

TRIBIWNLYS PRISIO CYMRU VALUATION TRIBUNAL FOR WALES

Appellant: Gerald Eve LLP for Debenhams Retail Limited

Appeal property: Shop and Premises, 46 48 50 St David's Way, Cardiff, CF10 2UF

Appeal numbers: 681533600437/285NV17/1 & 681534939907/285NV17/2

The Matter Appealed against: 2017 Non-Domestic Rating List

Date of Hearings: 24 November 2020 and 17 May 2021

Appearances: Mr D Kolinsky, QC (Advocate)
Mrs H Edwards & Ms K Fieldhouse, Gerald Eve LLP (Expert Witnesses)

Mr C Ormondroyd (Advocate)
Mrs C Jones & Mr P Dalling, Valuation Office Agency (Expert Witnesses)

Date of Decision: 5 November 2021

Decision of the Tribunal: Appeals dismissed

Members of the Tribunal on 24 November 2020: Mr M L Mason (Chair), Mr K C Curry and Mr S Hennah

Members of the Tribunal on 17 May 2021: Mr M L Mason (Chair), Mr B D Fraser and Mr S Hennah

Tribunal Clerk: Mr R Williams assisted by Mr J Evans

Summary of the Case

1. The subject appeals arise from proposals challenging the Compiled List entry of the appeal property in the 2017 Non-Domestic Rating List at £2,080,000 Rateable Value (RV) and against a Notice of Alteration served by the Valuation Officer (VO) at £1,750,000 RV both with effect from the 1 April 2017.
2. The grounds of appeal as contained in the Compiled List appeal dated the 12 July 2019 were *'The Rateable Value be altered to £1 with effect from 1 April 2017. The entry and/or assessment of the hereditament is bad in law. The value is excessive, incorrect and unfair and should be reduced'*.
3. The grounds of appeal as contained in the appeal against the VO Notice of Alteration dated the 18 December 2020 were *'The Rateable Value be altered to £1 with effect from 1 April 2017. The rateable value shown in the Rating List by reason of an alteration made by the Valuation Officer on the 8 December 2020 was inaccurate. The entry and/or assessment of the hereditament is bad in law. The value is excessive, incorrect and unfair and should be reduced'*.

The Appellant's Case

4. Mr Kolinsky provided an opening statement regarding agreed facts and issues of dispute between the parties. He explained that the appeal property was located in Cardiff City centre forming a part of the original St David's Centre (SDC), which was developed in the early 1980s, along with a small extension and some refurbishment into the new development of St David's 2 (SD2) which opened in 2009. The appeal property trades over three floors with a tank and plant room located on the fourth floor. The total gross internal area of the appeal property is 15,441.20m².
5. He verified that the valuation approach was agreed between the parties on an overall basis where the rate per square metre was applied to the agreed area reflecting the advantages and disadvantages of the appeal property. The issue of contention was the rate per square metre to be adopted in the overall valuation.
6. The advocate referred to the basis of valuation as defined in paragraph 2, Schedule 6 of the Local Government Finance Act 1988, as amended by Section 1(2) of the Rating (Valuation) Act 1999 and submitted that for the purposes of the 2017 Rating List, the appeal property must be considered vacant and to let having regard economic conditions as at the Antecedent Valuation Date (AVD) 1 April 2015 and the physical state of the appeal property and its locality as at the Material Day 1 April 2017.
7. Mr Kolinsky confirmed that the appeal property's compiled list entry was originally entered the 2017 Rating List at £2,080,000 RV based on a rate of £135/m², however following an alteration, the VO has conceded a reduced assessment of £1,750,000 RV based on a rate of £113.50/m², whereas the appellant sought a further reduction in the assessment to £1,040,000 RV based on a rate of £67.50/m².
8. He clarified the main issues of dispute between the parties. The first issue was what was the state of the department store market in Cardiff as at the 1 April 2015. The appellant suggests that demand for retailers to occupy stores of the appeal property's size as a department store had drastically reduced, whereas the VO will contend that there was no evidence to suggest a decline in the market for department stores after the 1 April 2015, which was linked to the collapse of British Home Stores (BHS) in 2016 and therefore created a surplus of stores onto the market.
9. The advocate contended that when applying the economic condition as at the 1 April 2015, the seeds of that decline would have been apparent coinciding with the sale of BHS for a £1.00 in March 2015 along with the fact that department stores were grappling with the new relationship between space and sales caused by the influx of on-line sales which would have been apparent to parties during negotiations.
10. The second issue was what weight should be attached to rent review evidence. The VO would contend that there was no rental evidence to support the contention that the department store market had declined by the 1 April 2015. The VO however does not deal with the evidence which explains why they would not find the evidence of declining rents in the evidence available. All the evidence of rents comes from rent reviews and when reflecting the rent review process for department stores at this

time, it was quite apparent that the process was never going to produce evidence of declining rents.

11. Mr Kolinsky elaborated that there were two background points to be made towards rent reviews along with a specific answer. Firstly, he explained that almost all rent review for department stores were generated in the context of upward only rent reviews and secondly, in a rent review situation by the definition that the tenant was a sitting tenant, the dynamics of negotiation were fundamentally different from the dynamics of vacant and to let where the tenant was fresh to the scene.
12. He then provided a specific answer as to why there was no evidence of a declining rents in a rent review. He explained that up to the 1 April 2015, the rent reviews of department stores did not draw on any open market transactions as there was limited activity in the market for department stores before the 1 April 2015, and where activity did take place that information was confidential and was not available to those undertaking the rent reviews.
13. Consequently, in search for evidence, those involved in rent reviews had looked backwards to other rent reviews where there was a self-perpetuating body of evidence, which grew up in the rent review context that had not been tested in the market for many years and was becoming increasingly historic and detached from market reality.
14. The advocate suggested that it is was not fit for purpose to capture values in a falling market as it would not be possible to find evidence of falling rents if there were no transactions taking place. Also, if there were any transactions taking place, access to details of those transactions would be limited. He therefore opined that the VO's case, which was based on the lack of evidence regarding rental decline, does not grapple with the problem that you would not do that if there were no market transactions.
15. Mr Kolinsky highlighted a key piece of evidence specific to the appeal property which concerned a rent review determination for part of the store with a valuation date of 2014, which needed to be approached with caution for the reasons already indicated along with the additional reason that it assumed valuing an assumed store and not the store that needed to be valued by the Tribunal, which was based on a model layout which was understood to be particularly attractive in a town centre location with quality entrances over two floors not three. Therefore, assuming the store was much better than the actual store.
16. He commented on an independent report produced by Mr K H Whale BSc FRICS ACI Arb in respect of a rental determination on the appeal property, which provided a reasoned determination with a window into the deficiencies of the rent review process which confirmed that no open market evidence was available to the Independent Expert to provide any clear market lead parameters.
17. The advocate then highlighted a third point in that evidence of new stores with evidence of new lettings around the AVD that were not available during the rent review process. There was a debate between the parties as to what extent this evidence helps and how to deal with it. The appellant was of the opinion that there

was relevant market evidence which should be considered and the incentives negotiated reflect the balance of power in the market dynamics around this time and that the tenant was in a very strong position.

18. Whereas the VO will state that these rents do not help and will be characterised as pioneering rents which secure the tenant in order to facilitate development and was not a useful proxy. However, this point of view was not shared by those who were involved in the rent review process.
19. Mr Kolinsky also added that there was also a debate about the utility of the bespoke new evidence along with what it showed about the valuation produced by analysing those transactions. The VO has evaluated evidence in respect of Debenhams stores located at Wolverhampton and Newport and the values put forward represented values derived from fitted new units. However, in the context of a rent review, interest should not be in respect of fitted new units but in respect of shell units. Therefore, the relevant impact of this evidence on the state of the market was what they would let for as a shell, information which was missing and available from the rent review process if you analysed the rents. Consequently, if you examined what the VO submits as values, you realise that they were loaded with a substantial amount of cost that was referenced to the rateable fit out of a new store, which in the appellant's opinion was irrelevant for the purposes of a rent review and unhelpful for the purpose of valuing an old store such as the appeal property dating back to the 1980s.
20. He confirmed there would also be a debate in the evidence whether the appeal property was fitted out in 2009. However, the appellant states that none of the expensive items were replaced albeit there were superficial improvements of some of the presentation but the core rateable elements were unaffected.
21. The advocate therefore confirmed that there was a great debate between the parties regarding rent review evidence along with new evidence and how to adjust that new evidence.
22. Mr Kolinsky suggested that in the perfect world the best scenario would be that of a reliable valuation footprint for a large department store in Cardiff having regard to economic conditions at the 1 April 2015. He believes that scenario is fulfilled with the John Lewis store located in the 'swankier' part of the Cardiff city centre within the new SD2. It is a larger store at 26,176m² valued on an overall basis with a rate of £75m². The appellant believes that this was a reliable starting point for valuing the appeal property and it was accepted that an adjustment should be made for its larger size.
23. The appellant will suggest that within Cardiff's city centre the John Lewis store was in a better location whereas the VO will suggest that the appeal property was in a far superior location. It will also be necessary to consider quality with the appellant suggesting that the evidence available strongly supports the contention that as John Lewis was a new store benefiting from better fit, layout, vertical circulation, entrances and parking. Therefore, in comparison the appellant suggests that the appeal property's rate should go up for size as smaller stores have a higher rate for the implied quantum, down for quality as it is markedly less quality than John Lewis and then up or down for location.

24. The advocate then highlighted the fact that the appeal property was entered in the 2010 Rating List at a base rate of £110m², whereas the John Lewis store was entered at a base rate of £95m². However, in the 2017 Rating List the John Lewis store base rate went down to £75m² showing a reduction between the two economic dates of 1 April 2008 and 1 April 2015.
25. It was therefore interesting to reflect what if anything has changed and what impact there has been on the relationship between the appeal property and John Lewis. The VO seemed to accept that through the agreed values that John Lewis store had gone down by over 20% from £95m² to £75m² whereas appeal property had increased between the two Rating Lists from a £110m² to £113m², which would change the differential from 15.7% in 2010 to over 50% in 2017. He suggested that the outcome feels and looks wrong.
26. Mr Kolinsky also confirmed that there would be a debate regarding the utility of other pieces of evidence which are drawn from further afield from Cardiff or from stores potentially far less comparable to the appeal property than John Lewis.
27. In closing, Mr Kolinsky suggested that the Tribunal had the following questions to consider in relation to the John Lewis store in that what had changed in relation to size taking account the market; what had changed in relation to location; what has changed in relation to quality and what kind of relationship should be taken into account bearing in mind the differential was 15.7% in 2010.
28. Responding to a question from the Tribunal in respect of a fitted unit against a shell unit, the advocate explained that for the rating hypothesis, the valuation was of a unit that was ready for occupation and therefore there was a certain amount of infrastructure such as air conditioning, lifts, electrical supply, which is assumed to be present and carries a value. In a rent review, it was valued to shell excluding that infrastructure which would be counted in a rating hypothesis. Therefore, it can be value significant to move between rent review evidence and rateable evidence but to do so depends on the quality of the fittings that are assumed to be present in a rating context.
29. He continued to explain that in relation to new evidence it was when you examine the evidence produced in relation to the new lettings and you look at how the VO has expressed the value for those, surprisingly a significant amount of that value was attributable to rateable fit out and that would be irrelevant to rent review as it was valued to shell without that rateable fit out and also irrelevant to the valuation of a much older store where lifts, electrics and air conditioning have been there for over 40 years as in the appeal property. All the expensive items that drive up value would be old and of limited value.
30. Mr Kolinsky invited his first expert witness Mrs H Edwards to speak to her evidence in respect of valuation of the appeal property.
31. Mrs Edwards spoke to the value significant features of the appeal property in terms of entrances, layout and situation. She reported that the appeal property had three floors with a plant and tank room located on the fourth floor. She confirmed that it was of an irregular 'L' shape configuration and occupied a gross internal area of

15,441.20m². It was also disadvantaged by the position of escalators and gives a dysfunctional trading area partly due the fact that the floor area evolved in a piecemeal fashion rather than being constructed to that design.

