

# Comparables - Weight of Evidence and the Best Evidence

- Do not automatically rely on open market evidence
- Identifying the 'hypothetical tenant'
- Clear financial benefits with the right approach

It is widely known that there is an acknowledged hierarchy of evidence:

- Open market lettings
- Arm's length lease renewals or rent review agreements
- Expert determinations
- Arbitrators' awards
- A lease renewal determined in the court
- Hearsay

For confidential and expert advice, please contact:

## David Gilbert

01252 704514 or 07540 269 777 or email [dgilbert@gilbertevans.com](mailto:dgilbert@gilbertevans.com)

Less well known are comments made by Mr Justice Coleman in *Living Waters Christian Centres v Fetherstonhaugh* (1999) in relation to the relevance of transactional evidence and the degree of weight that should be attached to it. In this case, it was acknowledged that open market evidence is generally considered to be superior to other transactional indicators of value. However, the following statements were made in respect of the term 'comparable':

- It has to be treated as wide enough to cover any property that has any evidential contribution to make when assessing the value of the property in question.
- Whether the evidential contribution is substantial or only relatively small will depend on any differences in material characteristics.

There will be many situations where the 'material characteristics' of the property to be valued are such that there is a distinct lack of directly comparable transactional evidence. In such situations, especially those involving cases subject to arbitration proceedings, there is a real danger that a blinkered reliance on open market transactions above all other transactional evidence, may produce an outcome that is at odds with the realities of the market place. All forms of evidence, irrespective of where they appear in the acknowledged hierarchy, should therefore be considered. The degree of weight that should be attached to them will ultimately depend on how comparable and relevant they are to the case being put forward.

Gilbert Evans has faced many situations where open market evidence is at odds with other transactional evidence and relates to properties of vastly differing size/layout and location to the property under consideration. We understand the true meaning of the term 'comparable' and the importance of the 'hypothetical tenant'. We have successfully argued that less weight is attached to 'comparable evidence' if the 'material characteristics' are substantially different to the property in question, irrespective of where the evidence appears in the acknowledged hierarchy. This approach, coupled with our experience of adjusting for material differences in property types, has served our clients well.

The message is clear. Do not automatically rely on any evidence until the limiting factors associated with the 'material characteristics' of the property in question are understood and the true comparability of the evidence has been rigorously interrogated.