



Expert Witness

Case Study

Contractual Dispute

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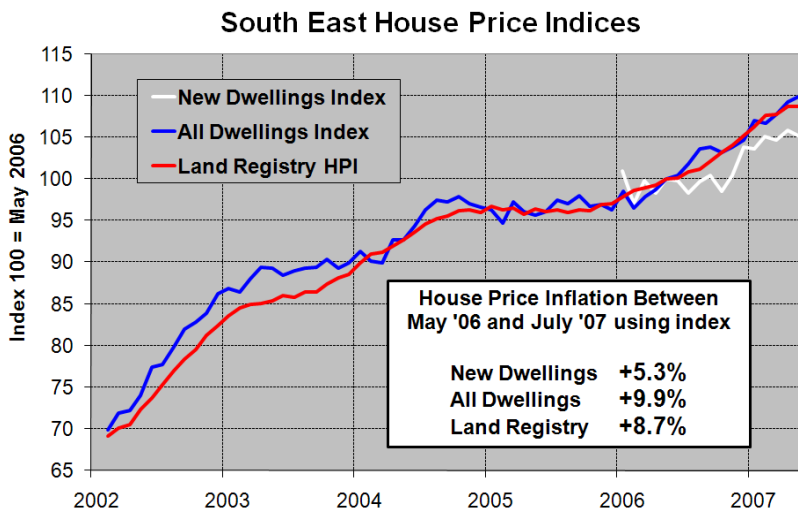


1: Background

A property developer purchased a property for £1.15 million in May 2006. Since the developer needed to obtain planning permission before any redevelopment, the purchase could not be completed until this had been granted. In order to protect the seller from losing out on any price rises, the contract specified that the final price would be £1.15mn plus an allowance equal to any house price inflation that occurred between May 2006 and the date that planning permission was granted. This finally came through in July 2007 and using the house price inflation index that was specified in the contract, this meant that the final price would be £1.15mn plus 5.3%.

2: Why the company came to us

There is no official house price inflation index in the UK. Of the 3 options available the inflation index used in the contract was the New Dwellings index for the South East.



Unfortunately for the seller, this index gave the lowest inflation allowance of the various indices that could have been used in the contract. The seller refused to settle for this and threatened legal action to get a higher inflation allowance.

The developer realised that statistical advice was needed as to whether the New Dwellings index was the most appropriate one to use.

Since we had the experience of using official statistics in commercial instances and the expertise to understand how the indices were calculated, we were engaged as an expert witness to advise on this dispute.

3: The Solution

After reviewing the facts we found that the contract had been correctly applied. However, it was clear to us that the new dwellings index persistently rose at a slower rate than other indices. In addition, it was a more volatile index with monthly changes that at least twice that of the other two indices. For these reasons, we stated that the New Dwellings Index was an inappropriate index to have been used in the contract in the first place.

Using elementary statistical methods, we showed that it was possible to have calculated in May 2006 (when contracts were exchanged) that there was a 28% probability of the outcome that came to pass actually taking place. In other words, had either party taken statistical advice when drawing up the contract, they could have avoided a costly legal dispute later.



4: The Results

The analysis clearly showed how whilst there was nothing wrong with the contract itself, the New Dwellings Index should not have been used to make the calculations for the contract. We presented our findings to both the developer and the seller. The statistical analysis we provided showing how the indices should have been calculated, demonstrated to both parties that they needed to have taken statistical advice in the drawing up of the contract. After digesting my comments, both sides eventually came to a settlement and avoided going to court to settle their dispute.