32. She confirmed that the appeal property was incorporated into the SD2 shopping centre extension which opened in October 2009. During the construction process, Debenhams was required to hand back in excess of 10% of its sales space to the developer. On completion of the development Debenhams took on the new expanded store with the advantage that the new store had an entrance on the first floor into the new SD2 shopping centre.
33. Mrs Edwards highlighted the fact that the appeal property only had one first floor entrance into SD2 at a width of 5.45m and that its main entrance fronts into the original dated SDC, which first opened in the 1980s and when looking at the 1 April 2015, you are considering a store that had been open for approximately 35 years. She also confirmed that the appeal property had side and rear ground floor entrances.
34. Having provided a brief overview of the appeal property and its location within SDC and SD2, she reiterated that the appeal property only had one first floor entrance into SD2; it was a very dated and compromised store which had had little works in terms of fit from the date of construction other than to incorporate an extension in 2009.
35. She also confirmed that the appeal property was the only store which fronts into SDC whereas Marks & Spencer, Primark and Boots have their main frontages onto Queen Street, the main pedestrianised shopping street through Cardiff city centre, whilst also benefiting with rear accesses into SDC.
36. Mrs Edwards then spoke to a rent review that was carried out on the 16 June 2014 by Mr K H Whale BSc FRICS ACI Arb, approximately 9 months before the 1 April 2015 which she opined was potentially a valuable piece of evidence. The review clause allowed for upward only reviews with the rent remaining unchanged at £324,464 which equates to £127.55m² even though the award determined a rent below the level paid at £126.48m².
37. However, the issue with this review was that it was to be based on the hypothetical store and not the actual store. Also, the appellant had to assume or was required to assume under the review clause that the appeal property traded from two floors, when actually there were three floors and that the review clause required an assumption that there was a frontage consummate with a department store of this size which was equal both on the ground and first floors.
38. In the award, the Independent Expert found that the frontage of the first floor failed the test that was to be required to be assumed under the hypothetical store. In fact, the independent expert went as far to say that he felt the hypothetical store departed from the reality of what existed. It is for that reason, Mrs Edwards opined that there were questions to be raised as to the reliability of that award in what was actually there as opposed to the hypothetical store.

39. She then raised a further point of contention which compounded the issue of self-referential system of rent review evidence on which this review was based, as the independent expert stated that there was evidence available of new lettings which he was unable to access and which could have fundamentally changed his opinion of value and thus cast considerable doubt of the quality and reliability of the evidence available to him.
40. Mrs Edwards believes that this was an important point of contention as it was probably the first time that there has been an award that references the self-referential review evidence that was setting the market for department stores. Basically, the same pool of evidence being used in a five-year circular fashion.
41. A further important factor in the award was that the Independent Expert found no conditions for growth in June 2014 and accordingly he treated his valuation with caution and determined that the rent should decrease from £127m2 to £126m2 recognising that the market had decreased.
42. She suggested that the decrease in rent was not reflective enough of the decline in the market for all the reasons set out by Mr Kolinsky in his opening statement.
43. Mrs Edwards then continued by referring to the comparison of the John Lewis store having regard to location, quality and size.
44. Regarding location she provided the Tribunal with an overview of what existed when Debenhams first opened in the early 1980s when there were historic car parks, the old Central library and a thriving series of market stalls located to the rear and the side of the appeal property. It was accepted that the appeal property was well situated to benefit from footfall from the car parks, the Central library and market stalls and was a part of the main pedestrian flow to and from the City centre.
45. Mrs Edwards commented that the opening of the SD2 in 2009 changed the scene dramatically. As at the compilation date and material date of the 2017 Rating List and following approximately 6 months trading, Debenhams was not well established within SD2 and was surrounded by several vacant units. SD2 was a new shopping centre but in its infancy.
46. Since the 2010 Rating List and the material day of the 2017 Rating List several new retailers have located in the city centre such as Vivienne Westwood (October 2014), Jo Malone (November 2010), Crew (November 2011), Sea Salt (June 2016), Michael Korrs (December 2015), Vans (September 2011) and the White Company (June 2013). She emphasised that these were new retailers attracted to the city centre and not current retailers re-locating. These were high profile stores that were locating in Wales for the first time.
47. All these stores were located in the vicinity of the John Lewis store which was as a result of a target plan by the landlord to have high-profile retailers located at that side of the city centre in close proximity to the John Lewis store.
48. Mrs Edwards intimated that a scene had been set and that the situation was quite different in April 2010 as to what it was in April 2017, which has been recognised by

the VO in the Zone A rates adopted under the 2010 Rating List and the 2017 Rating List between SDC and SD2.

49. In support of her contention, she provided an example of units located in both St David's Way and the Grand Arcade where the adopted Zone A rates were as follows:
50. 33 St David's Way - 2010 Zone A Rate £2,340/m² & 2017 Zone A Rate £1,450/m² equalling a drop of by 38%.
51. 13 & 15 Grand Avenue - 2010 Zone A Rate £2,575/m² & 2017 Zone A Rate £2,000/m² equalling a drop by 22.33%. (Following RSA discussions, the original 2017 Zone A rate was £2100/m² but has since been agreed at £2,000/m²).
52. Mrs Edwards suggested that the reduction in Zone A rates supported her contention that the brand and retailing strength of the Debenhams store in the SDC was not as strong as that of John Lewis store located next to SD2.
53. She also suggested that the brand and covenant strength of retailers located around the appeal property was not as powerful as those located around the John Lewis store as was indicative of the landlord's target plan.
54. Mrs Edwards then referred to the Cardiff Promis Retail Report 2016 which states that SDC, the northern section of centre was anchored by the appeal property and the southern part was anchored by the John Lewis store. The report states that the two sections are defined by different characters in that SDC focuses on mass market and non-fashion retailers, whereas SD2 was a high fashion pitch and a prime location within the city centre. Again, this was a third-party view that the John Lewis store pitch was in a far better location than that of the appeal property.
55. Another point of contention was the fact that the John Lewis store had an underground car park which provided some 550 spaces with a lift from the car park accessing all four floors within the store along with stairs from the car park to the ground floor. The appeal property has no car park and SD2 car park was located closer to John Lewis than to the appeal property.
56. Regarding the quality of both stores Mrs Edwards commented that the appeal property was a very dated evolved store on 3 floors not an equal footplate in comparison to the John Lewis store which was involved at the conception of the SD2 development designed to meet and maximise its retail requirements and make optimum use of their retail space.
57. Having regard to the value for size, Mrs Edwards stated that it was a matter of fact that the John Lewis store was 11,000m² larger than the appeal property and therefore must be reflected as it was for the 2010 Rating List assessment and there was an inherent quantum in the differential between the rates adopted for John Lewis at £95m² and the appeal property at £110m².
58. She then referred to the rent review carried out by the Independent Expert in 2014 where reference was made to size and to the recent settlement of the Debenhams store at the Bull Ring, Birmingham, where an adjustment of 5% was made to reflect

configuration and size of that store, which was just over 19,000m² in size compared to the appeal property at 15,441.20m².

59. Mrs Edwards confirmed that she applied the award of 5% as her base and then in her judgement increased the amount of quantum to 15% to reflect the differential in size between the appeal property and the John Lewis store.
60. She then commented on the fit out in terms of percentage and how it was adjusted from the rating hypothesis and confirmed that she sought guidance from VO Rating Manual where it references a 0 – 10% addition to reflect fit out depending on the quality of the fit out and the age. In respect of the John Lewis, a store under 10 years of age, she had assumed a 10% adjustment for fit out in comparison to the dated and compromised appeal property where she has assumed 2.5% for fit out.
61. In her opinion and adopting a stand back and look approach, the evidence she finds the most useful was that of the award with regard to the uncertainty of the hypothetical store in comparison to the actual store based on the rent review evidence where the independent expert questioned that it did not provide an overall picture as not all evidence was available and therefore attached little weight to it.
62. Regarding other comparable evidence in Cardiff, she was aware of the letting of the store occupied by Matalan, 43/45 Queen Street, which was formerly occupied by Primark. The unit is 6,967m² in size and approximately half the size of the appeal property. Matalan agreed a 15-year lease from the 1 July 2014 at a rent of £1 million with the first 2 years rent free and when analysing and reflecting the rent-free period over the whole term of 15 years, you are looking at a rate of £116m². This property appeared in the 2017 Rating List at £985,000 RV based on a rate of £141.75m² and an appeal challenging the assessment remains outstanding.
63. As there was a scarcity of evidence, she has used this evidence as it would be remiss of her not to in arriving at an opinion of value. She has however attached little weight to this evidence as Matalan was a variety store and not a department store.
64. She also pointed out that in 2010 Rating List the store occupied by Matalan was valued at a rate 30% more than that of the appeal property which in comparison would have been valued at £77m².
65. In summary, Mrs Edwards submitted that the strongest piece of evidence was the settlement of the John Lewis store. As a valuer she had to consider how things have changed between the appeal property and John Lewis regarding their position, quality and the whole dynamics of Cardiff city centre and apply her opinion as to what the value would be.
66. She reiterated that the most significant factor that had changed between the material day of the 2010 and 2017 Rating Lists was location with the appeal property located in an inferior position in comparison to John Lewis which was located in a prime area of the city centre retail.
67. Responding to questions from the Tribunal Mrs Edwards confirmed that the appeal property does not benefit from car parking and that it was both dis-functional and

compromised due to the fact that it has evolved and was not purpose built; it has an extension that had to be incorporated; pillars and escalators prevent clean open sales areas in which to trade and from the entrance in St David's Way the ground floor 'kicks back' behind smaller units which front St David's Way.

