest that the actuality of an approved development at Yew Tree Hill is not adversely affecting prices of properties on Pulley Lane, supporting Mr. Clines' view that the mere possibility of such an application, at the time unlikely to have been approved, would not have done so in 2010.
87. Finally, the claimants put forward a claim for damages for mental distress caused by having acquired a property subject to disturbance by future development, which Mrs Thorp said she regarded as a nightmare, such that she could not wait to leave and had

spent countless hours on demonstrations and in other activities opposing the Yew Tree Hill development. The authorities Mr. Maguire cited, referred to in McGregor on Damages at para 47-043 were in relation to claims in deceit. Given that I have found against that claim on the facts, and no authority was referred to supporting such an award in innocent misrepresentation, which is the highest that on my findings the claimants' claim can reach, I do not think it right to express any view as to whether such damages would be in principle recoverable or, if they were, the amount I would have awarded if the claimants had succeeded.