68. Responding to Mr Ormondroyd in cross examination, Mrs Edwards replied as follow:
69. The parties were applying the overall value to the gross internal area with a unit rate reflecting all the appeal property's features with the main features being location, size and quality.
70. The issue between the parties was what evidence should be used to drive the overall rate and what weight should be attached to the different pieces of evidence, the three main groups of evidence being rent on the appeal property, other rents and other assessments.
71. The rent on part of the appeal property was concluded by an Independent Expert in a rental determination on the 23 April 2015, 23 days post AVD determining a slight reduction in the unit rate by a £1.00, however, the review clause was upward only with the rent remaining at the same level. However the rent review date was the 16 June 2014, approximately 9 months before the 1 April 2015.
72. Regarding the unit rate determined by the Independent Expert, she confirmed that she objected to using that unit rate as a basis of value, as the award was valuing a store on certain assumptions which differentiate to the actual store and more fundamentally the process was unreliable as it did not refer to new lettings and to other sources of evidence.
73. The Independent Expert valued the hypothetical store on an assumed size of 15,329m² against the actual store which measured 15,441m² therefore no adjustment was required and both the hypothetical store and actual store were located in the same position and therefore no adjustment was required either.
74. As far as the frontages are concerned there was no difference on the ground floor as it met the test of the hypothetical store. However, an adjustment was required on the first-floor frontage as it significantly failed the test.
75. The number of floors would require an adjustment as the actual store would have a lower rent than the hypothetical store as the frontage and the number of floors on the actual store and its position were worse than the hypothetical store.
76. Fit out would have to be considered as the hypothetical store was valued to a shell rent where the actual store for rating purposes was valued to a fitted unit therefore suggesting that the actual store would have a higher rent value than the hypothetical store valued by the Independent Expert.
77. Whilst the Independent Expert was aware of the general dynamics of the market, he did not have the evidence to back up where he felt the market was. In his award he referred to rent review evidence and the fact that it was self-referential and that a small body of evidence was being used time and time again.

78. Whilst the Independent Expert made no reference to lettings on small shops, as that market had a different dynamic of supply and demand to the market of large shops, she believed that small shops provided a good indicator of the relative strength as there was a larger churn of reviews and transactional evidence available of small shops, which provided a picture of the strength and the health of retail in a town or city centre.
79. Whilst there was a different valuation and market approach between unit shops and large shops, comparison can be drawn from small shops in that it was indicative how a part or prime area of city centre was performing. Whilst it was an entirely different market to that of large shops, small shops gave an indication as to the health of an area within a city centre.
80. She reiterated that she was highlighting the relative strength of retailing within parts of a city centre and not the overall level of increase or decrease in small shops compared to large shops. It was simply used as a barometer as to where the relevant strengths of retail were located.
81. Whilst the Independent Expert made no reference in his award to rents passing on small shops, it does not prohibit a valuer from having regard to that information in making an opinion on the health of retailing in a town centre.
82. Her issue with the award was the evidence that the Independent Expert considered and its reliability as it was self-referential and the fact that he had no access to the new letting information.
83. A valuer makes a subjective judgement and adjustments where necessary.
84. She believed that had the Independent Expert been made aware of the transactions involving the lettings of the stores in Birmingham and Leeds he may have arrived at another decision in respect of the award.
85. In her opinion the weight of the John Lewis settlement in Cardiff far outweighs the evidence in respect of the award and therefore she attached little weight to the award.
86. In respect of other rents, she was very nervous in the weight attached to the Matalan store as it was half the size of the appeal property and was a variety store.
87. Department stores generally offer their own goods for sale along with concessionary units, who also have their own shops located on the high street. It was a traditional way that a department store operates.
88. Consideration had been given to the rental market of department stores and she had had regard to the Matalan store, however in her opinion the strongest evidence available was that of the settlement of the John Lewis store, which was a far more comparable piece of evidence to the appeal property.
89. She attached little weight to the rent passing in 2014 on the Next store, 80-88 Queen Street, as the rent was 3 years prior to the 1 April 2015 and reflected a small increase

from the 2007 rent review. From the review in 2012 up to the award in 2014 it was recognised by the Independent Expert that there was a declining market.

90. In respect of Matalan, 43-45 Queen Street, the lease began on the 2 July 2014 and was let on a fitted basis, which analysed to £116m² based on the assumption that the store was fitted out with no adjustment to make on account of a new tenant having to fit out. However, she accepted that if there were an adjustment for fit out the rent would analyse to higher figure than £116m². Accordingly, she has treated the rent passing on Matalan with caution.
91. The large shops located in Queen Street are under appeal and are yet to be discussed.
92. The appeal property rent was based on self-referential rent review evidence and would be the same for the other Debenhams stores cited by the VO in its evidence. She commented that the new letting evidence was not available to the rent review surveyors to consider. If it had, she contended that it would have fundamentally changed how the rent reviews were settled where in majority of the cases there were upward only reviews contained within the leases.
93. In respect of assessment evidence, she confirmed that the size of the John Lewis stores located at Oxford and Cheltenham were in the region of 13,000m² whereas the subject property was in the region of 15,000m² and therefore no significant adjustments would have to be made to the rate per square metre. Also, as the two stores were both new and purpose built, they would reflect a higher rate per square metre and therefore she attached little, if no weight, to those settlements.
94. Having regard to the VO Rating Manual, location was the most important consideration whilst contemplating location within a city centre. For example, John Lewis store Oxford was located within a brand-new development in comparison to the appeal property which was located within a dated development which opened in the 1980s. Effectively consideration should be given to location by town and then further consideration for location within that town.
95. Whilst Cardiff was ranked higher than Oxford and Cheltenham within the Promis Retail report, the appeal property was located within a far inferior position to the John Lewis stores located within Oxford and Cheltenham.
96. Regarding the size of the John Lewis store Cardiff, an addition of 15% to reflect quantum was based on subjective valuer judgement having regard to the award of the Independent Expert where he made an adjustment of 5% for size and configuration having regard to the comparable of Debenhams store in Birmingham.
97. She has also made value judgement having regard to the 2010 agreed assessments where an inherent reflection of quantum in the differential between the appeal property and the John Lewis store Cardiff was reflected in the rate per metre square at £95m² and £110m² respectively.
98. In respect of location and using valuer judgement she has subtracted 20% having regard to the movement of Zone A.

99. The main prime for Zone A was from the crossroads from Grand Arcade leading down towards the John Lewis store where it then tailed off.
100. Whilst neither the appeal property nor the John Lewis store was surrounded by the prime Zone A rents, the rents around the Grand Arcade were to be agreed at £2,000m2 where the rents within perimeter of SD2 around the Hayes were yet to be settled as parties were awaiting further information from the landlord. She also explained that the units entered at a Zone A of £1,350m2 were poorly located beneath the first floor level entrance to John Lewis behind the escalators.
101. Discussions are ongoing regarding the Zone A levels of value on the first floor and there should be movement from £1,700m2, however it must be remembered that the appeal property has one entrance on the first floor whereas John Lewis has an entrance on the ground floor as well as one on the first floor.
102. The letting plan around John Lewis was for high brand high fashion retailers and as a consequence there was a 20% difference for location between the appeal property and the John Lewis store.
103. As per the Promis Retail Rankings report vacancies within SDC around 2015 were decreasing in comparison to SD2.
104. As at the 1 April 2015, the retailer Swarovski relocated from Cathedral Walk to the Grand Arcade. Also, as at the material day, a letting plan produced in May 2017 showed several vacancies within Cathedral Walk. She had however no documentary evidence to support her contention.
105. The Promis Retail Rankings report refers to SDC and SD2 having two distinct sections with the appeal property located at the north section and John Lewis located at the south section. The north section attracted mass market value branded fashion whereas the stronger pitch of the south section surrounded John Lewis with high end fashion retailers.
106. The rental evidence provided by the VO for the units at 13 & 15 Grand Arcade supported higher levels of Zone A values in comparison to St David's Way or Cathedral Walk.
107. The appeal property does not have a frontage onto the pedestrianised area of Queen Street and as a consequence the pedestrian flow through SDC does not necessarily pass the appeal property, whereas the John Lewis store benefited from pedestrian flows from bus stops located to the side and rear of the property with an underground car park.
108. She did not accept that the appeal property sits well between the old traditional prime area of SDC and the prime area of SD2 and that it was used as a walk-through route for pedestrians. Pedestrians would rather enter SDC via the Queen Street entrances to Boots and Primark, travel through the stores and then turn in an easterly direction and travel towards SD2 completely by-passing the appeal property located in the other westerly direction.

109. Whilst the partial refurbishment to incorporate the extension into the appeal property was in 2009, she was unaware that a new tank and generator was also installed at that time. However, regard must be given to the fact that the appeal property was a 35 year old compromised store and as a consequence a degree of repair had taken place over the years.
110. The only physical difference between the 2010 and 2017 Rating Lists was the advent of 10 new occupiers to SD2 when it was trying to establish itself as the prime retail area of the city centre.
111. The new occupiers around the appeal property in SDC around the same time were weaker in calibre and convenance strength to the new high brand retailers in SD2.
112. The car park at John Lewis was present at the material day of the 2010 Rating List and therefore would have no change in the relativity between the Rating Lists.
113. In respect of size, the John Lewis store was significantly larger than the appeal property and therefore should be reflected. She opined that the market for large department stores had become weaker and therefore an adjustment of 15% to reflect the differential between the adopted 2010 rates would be appropriate as an element of comparison.
114. Regarding location she has used the rental evidence of small shops as a barometer to reflect the health of respective pitches. As referenced by the VO, the change was in the region of 38% between the 2010 and 2017 Rating Lists and was a guide on the indication of travel.
115. Albeit there was one settlement, several appeals on large stores in Cardiff remain outstanding. Accordingly, there was no established tone at this present time.
116. She has utilised the settlement in respect of John Lewis at £75m2 as a starting point to arrive at her opinion of value that the appeal property should be entered at a rate of £67.50m2.
117. In re-examination by Mr Kolinsky, Mrs Edwards confirmed the following:
118. She opined that had the Independent Expert been privy to information regarding confidential transactions being available at the date of his award, he would have in every likelihood arrived at a different outcome.
119. Also, the Independent Expert accepted that had new letting information been available to rent reviewers practitioners they may have arrived at different judgements towards current market values.
120. Regarding the 'bigger churn' of small shops there was more evidence available of open market letting transactions rather than large shops which were subject to rent reviews with a nil increase and had not been tested in the market.
121. In respect of the open market rent review for Next, the rent was agreed in February 2012 over 3 years before the AVD showing only an increase from £1.5 million to

£1.55 million, reflecting a slowdown in the market. Also, the Independent Expert in his report recognised a decline in the market and accordingly she attached little weight to this open market rental evidence.

122. Mr Kolinsky invited his second expert witness Ms K Fieldhouse to respond to evidence from the VO and to provide an overview of the differing approaches by the parties along with her observations.
123. Ms Fieldhouse informed the Tribunal that the key differences in approach between the parties are identified under the following issues:
 - a) the approach of dissecting the VO's evidence to fitting out and relevance to the appeal property;
 - b) the value of new letting evidence; and
 - c) the value of rent review evidence.
124. Regarding the issues concerning rent review evidence, she clarified that the evidence submitted by the appellant explained the reasoning behind the 'disconnect' between the rent review market and the real world. It was clear from the compelling body of evidence and the new lettings available that it was not appropriate to consider rent reviews as a reliable means of arriving at RV.
125. The rent reviews represent a self-referential body of evidence, reliant upon previous review settlements, as opposed to letting evidence and therefore were unable to react to market changes, or at least very slow to do so. In particular it would be wrong to reject the evidence of rents struck in the open market in preference to rent reviews which are not. The hierarchy of evidence in the VO Rating Manual and case law all suggest that new letting evidence should always be preferred even when significant incentives need to be analysed and there were good reasons in the present case to respect that guidance.
126. Within the independent expert's report, he stated:

I am very clear that the absence of such information and knowledge was not present amongst rent review practitioners dealing with reviews in the period leading up to 2015, but had full knowledge been available then there is every probability that some settlements would have been negotiated, determined, or awarded at lower levels than have actually occurred.

I consider that the strength of the negotiating position of the parties to a letting to be relevant. Whilst there may have been competitive tension in terms of tenant demand up to 2008, it is evident that that by 2014 such tension had evaporated leaving the tenant in a strong position.

I did so in determining the rent of Debenhams at Cardiff as at June 2014 (the Determination was published in April 2015), and found clear evidence of drastically reduced demand from retailers who would seek to occupy stores of the size customarily used as a department store. It was very clear to me that the dynamics of the market were changed by mid 2014, but that it was less clear whether rent review

settlements, awards or determinations took account of such change as the transaction evidence was scarce.

127. Ms Fieldhouse believed that when the Independent Expert wrote his expert determination of the appeal property in April 2015 around the AVD, he felt that the market had fundamentally changed:

My extensive investigations and discussion have provided no grounds to suggest that, as a generalisation, conditions for rental growth in the department store sector existed in 2014. The sector as a whole was cautious and would consider acquisitions of strong opportunities where capital commitments could be kept to a minimum.

128. The Independent Expert wanted to be able to value by reference to transactional market evidence and he felt that without market evidence any valuation, including inevitably his own, was subjective saying:

The limited evidence that exists relates solely to historical rent review transactions conducted by experienced practitioners and frequently determined either at arbitration or by Experts determining rental value. As a consequence transactional evidence is generated by a continuing cycle of rent review transactions without the assistance of any clear market lead parameters.

Consequently the assessment of rental value is by necessity subjective and, as the passage of time continues without any market evidence, it becomes highly so.

129. The Independent Expert was under the impression he was unable to refer to new letting evidence as he believed there were no new market lettings which would help him in deriving value. Nevertheless, those transactions were available however they were wrapped up in confidentiality clauses and shrouded in secrecy. He stated:

The market for department stores is also a mature one with most of the UK's major retailing centres hosting at least three of the major department store operators. My research suggests that few new opportunities have arisen in recent years, the exceptions being John Lewis' anticipated arrival in both Birmingham and Leeds. In each case I understand that John Lewis occupation will not be on a conventional market rent lease although I am advised that the details of each transaction are subject to confidentiality.

130. Ms Fieldhouse opined that there was every reason to conclude that the Independent Expert was representative of those in the review market, certainly those like him who were independent and those on the tenant side, in bemoaning their inability to draw on new letting evidence to re-calibrate the review market for what he had correctly perceived as a drop in demand. She does not consider that there was any ambiguity in the Independent Expert's desire to be able to re-calibrate the rent review market to the transactional market in the passages above, but that he just did not have the right information in what was a very secretive market.

131. She believed it was the VO's failure to understand this point which was critical to why the VO undervalues new letting evidence and over values rent review evidence. The VO believes the market chose not to have regard to new lettings whereas the

Independent Expert showed that the review market was unable to have regard to new lettings. She believed that the VO was mistaken in its interpretation throughout the report. The VO expresses it its final paragraph of its conclusion saying the review market was giving either *“very little weight to the new letting or by offsetting the capital contribution against the fitting out costs”*

132. The Independent Expert was one of perhaps a dozen people active in the review market for department stores since 2010 and one of only two credible active third-party experts or arbitrators. As far as she was aware, the VO had never negotiated a rent review and certainly not one on a large shop.
133. Accordingly, it is for the Tribunal to decide if it gives more credence to the Independent Expert writing at the 1 April 2015 and saying he wanted to be able to reset the market by having reference to new lettings to remove the “subjectivity” of the reviews which constantly recycled evidence from earlier reviews, but that he just did not know about new lettings.
134. Or consider the VO’s interpretation to be correct in that review surveyors knew about new lettings but did not give them much regard. For the VO’s interpretation to be credible the Tribunal would have to disregard the precise basis on which the Independent Expert eloquently expressed himself in the appeal property award written at the time.
135. It was her assessment that a review market which was only recycling old evidence in arriving at review determinations was fundamentally unable to properly reflect a downwards moving retail market. It was also her view that the market can only re-set by looking at new lettings, a position held by the Independent Expert at the time.
136. The VO seems to believe the review surveyors would be able to reflect a falling market without having recourse to new lettings and makes no explanation of how this was to happen without evidence and somehow thinks the long experience of the review surveyors enabled them to circumvent the evidence requirement. The VO’s belief in reviews to show a proper reflection of the market for large shops means that the VO can therefore place reliance on review rents.
137. Ms Fieldhouse does not believe the VO was correct. If reviews cannot reflect the market without having reference to new lettings and the reviews did not refer to new lettings, she considered that the reviews should carry little weight in determining rateable value which was supposed to reflect the higgling of the market and the value of the property vacant and to let in the applicable market conditions.
138. She was concerned about where rent reviews would apply both where a rent review was upwards only as well as to rent reviews which were upwards/downwards. The rent review surveyors dealing with the upwards/downwards reviews did not have access to any better and more reliable evidence in order to be able to re-calibrate levels of value. Their evidence also only came from other reviews and as there were only a handful of upwards/downwards review leases, the evidence came primarily from upwards only review rents. If the property was of a size and configuration where there was really no market and none were ever re-let; they did not have access to evidence which reflected the reality of market conditions.

139. In a vibrant economy and with a successful business model, the cycle of reviews creeping ever upwards may have been sustainable. Following the recession of 2008/9 and in the face of ever greater pressure on department stores from online sales where margins were already low and costs were creeping ever upwards, a review market was not designed to re-set itself and the business was not sustainable. The impact of this lack of sustainability would not be immediate as shops continue to trade as long as sales covered the variable costs of staffing etc even if trade did not cover both variable and fixed costs. Ultimately the parent company runs out of money and administration ensues. The ultimate position was what is seen now; virtually all the department store sector closing shops, downsizing and most Debenhams, House of Fraser, Beales have business failure. The failure of rent reviews to reflect the issues was partly responsible for the position the sector was now faced with. The signs of the problems which in fact emerged were apparent at the 1 April 2015 as was clear from the market commentaries at that time, the clear signs that department stores were struggling, the very limited number of open market transactions and the analysis of those transactions which were in fact available.
140. Regarding the materiality of new letting evidence, she opined that new letting evidence was always considered as being the top of the hierarchy of evidence and not rent review.
141. She explained that from a perspective of arriving at a rating assessment it was accepted in the VO's Rating Manual which details that rents of new lettings should generally be regarded as being the most reliable category.
142. In the context of new letting evidence needing adjustment, she explained that in the case of new large shop letting evidence there were always significant capital contributions which needed to be considered. This was however not a reason not to have regard to the new letting evidence which was supported by the case of *Lamb v Go Outdoors Limited (2015)* where the member P D McCrea states:
- Open market lettings (rents) must always be preferred to other forms of evidence. I accept that the judgment as to weight is a matter for the valuer rather than applying legal precedent. But I would emphasise how important it is in the market conditions in 1 April 2015 to focus on transactions in the market rather than rely on an evidence base which is demonstrably drawn from an earlier period (i.e. the body of rent review evidence).....I agree that adjustments are required but do not accept that they render this contemporaneous evidence of a (new) letting in the open market any less valuable.*
143. Accordingly, she reiterated that new lettings sits at the top of hierarchy of evidence.
144. Regarding the VO's approach to fitting out and its implications on new lettings analysis, she has had to analyse two Debenhams properties located in Wolverhampton and Newport both of which were new lettings close to the 1 April 2015. The transactions were structured with a headline rent with an additional capital contribution paid to the tenant in each case, which the VO has then analysed.

145. Ms Fieldhouse confirmed that in the Debenhams Swansea appeal, the new letting evidence feeds into the valuation approach and her colleague's valuation of that store draws upon the analysis from the Debenhams store in Wolverhampton.
146. She also confirmed that in the Swansea appeal, the VO had undertaken its own analysis of the Debenhams stores in Wolverhampton and Newport and that she had carried out an exercise based upon looking at the VO's analysis of those transactions.
147. Ms Fieldhouse explained that the valuations the VO had produced reflected a fitted property, so the rate per square metre that was being extrapolated was on a fitted basis where the value of the fittings depended on age i.e. the older the fitting the lower the value. Accordingly, when starting with a shell rent to arrive at a fitted rent on an old property you may make an upward adjustment of 2.5% to reflect the old fitting, which the appellant believed was appropriate in respect of the appeal property.
148. Regarding new properties you would make an addition of 10% to the shell rent to reflect the fitted status of the properties.
149. The issue with regard to 2017 Rating List was that there has been more focus by the appellant on the new lettings as it was felt they were the only ones which can actually reflect the drop in the market.
150. Consequently, there had been more focus on the additions for the fittings with the VO deciding to revisit the additions and consequently wants to derive the value of the fitting element from the cost of the actual fitting, which it considered to be rateable fittings.
151. Therefore, the VO had required Debenhams to provide itemised fitting out costs for all its new properties and from this information the VO had derived a lump sum for the cost of which it considered to be the cost of rateable fitting out in each case. However, the VO had failed to require the same information from John Lewis on an itemised cost basis to derive rateable fittings. If that information was available, the appellant had not been given access to it.
152. When looking at the new letting derived figure that the VO was utilising, the appellant needed to be able to compare that information to an older property in order that the appropriate adjustment can be made for fittings. In essence taking the fitting addition off the newer unit to get back to a shell and then making an appropriate adjustment to add it back in for the old fitting for the old unit.
153. She contended that this issue was important in respect of the appeal property as the VO had placed reliance on some assessment evidence which was derived from new lettings namely the John Lewis stores in Oxford and Chelmsford.
154. The appellant has concentrated on the John Lewis store Oxford as it was where the VO had sought to make a particular comparison with the appeal property, where the John Lewis store Oxford level of value was £100m2.

155. Therefore, what has to be worked out on the John Lewis store Oxford was what element of the £100m² that has been agreed relates actually to the fittings and what element relates to the property.
156. The appellant believed that the VO had failed to adjust appropriately for that fitting element and therefore it was required to unpack the fittings in order to extrapolate from that £100m² to work out what the core or shell property value was in Oxford in order to make a satisfactory comparison to the appeal property.
157. As John Lewis was not required to provide information in respect of the actual cost of fittings in Oxford, the appellant has had regard to the two new lettings of the Debenhams store in Wolverhampton and Newport, where the appellant had provided the VO with the itemised fitting out costs, which the VO has used and derived a lump sum for fitting out to be used in the cases of Wolverhampton and Newport.
158. As the VO has not made it explicit in the valuation how much of that value related to fitting or how much to the value of the property, the appellant has tried to unpack that information.
159. With regard to the Debenhams store, Wolverhampton the appellant has de-capitalised the lump sum used by the VO to arrive at a rental value for fitting out element at a rate per annum of £327,593, which when divided by the area of the said property arrives at a rate £37.75m² purely on the fittings.
160. She also pointed out that the shell and core of the said property was only valued at £27.25m² which indicates that the VO was putting a substantially higher amount on the fittings than what was ascribed to the property.
161. The same exercise was carried out in respect of the Debenhams store Newport and again by utilising the VO's fitting out element it arrives at a rate of £32.44m² which was the de-capitalised cost of the fitting element on a per square metre basis.
162. Therefore, a substantial amount of value was placed on fitting on new letting analysis arriving at two figures of £37.75 and £32.44, which when taking an average of those figures arrives at £35.10m².
163. Accordingly, it must be assumed that the VO was consistent in its valuation of John Lewis implying that the fitting addition to Debenhams shows an average of £35.10m². It was then reasonable to assume the addition of £35m² should extrapolated from the Debenhams stores in Wolverhampton and Newport and then use that fitting addition to extrapolate values in Oxford.
164. Ms Fieldhouse confirmed that she had made one further addition based on the assumption that John Lewis was of a higher specification than the appeal property and accordingly she had made a 5% uplift to £35.00m² say £37.10m² to reflect the John Lewis fitting at a higher superior quality.
165. Therefore, what has been extracted from the actual cost was a £37m² element of the total value that the VO had placed on John Lewis, Oxford for fitting, which can be derived by deducting from the shell or the body of the building costs by deducting

£37m2 from the agreement of £100m2 to arrive at a basis for a shell property at £63m2.

166. Accordingly, to adjust back for the fitting out of the appeal property you are required to adjust upwards, however as the fitting at the appeal property was nearly a 40-year-old, she had made an upward adjustment 2.5% to reflect a basis of £64.57m2.
167. Hence you then have the standard fitted base rate of the appeal property at £64.57m2, which reflected the location of Oxford, and which should be used as the base level before making adjustments for the various dissimilarities between all the locations such as specification of property, quality of floor layout, number of floors, proximity of parking, location within a town and then the adjustment for fitting and then making an adjustment from Oxford to Cardiff.
168. Therefore, when considering and weighing up the positive location of the appeal property against its disadvantages, she arrived at a value neutral basis by comparing the John Lewis store Oxford in its shell basis, plus 2.5% for fitting at £64.50m2 with the appeal property having made all other adjustments.
169. In clarification of points raised by Mr Kolinsky, Ms Fieldhouse confirmed that her analysis was derived from new lettings and that there was no evidence available of new letting transactions which were shrouded in secrecy and covered by confidentiality.
170. She also explained that rent reviews were normally settled on a shell basis and if you were valuing an older property, as was the case with the appeal property, you would make an addition to the shell with a percentage increase to reflect age.
171. Ms Fieldhouse also added that the adjusted rent for the fitted unit provided by the VO for Debenhams, Newport at £72.45m2 did not reflect the proportion relating to the shell element as it had not been broken down.
172. She concluded that in respect of Debenhams, Newport she had calculated the core or shell part of the building at 56% valued at £42.55m2 and not the fitted element.
173. Responding to Mr Ormondroyd in cross examination, Ms Fieldhouse replied as follows:
174. She agreed that the valuation approach was on an overall basis where the rate per square metre was applied to the agreed area reflecting the advantages and disadvantages of the appeal property including rateable fittings which form a part of the hereditament.
175. She also confirmed that if the fit out of one building was newer or of higher quality then that implied that the hereditament was newer or was of higher quality, which was one of the advantages or disadvantages to be reflected in the overall value between two hereditaments.
176. The way that the advantages and disadvantages were to be assessed was by application of value judgement to all the evidence.

177. She had adopted the percentage adjustments made by the VO throughout the case. The overall judgement for adjusting from a new letting was clearly incorrect, where the VO had added 44% for fitting by using actual costs to derive the value of the fittings.
178. Regarding John Lewis, Oxford she has had to extrapolate from actual fit out adjustments used on the Debenhams stores at Newport and Wolverhampton, as the VO had not provided a breakdown of costs used on value in respect of John Lewis, Oxford, and therefore she had assumed that the VO had been consistent in its approach to fitting out costs.
179. She confirmed that she had adopted the John Lewis, Oxford fitted value of £100m² which £63m² of the figure related to property. Accordingly, she had utilised £63m² as the base figure to be applied to the appeal property.
180. She disagreed with the VO's approach of taking a global view which suggested that the advantages or disadvantages of both the John Lewis, Oxford and the appeal property balance out to arrive at a similar rate, as it does not take into account the massive increases in fit out values which the VO was applying when valuing new letting properties.
181. The fundamental process of valuation was that you value as you devalue. You cannot devalue with a cost base and then value with a percentage addition.
182. It was not however just valuer judgement when the VO had analysed the rent using actual costs and therefore that cannot be seen as to be valuer judgement.
183. The cost base figure had been based on what the VO had used in the two rents which have been analysed.
184. In each case you need to get to the shell value in order to make the appropriate adjustment for the fit out. In conventional terms it was accepted that you would make a 2.5% addition for an old property and 10% for a newer property. The VO however had not done that regarding new lettings in the 2017 Rating List where the VO suggested that the addition was going to be much more. Accordingly, she suggested that you require a three-stage process where you need to work out if it was a new letting property and that the VO had made actual cost additions, which you then need to deduct to get back to your shell and then you can make a percentage addition to adjust the shell on the older properties.
185. The VO had not devalued the rents with a 10% addition as they had been devalued with a cost base approach. In order to arrive at the shell basis, you had to look at how the rents were devalued.
186. If you had arrived at a cost basis in your analysis on a new property, you cannot deduct the value of the fittings on a percentage basis as you were not doing the same thing on the new property in order to get back to the shell basis.
187. She suggested that it would appear there was a 'closed shop' with regard to rental analysis on John Lewis properties which only the VO was privy to, and it was the

VO's view not the appellant's that the fittings on John Lewis, Oxford were far more valuable than the appeal property. The difference of the value on John Lewis, Oxford was 36% which was attributable to fitting.

188. The appellant was of the opinion that a value on a new property was between 2.5% – 10%, however when valuing a new property on a cost basis approach you deducted the cost in order to extrapolate the old property with a percentage addition to the shell.
189. The VO had extrapolated a fitted value on a property where it used actual fit out costs, however they had not used fit out costs just simply by deducting a 10% addition off for fittings. The VO was not devaluing as it is valuing.
190. The VO had derived a cost base valuation to the fitting element of new lets.
191. The appellant supplied the actual fit out costs, which had been used to analyse the rents and then those fit out costs must be deducted to arrive at a shell basis.
192. In re-examination by Mr Kolinsky, Ms Fieldhouse confirmed that it was the VO who was attributing value to the cost of fit out.
193. In response to a question from the Tribunal, Ms Fieldhouse confirmed that in every case the appropriate approach was that the fit out should be separated from the rent in order to arrive at a shell basis, in order to add an appropriate addition for the alternative property you are valuing, as she had done with John Lewis in Oxford by applying it to the appeal property.
194. At the continuation in the hearing on the 17 May 2021, Mr Ormondroyd invited Mr Paul Dalling to present his evidence as an expert witness focussing on a wider national picture rather in respect of the appeal property.
195. Mr Dalling explained that his evidence took account of all evidence that was available to him and letting it fall to its weight. This considered approach took account of initial lettings, lease renewals and rent review evidence and was thus consistent with the approach developed in *Garton v Gunter (VO) (1969)* and relied upon by rating practitioners operating in both private and public practice.
196. He implied the appellant's position to exclude rent review evidence had removed an important contribution to the basket of evidence. In support of this he referred to the following extract of *Lamb v Go Outdoors (2015)*:

Lotus does not impose a straight-jacket on the process of valuation, and that in considering whether the actual rent was a good indicator of value, the other available evidence must also be looked at. Such evidence may confirm the level of value indicated by the actual rent on the subject hereditament or it may cast doubt upon it.

197. In light of this Mr Dalling explained that the VO will maintain its position which was to consider rent review evidence, particularly rents that have been agreed between parties close to the 1 April 2015.

198. He accepted that whilst some rent review might be the subject of adjustment to reflect matters such as “unusual or onerous” lease terms, it was generally clean evidence because they were agreed between landlord and tenant as being indicative of what the open market would bear. He added that these types of rents were not complicated by incentives such as rent-free periods, capital contributions and pioneering allowances.
199. As a corollary, Mr Dalling said it was not the VO’s position to jettison from its basket of rental evidence from new lettings and rent reviews. Whilst new letting evidence would not be ignored by the VO, he pointed out that less weight would be attributable to rents which required more adjustment to make it conform with the statutory hypothesis.
200. Mr Dalling said that the valuation of a large shop was not determined only by its location. He added that other factors such as size, age and number of storeys as well as many other aspects were other important attributes that contributed towards a valuation.
201. He commented that there are approximately 2,500 large shops/department shops in England and Wales trading as at 1 April 2015 with a gross internal area greater than 1,850m².
202. The VO explained that department shops and large shops such as Debenhams and John Lewis continued to open beyond 2008 throughout England. He also drew attention to the opening of a shopping centre in Westfield, Stratford that comprised some 1.8m ft², anchored by John Lewis along with large shops and which opened in 2011. Cabot Circus, Bristol also opened in 2008.
203. Mr Dalling explained that rent review evidence indicated that rents were rising despite the popularity of on-line shopping and multi-channel retail. This was demonstrated in the rent reviews of Debenhams centres in the Trafford Centre which, in 2008 was reviewed to £159.85m² and increased it to £180.30m² following a review in June 2013. A similar pattern was repeated in respect of Debenhams, Metro Centre which was reviewed to £138.32m² in 2009 and to £149.30m² in 2014 and to the House of Fraser, Milton Keynes which saw its 2011 reviewed rent of £887,500 per annum equating to £131.00m² increased upon a further review to £1,200,000 per annum equating to £177.15 /m².
204. He did not contradict Mr Whale’s report which suggested that the financial crisis of 2008 and an increased prevalence of online shopping had a negative effect on the increase in shopping centre provisions in the United Kingdom. He said that despite this, for the period 2013 to 2017, Debenhams had either expanded its portfolio or had had plans to do so. It was not until April 2017 that indications of a decline were seen. He supported this with references to various reports and newspaper articles which referenced the expansion of Debenhams stores at that time.
205. The VO said that the pace of expansion for Department stores continued post 1 April 2015 and cited the Marks & Spencer (M&S) and Debenhams expansion at Hammerson’s Elliott’s Field Retail Park, Warwickshire as one such example. He also referenced the opening of ventures at Birmingham New Street. This development

continued despite the collapse of the BHS chain in 2016. It was also pointed out that new openings and redevelopment schemes reached a four year high in 2017 even though no new floor space had been added to stores in the first half of 2016. With regard to Cushman & Wakefield's UK Shopping Centre Report, he explained that a total of 132,922 square metres across ten schemes were due to be completed by the end of 2016.

206. According to an article in The Times in November 2016, M&S intended to shut 30 stores and would convert 45 of them to food-only outlets which showed the company's desire to reinforce its successful food business and reducing its exposure to the tougher fashion market. However, in January 2017, the paper reported an increase in like for like sales over the previous year. Moreover, a published article in the Times in April 2017 drew attention to the fact that M&S intended to close 30 destination stores over a five year period and be replaced with 45 food-only stores.
207. On 20 April 2017, EGi reported that Debenhams intended to close one of its central distribution centres, 10 smaller regional warehouses and as many as 10 other stores. This followed an announcement that it had suffered a 6.7% decline in pre-tax profit. The report said that none of the stores were loss making but stores were vulnerable to closure if they did not meet the retailers required return thresholds.
208. In addition to the restructuring of high street retailers and the expanding phases of development of which retailers such as Primark were part of, Mr Dalling also pointed out that at around the same time in late 2017, Debenhams had installed plans to open gyms in surplus space in its stores.
209. He said that the VO was aware of changes in the retail sector. In order to gauge their effect, he said that reference was made to the basket of rents which it hoped would provide a guide as value. Whilst he accepted that the market changed after the 1 April 2015 the rental evidence on department stores before that date indicated a rising rental picture from mid-2014 and beyond.
210. Mr Dalling had included an extract of Debenhams' full year accounts dated 22 October 2015 in his report. The report referred to well-invested, modern stores in prime locations. Whilst the extract he had cited referenced what kind of store it was and the kind of products that sold well, it also gave details of its strategic priorities which included a focussed approach towards to customers in which they were asked what they wanted to buy from Debenhams and what they did not supply already.
211. Regarding to the tenant's position in 2015, the changes that had taken place had not escaped the attention of those who value property. Mr Dalling said that in the lead up to the valuation date, the rise in rents had been unexpected when taking account of the tenant's position in isolation.
212. He explained that historically the VO and landlord/tenant advisors in rent reviews had agreed that the capital contribution was offset against the rateable fitting out costs. In the Independent Expert's determination of Debenhams, 1 Regent Crescent, The Trafford Centre, Mr Whale acknowledged that the economic situation in 2013 was better than what it was in 2010; that in 2013 there was still a demand for department stores and that the market looked to rent reviews for evidence of value.

213. To his knowledge, Mr Dalling was aware of only a few older department stores occupied by Debenhams where upwards and downward rent review clauses had been agreed. He requested that the Tribunal note that the ratepayer's representatives had chosen not to refer to the 2013 reviewed rents on the Gloucester and Plymouth properties to inform their 2017 matrix of values, which they had applied throughout England and Wales.
214. He said that it was not impossible that department stores insisted on upward and downward rent review clauses suggesting that it should not come as a surprise to a tenant when the landlord increased the rent or, if the market suggested a lower rent, that it stayed the same on review.
215. With regard to agreeing rent reviews, surveyors gave little weight to new lettings and Arbitrators and Independent Experts had been similarly minded.
216. Mr Dalling said the fact that rents for a number of Debenhams units and the House of Fraser, Bluewater were rising until at least June 2013 and December 2013, respectively was not consistent with oversupply, lack of demand or that stores were too large. It was, however, consistent with the news reports of the expansion of Debenhams and other department stores until beyond 1 April 2017.
217. Whilst evidence existed in 2016 that some retailers had commenced a process of restructuring, he pointed out this was after the 1 April 2015. Furthermore, he understood that whilst there may have been some reduction in demand, nevertheless there was a demand for department space beyond the 1 April 2015.
218. With regard to Jerry Oates' report, Mr Dalling said that rental growth in market transactions of 8% were found in Birmingham, Gateshead and Manchester. Although some of the reviewed rents had increased, some had been settled by an arbitrator or independent expert. He said that rent reviews and lease renewal agreements settled by experts provided good comparable evidence for market rental levels.
219. In his report, Mr Whale acknowledged a 5% growth in the market for department stores between 2010 and 2013 and an 8% rental growth was established and reflected in market transactions in Birmingham between 2008 to 2013, Gateshead 2010 to 2016 and Manchester 2010 to 2015. Mr Dalling said that evidence of rising rents for the period June 1998 to September 2014.
220. Mr Dalling said that evidence of rising rents were shown to have taken place between 2014 and 2015 for stores such as Debenhams at the Metro Centre, Bath and Milton Keynes), House of Fraser at the Metro Centre and Next at Manchester. He said that the initial rent of a department store will often reflect the nature of the shopping centre in its unestablished form and cannot be compared to an established shopping centre location surrounded by other occupied shops. The approach preferred by arbitrators, independent experts and the markets have regard to the revised passing rent. Where the rent was agreed between the parties, the rating surveyor will do exactly the same within the context of the *Lotus* decision. Consequently, rating surveyors and other experts have given little weight to new lettings where evidence of agreed rent reviews are present.

221. With regard to a number of Debenhams stores situated in Wolverhampton, Newport, Leeds, Birmingham and other locations, Mr Dalling referred to an analysis of rental growth for these units and drew attention to their high levels of value.
222. Mr Dalling referred to the appellant's adjustment and analysis of Debenhams, Mander Centre, Wolverhampton with a GIA of 8,7678.30m², which he said was typical of how the appellant analysed rents as to inform their valuation matrix. The headline rent for this unit was £738,400 per annum with effect from 7 April 2014 and with an addition of 10% to reflect fitting out to arrive at £812,240 per annum. The landlord gave a capital contribution of £7,500,000 to the tenant to spend on fitting out. There was no rent-free period in this case, however where there was one, the appellant spread the incentive over the period to the first rent review which was normally five years. The appellant amortised the whole capital contribution over the period of the lease which in this case was 25 years.
223. The aim of the calculation was to find the equivalent rent which when divided by the GIA gives the rate per square metre on the department store. In the example given on the Mander Centre, an equivalent rent of £225,540 pa or £25.99/m² was derived from the headline rent of £738,400 per annum.
224. However, the tenant was contracted to pay £738,400 per annum or £812,240 if adopting the appellant's method. If it was assumed that the full market rent was £225,540 per annum accepting for demonstration that the appellant was correct in amortising the whole of the capital contribution over the period of the lease, the landlord would not be able to increase the rent until the equivalent rent of £225,450 per annum catches up with the headline rent of £812,240 per annum because if the £225,540 per annum was the full rental value, the market would not bear any increase in the headline rent of £812,240 per annum until the equivalent rent catches up with it.
225. Mr Dalling commented that the appellant's calculation assumed that it would take 25 years at a compound rate of rental growth of approximately 5.26% per annum before the equivalent rent or net effective rent of £225,540 per annum grows to £812,240 per annum.
226. Mr Dalling drew attention to the fact that stores such as Primark had been interested in the House of Fraser unit at Bluewater. The same company also moved into space previously occupied first by John Lewis and then by House of Fraser. No planning was required and neither was there a change to the mode and category of occupation. As a corollary, Mr Dalling said that the VO acknowledged that Primark competed with department stores both in terms of trade and space and accepted that there was merit in comparisons being made in respect of these stores. He added that since Primark and Debenhams were in the same mode or category of occupation and as no development assumption involved that might offend 'rebus'. He added that it was the VO's intention to consider all rental evidence and understand all it could about a rent.
227. Mr Dalling referred to an extract of the RICS Professional standards and guidance in regard to the benefit of hindsight. He said that the "*valuer valuing retrospectively needs to place themselves in the position of someone reviewing the available*

evidence on the valuation date, and then make a judgement on the extent and nature of the evidence that could reasonably be expected to have been available at the time.”

228. With regard to what rent might reasonably have been paid, Mr Dalling said that one must ask what rent might the market bear? He said that the solution to this question lay in what rents had been paid rather than speculating what might have been in an imperfect market the nature of which was secretive to all but those involved.
229. Mr Dalling explained that it was not the role of the VO to question or second guess whether the retailer was correct, or not to agree to pay a particular amount per square foot, or whether they had perfect or imperfect knowledge of market conditions. Irrespective as to the reasons why the particulars of the lease were deemed acceptable to the tenant, the rent was nevertheless agreed between two parties and therefore established itself as evidence worthy of being scrutinised.
230. Rent review surveyors and Independent Experts would in fact have had the best level of knowledge about the state of the department store market at that time.
231. With reference to Jerry Oates’ report, Mr Dalling said that it was apparent that details of lettings in Watford, Wolverhampton and Lichfield were available to rent review surveyors when conducting negotiations or determining rent reviews in September 2014.
232. Mr Dalling said that whilst the market was imperfect the valuation was in the real market. Whenever the statutory assumptions do not intrude, the realities of the real world are taken in preference – *rebus sic stantibus* or the Principle of Reality. In *Hoare (VO) v National Trust (1998)*, the Court of Appeal said –
233. *The statutory hypothesis is only a mechanism for enabling one to arrive but a value for a particular hereditament for rating purposes it does not entitle the valuer to depart from the real world further than my hypothesis compels. I would emphasise the necessity to adhere to reality subject only to give full effect to the statutory hypothesis, so that the hypothetical lessor and lessee act as a prudent lessor and lessee. I would call this the principle of reality.*
234. However, Mr Dalling pointed out that the imperfection of the property market was not an acceptable reason to abandon the rents that had been agreed on review between qualified, highly experienced and competent chartered surveyors.
235. In the same way that the large shop market considers similar towns and cities, Mr Dalling explained that the VO does the same thing for rating purposes.
236. Mr Dalling referred to a perception that ‘John Lewis would not enter into a rack rented deal’. If this were the case then such an arrangement would be on a square footing with the requirements of the rating hypothesis and the prevailing rent would have required some adjustment.
237. In his section “The hierarchy of evidence”, Mr Dalling referred to an extract from Mr Rakkar’s first report in which he suggested that the December 2021 rent review on

Selfridges justified a reduction in the value per square foot of other large stores situated elsewhere in the country.

238. Mr Dalling did not accept this statement and labelled it conjecture because the statement did not fall within the hierarchy of rents nor was it commensurate with the propositions established in *Lotus* decision. He reminded the Tribunal that the VO does not make the rent but follows it. He referred to RICS standards which reinforced the view that the rent review clause in a lease would lead to market value and that it reflected what the market will bear. Any such agreement between two parties will have borne such considerations in mind. Moreover, with reference to *Robinson v Chester-le-Street (1937)*, Mr Dalling explained that a valuer was influenced by every intrinsic and extrinsic quality which affected rental values; up or down.
239. With regard to a rent review on Debenhams, Merry Hill shopping centre, Mr Rakkar calculated that a rent based on his view that evidence given less weight in practice should be given more weight instead. He argued that a rent of £4.08ft² should have been determined and relied upon rather than the rent of £10.20 ft² which had been determined by an arbitrator. The theoretical rent was never agreed between the parties neither was it paid. He said that it was not an open market letting, nor was it an agreement secured at arm's length by surveyors; nor determined by independent experts.
240. Despite the foregoing, Mr Dalling accepted a point made in Mr Rakkar's report in that he considered an arbitration award should not be ignored when considering a value for rating purposes. He said that the determination of rent in this way could be the starting point as set out by the *Lotus* decision.
241. Mr Dalling said that all evidence prior to and at the 1 April 2015 should be considered. Such evidence included new lettings, lease renewals which were settled by experts and rent reviews. Relying on his own empirical research in respect of Debenhams, Mr Whale concluded that at the date of the review June 2014, no conditions existed for rental growth. This did not in Mr Dalling's view suggest that there was no actual rental growth in the rental market up until then and neither did it lend itself to the theory that the market was in decline at that date.
242. Mr Dalling said that the hierarchy of evidence afforded greater weight to the award of an Independent Expert than that of an arbitrator because the decision of the former would have an impact on future rent review agreements and used elsewhere to assess rateable value. However, a third-party decision may be of lower standing and Mr Dalling pointed out that Mr Oates had accepted that such agreements formed good evidence of value particularly if they represented the passing rent on the subject hereditament near to the 1 April 2015. Moreover, if Mr Whale had rejected or placed little weight on the new lettings of Debenhams stores in Watford and Wolverhampton, then he failed to see why the VO should be criticised from following a similar track of thought.
243. Although these rents tended to attract less weight as evidence, if the rent that was determined was the passing rent then it fit the requirements of the first and second proposition in the *Lotus* decision –

- i) *Where the hereditament which is the starting point of consideration is actually let that rent should be taken as the starting point; and*
- ii) *The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition the more weight should be attached to it.*

244. Where rents on large shops were the subject to capital contributions and other incentives, how these are dealt with in the minds of the hypothetical landlord and tenant was uncertain. As a corollary, such rents require subjective adjustment in order to bring them in line with the statutory hypothesis.
245. Mr Dalling said that the VO did not accept that rent review evidence was fundamentally flawed and pointed out that in respect of large stores, it was new lettings which subject to scrutiny and analysis, often proved to be less reliable. Mr Whale had reflected on this within his report where he mentioned that in the case of confidential transactions, what motivated the parties to arrive at a rent was not made clear. By contrast to new lettings, Mr Dalling stated that rent review evidence had proven to be more reliable because they show what the landlord was prepared to accept and what the tenant was prepared to pay for a department store in an established location.
246. With reference to remarks made by Lord Scott in *Robinson v Chester-le-Street*, Mr Dalling explained that it was the duty of the valuer to take into account every intrinsic quality and circumstance which affected value could be taken into account.
247. Mr Dalling said that the caution with which the VO had treated rents of new lettings was mirrored by Doug Stevens who acted as Arbitrator for Debenhams (Wolverhampton). He said that if the arbitrator placed little to no weight on this form of evidence, then the VO could not be criticised for doing likewise. Similarly, Mr Whale was informed of new letting deals in respect of Debenhams, Milton Keynes, but he also had no regard to it.
248. With reference to points made by Mr Oates in his report, Mr Dalling suggested that the reason why arbitrators had given little regard to new lettings but more to rent reviews was because they contained an element of pioneering. Mr Dalling said that the VOA did not question the integrity, skill or knowledge of the parties, nor question why the parties conclude as they do. He said that the only proviso being that the rent which was agreed was one that might reasonably be expected to be paid in the market, then regard would be had to it.
249. Mr Dalling said that a new shopping centre takes time to establish itself and departments stores were very often the first tenant to “sign up”. The presence of these stores tends to increase the tenant demand to fill other vacant units even though the rents of those units were enhanced with increased footfall and drove up its overall value. Whilst the VO did not ignore new lettings, and with reference to proposition number 2 of the *Lotus* decision, he reminded the Tribunal that the greater adjustment to the rent so as to bring it into line with the statutory hypothesis, the less valuable that evidence was.

250. With reference to Patrick Bond's book '*Rating Valuation, Principles and Practice*', Mr Dalling pointed out that the reliability of a rent on a new letting of a new property may still be called to scrutiny even if it conformed closely with the definition of rateable value.
251. With regard to large shops or department stores, the weight that could be attached to a new letting was constrained by the fact that the new letting was not 'clean'; that the Agreement of Lease was frequently made years before the centre was built; that at the material day, the store's valuation must reflect its physical circumstances not at the date of the Agreement to Lease and the rent on a new letting may reflect other matters such as what added value it brings to the centre.
252. In the context of new lettings, Mr Dalling said that relying on them undervalues the store after incentives were amortised and deducted from the headline rent. Moreover, where incentives were factored into the rents of initial lettings and the equivalent rent used as the base price then a rent on review will often show a greater increase than a review of a previously reviewed rent.
253. He said that under the terms of the rating hypothesis, one must look at the physical circumstances as at the material day. However, the rent and other terms of new lettings may have been agreed a few years before the store opens. Mr Dalling also pointed out that at that time the department store and the surrounding shops may not have been built. He added that by the time of the store's opening, the physical circumstances may have changed and such matters must be considered at the material day, which in this case was the day the store opened.
254. Mr Dalling explained that John Lewis had a different standing to that of Debenhams or House of Fraser and being aware of its brand strength and attraction to developers. As a corollary it would be well placed to drive a hard bargain with prospective developers. He said that not all large shops would be able to secure the same terms as John Lewis to secure similar deals.
255. Responding to Mr Kolinsky in cross examination, Mr Dalling replied as follow:
256. Mr Dalling recognised that Wales was economically a different place to other areas of the United Kingdom, but from a stand back and look perspective it did not preclude him from looking at all the evidence that emanated from various locations.
257. He said that his opinion as of June 2020 was that the pattern of evidence that related to big shops was in contrast to normal behaviour. He said that the economics of supply and demand in cases of oversupply and reduced demand normally translated into lower rents. However, the rent review evidence suggested otherwise and with reference to Debenhams, he drew attention to the fact that rents were increasing up to June 2013 and the rents on House of Fraser had increased. He said that since he compiled his report for these proceedings, he accepted that no demand surplus existed for stores over a certain size.
258. Mr Dalling responded to questions that surrounded the contents of the VO's Rating Manual and of the accuracy of information contained within it regarding large shops. He said that the manual was an internal document that would be edited whenever

possible. He explained that an examination of rents would still be required but he added that discussions would also be had with retailers.

259. He said that for the period that led up to the state of the market up to the 1 April 2015 was reasonably strong and that a fall in demand came after that date. When further pressed on this statement, he clarified that the market was, in his view, both reasonably strong and challenging. He said that whilst stores were in the process of looking for space, it was the influence of the internet which had made the environment challenging.
260. Whilst Mr Dalling accepted that structural changes in shopping had occurred, such as the introduction of online shopping, he maintained, although Mr Kolinsky disagreed, that the “catch all” was the rent. Furthermore, he opined that a need existed for “High Street” shops and that online shopping was, in some cases, complimentary to stores/large shops such as the appeal property where shoppers might browse online and buy in shop. It was also possible that shoppers might look instore but make an online purchase instead. He also drew attention to the fact that John Lewis had a strong online presence.
261. In respect of changes in the profitability of physical shops such as Debenhams, he said that landlords encouraged online shopping but reiterated his view that rents were a significant driver. He also said that despite a large injection of capital the market for larger shops remained still strong and referenced the opening of five new shops in support of this statement. Moreover, despite the nature of the prevailing environment, he reiterated his point that Debenhams was in the process of expanding its portfolio.
262. With regard to rent reviews, Mr Dalling acknowledged that these did not reflect the “fresh to the scene” scenario envisaged by the rating hypothesis. However, he pointed out that the veracity of such rents had to be contemplated in the correct context. He said that rent reviews may be imperfect, but this did not mean they should be discarded particularly in the absence of new lettings. He added that rent review surveyors were well experienced in dealing with these matters and the conclusions they arrive at tend to attract some weight.
263. As to the relevance of rent reviews, he said that if the landlord and tenant agree that the rent should be “X” then that was what the VO tended to follow. Whilst the Independent Expert Mr Whale acknowledged the paucity of available evidence, it was he who decided the rent. In regard to other reports that were advanced in evidence, Mr Dalling said that some of these were produced by surveyors whose area of expertise was not in rating and reiterated his stance that Mr Whale’s report was, in his view, authoritative.
264. In response to a question that the system was skewed towards upward only rents, Mr Dalling said that a minimal increase would generally be ignored, he would however follow the rents if the evidence suggested a downwards direction. With regard to the usefulness of rent review evidence, he opined that it was such an approach that was supported by other valuers.

265. With regard to issue concerning evidence related to allowances given in respect of pioneering or anchoring, Mr Dalling agreed that the Debenham's site in Wolverhampton was not pioneering as such but more accurately described as a regeneration of an existing site.
266. Mr Ormondroyd examined Mrs Catherine Jones on the evidence she had presented as an expert witness and she replied as follows:
267. She opined that the hypothetical store was very similar to the actual store and differed in limited ways. The adjustments she would make were threefold. Firstly, an adjustment for size which was minimal as the size difference was only 100m² therefore she had made no adjustment. Secondly, as the hypothetical store was deemed to have two floors and the actual store has three floors an adjustment would be required. Thirdly, the hypothetical store was deemed to have frontages appropriate to department store use. The Independent Expert Mr Whale deemed that the actual store did have frontages which met this requirement however on the first floor he deemed that the actual store would be lacking in this area and accordingly she had made an adjustment.
268. Overall, she had made an adjustment of 5% for the floors and frontages and then an addition for fit at 5% based on the fact that the appeal property was refurbished and extended into SD2 in 2009.
269. Effectively the deduction of 5% for floors and frontages along with the addition of 5% for fit cancel each other out, which equates the value of the hypothetical store for the value of the actual store.
270. With regard to the rental value of the actual store and adopting the adjustments made by the appellant of deducting 12.5% and then adding 2.5%, the overall deduction would be 10% from the hypothetical store compared to the actual store. By utilising the overall adjustment of 10% suggested by the appellant you would arrive at the same figure as proposed by the VO at £113.50m², the figure proposed by the VO in its final valuation. Accordingly, it was her belief it would make no difference in her opinion of value for the actual store.
271. The VO commented on the rental evidence passing on both John Lewis stores located in Birmingham and Leeds. In respect of John Lewis, Birmingham, the VO had analysed the rent at £31.43m² which was agreed in the 2017 Rating List at £65m² and whilst the VO's adjustment analysis was higher than the appellant it was still not at the level of £65m². Therefore, in her opinion the level of rental evidence did not provide a good indication of open market rents.
272. In respect of the rent passing on John Lewis, Leeds the appellant had analysed the rent to £45.19m² and the VO at a higher level but still not at the level agreed in the 2017 Rating List at £77.75m². Therefore, where the adjustment was so much lower in comparison to the agreed rate, she opined that it did not provide a good example of open market lettings.
273. Effectively, the VO has given a lot of weight to the passing rent on the appeal property.

274. In respect of the other rents passing on large shops, the VO had considered to what extent they were in the same mode and category of occupation as a department store. She commented that leading up to the 1 April 2015 the market of large shops in Cardiff was good as Primark had vacated a unit of 7,000m² to occupy a larger unit of 11,000m² which opened in June 2014. In July 2014 Matalan occupied the former unit occupied by Primark and therefore became the company's first high street location as Matalan normally occupied units on retail parks.
275. In 2015 H&M moved stores from a unit of 2,000m² to occupy a larger unit of 4,000m² effectively doubling its original store size around the 1 April 2015 and therefore creating the largest store occupied by H&M in the United Kingdom at that time.
276. Therefore, evidence clearly shows that the market for large shops was not struggling at the 1 April 2015.
277. Dealing with the specific rents referred to by the VO, she commented that the rent passing on Next, Cardiff analyses to £171.64m² approximately three years before the 1 April 2015 for a store just under 9,000m² and in her opinion was consistent with her valuation. Next was entered in the 2017 Rating List at £1.55 million RV and therefore she would expect to see the appeal property, a much larger store, at a lower rate per metre square but with a higher overall RV.
278. Evidence for the large store market was far scarcer and therefore you had to have regard to all evidence and weigh it accordingly. Between 2012 and the AVD, the large shops market appeared strong and she had not been provided with any evidence to suggest disregarding the rent passing on the Next store.
279. She also considered the rent passing on Matalan, Cardiff to be consistent with her valuation. The rent analysed to £143.53m² which was based on the fact that the landlord provided a 2-year rent free period for fitting out rather than as an incentive. Matalan was entered in the 2017 Rating List at £985,000 RV which was supported by the rent given that the appeal property was double the size, you would expect the appeal property to have a much larger rateable value.
280. Thus, the VO's approach was consistent whereas the appellant's valuation at £1,040,000 RV was not when compared to Matalan's assessment of £985,000 RV. Also, when considering that between those values you had Boots at 9,000m², Next at 8,881.55m², Primark at 11,330m² and M&S at 11,666m², you had to contemplate that all those assessments within that range did not appear realistic and did not sit right.
281. She commented that the appellant had analysed the rent to £116m² on the basis that the 2-year rent free period was an incentive and not for fit out. When Matalan took on the property there were fittings there. However, for a period of 4 months those fittings were ripped out and consequently whilst those works were ongoing the property was entered at a Nil RV in the 2017 Rating List.
282. Accordingly, from the tenant's point of view it had paid £1 million knowing that it had to carry out a fit out. Therefore, to take off the 2-year rent-free period as an incentive was in her opinion incorrect.

283. If she were to adopt the appellant's rate of £116m² it would provide an assessment in the region of £810,000 RV for the property occupied by Matalan approximately £7,000m² in size. Again, by comparing the Matalan property to the appeal property, which was almost double in size at the appellant's, suggested that an assessment of £1,040,000 RV whilst having consideration of all the other stores to fit into that range does not seem realistic.
284. In taking a stand back approach from the rental evidence presented so far in respect of Next and Matalan, she opined that it supported the value obtained from the passing rent on the appeal property. Based on the Next and Matalan rents, she believed the rent passing on the appeal property was reasonable and whilst she would not choose the Next and Matalan rents as direct comparables, they were a good indication of the values of those stores which can then be used as an indicator to consider if the value on the appeal property was reasonable or not.
285. With regard to rents passing on large shops beyond Cardiff, she believed those rents would be relevant especially with regard to the subject appeal where there was no specific evidence available on a comparable property. It therefore required to go further afield to a national market for large shops to find similar rents passing on similar properties in other locations.
286. In respect of other locations and a national market and the fact that there was nothing similar in Wales to the city of Cardiff, she had looked towards England for similar comparisons and in doing so had utilised the Promis Retail Rankings, which was also used by the appellant, to find the strength of a retail location.
287. She reported an amendment to her analysis in respect of Debenhams, Birmingham, in that the rent review in September 2013 was agreed at £1,965,000 million per annum so giving an open market value of £2,456,250 with a 10% addition for fit giving an assessment of £2,502,500 based on a unit rate of £140.68m².
288. As a consequence, she would make a further adjustment of 5% to reflect the difference between the Debenhams, Birmingham and the appeal property, which suggested that the hypothetical store at Cardiff should be valued at £115m² to arrive at an assessment of £1,770,000 million RV.
289. The adjustment does not alter her overall conclusions to value as the rate on the appeal property was £115m² which was still in excess of the figure she had proposed at £113.50m².
290. In providing an overview of rental evidence from other cities, she explained that she had considered rental evidence in Bath, Birmingham and Bristol and made the necessary adjustments in the actual store for location within their respective centres, the number of floors, the fit, age and whether it was a new building.
291. Generally, the rent passing on Bath suggested that the value of the appeal property should be £116m². Whereas Debenhams, Bristol was a poor comparable as it was off pitch, larger, older and with a layout over a number of floors suggesting that the appeal property should be valued in excess of £1,530,000 million. However, it was difficult to compare as the differences between the two properties were so great.

292. Overall, her analysis of those rents suggested that the appeal property should be valued at £115.50m² given that the Bath store following adjustments was on a par with the appeal property, Birmingham was valued higher than the appeal property and Bristol was valued at the lowest value. Having surveyed the evidence, she was of the opinion that as the passing rent on the appeal property works out in the region of £1,950,000 million and that those values are a little bit lower, they are broadly consistent with the figures and therefore does not undermine her valuation.
293. In respect of the market for small shops she accepted the appellant's contention that they were an entirely different market to department stores and the large shop market. However, she believed that the levels of Zone A were of no assistance from the rental levels being achieved, as between Rating Lists Zone A values had fallen and large shops had increased and therefore Zone A rates cannot be used as an indicator towards a large shop market.
294. The only change she could identify in the small shops market specifically to Cardiff between Rating Lists was the opening of SD2, where approximately 105 small shops were introduced along with John Lewis. As the appellant had stated such an impact as the introduction of SD2 takes time to settle down and therefore it would appear to have had more of an impact on the large shops market.
295. She does not believe that the extent of change in the Zone A values had any relevance to the appeal property's valuation.
296. She stated that tone had not been established for large shops in Cardiff. There was only one agreement in respect of John Lewis with the exception of the House of Fraser both two large shops in excess 25,000m² and therefore were not indicative of the tone for large shops in Cardiff.
297. With regard to her survey on John Lewis assessments, she considered John Lewis, Oxford as the most relevant assessment and therefore when making the necessary adjustments between this store and the appeal property she had regard to size, sales floors, location within the town centre and the fact that it was a new build in 2016 and therefore the fit would be different. Having regard to those adjustments, she had valued the John Lewis, Oxford at £100m² with an overall addition of 10% to reflect the stronger location of Cardiff in accordance with the Promis Retail Rankings and therefore the appeal property should be valued in the region of £110m² giving an assessment of £1,698,532 RV.
298. The appellant suggested that £35-£45 should be deducted from the John Lewis, Oxford value of £100m² to reflect fit out, which would reduce the rent to £60- £65m² with an addition of 2.5% for fit out in Cardiff, an unreasonable suggestion in the VO's opinion, as 2.5% equates to approximately £1.65 and the appellant was proposing that £37.00 of the John Lewis, Oxford value was for fit and that £1.65 was only worth that on the appeal property. She reiterated that it was not reasonable and was not how the VO had approached agreements.
299. In respect of the House of Fraser assessments which had been agreed, she commented specifically on two stores located at Bristol and Reading and the method of adjusting she had adopted to making equivalent to the appeal property.

300. The rent passing on the House of Fraser, Bristol had been agreed at £112m2 and whilst in her opinion the overall value of the appeal property would be 5% lower than House of Fraser, Bristol, she had added 5% to the appeal property to reflect the quality of the retail centre. Therefore, using the agreed figure of £112m2, it suggested that the appeal property should be valued at £111.72m2 resulting in £1,725,091 RV.
301. She did not accept the appellant's contention that the overall adjustment was not enough as the House of Fraser, Bristol was superior in every way. She did accept that the House of Fraser, Bristol had more sales floors, it was built in 2008 and was in a better location within the City Centre. However, if you looked back at the 2010 values just as a comparison to see if the adjustments had been reasonable or not, Bristol was valued at £97.75m2 and the appeal property valued higher at £110m2 demonstrating that the VO's adjustments were not unreasonable.
302. She does not accept the appellants contention that the House of Fraser, Bristol was linked to a car park and therefore making it superior to the appeal property. The car park was separately assessed giving access to a shopping centre over a bridge crossing a road and was not directly linked or immediately adjacent to the store. The car park existed in the 2010 Rating List and the relativities shown in that list suggested that the VO's adjustments were not unreasonable.
303. Whilst the appellant suggested using Zone A values adjacent to House of Fraser, Bristol as against Zone A values adjacent to the appeal property to drive a comparison between the two stores, the VO believed that the appellant was double counting by adjusting for location within the centre and then having regard to the quality of retail centre. Whereas the VO had approached by making that initial adjustment where the store sits in location to the rest of the city centre and then a separate adjustment to reflect the quality of the retail centre.
304. In respect of the House of Fraser, Reading which was agreed under the 2017 Rating List at £103.50m2 and by adopting the VO's adjustments, the value of the appeal property equated to £105.31m2 resulting in a total figure of £1,626,113 RV.
305. In her opinion therefore looking at the House of Fraser settlements overall, they support values on the passing rent and were broadly consistent.
306. She then explained the relevance in the comparison between the House of Fraser store and the John Lewis store both located in Leeds. The House of Fraser store was a smaller older store at 10,000m2 whereas the John Lewis store was brand new at 23,000m2. The Zone A values around John Lewis store were higher than those located around the House of Fraser and the appellant opined that the location of House of Fraser was stronger and there were indicators to support that opinion. The House of Fraser was agreed at £150m2 in comparison to the John Lewis store which was agreed at £77.75m2.
307. The VO contended that this demonstrated a great difference in values with House of Fraser being approximately 93% higher in value than John Lewis which were very similar circumstances to the appeal property in that it was older, smaller and in a strong location.

308. The House of Fraser store Cardiff whilst in a similar size bracket to the John Lewis store was an off pitch dated, Grade 2 listed building with a poor layout over seven floors and an appeal made in respect of its 2017 assessment was provisionally withdrawn at £34m². This store had never been used as a comparable for either the appeal property or the John Lewis store and she does not believe it ever would be having regard the differences between the properties.
309. In the 2010 Rating List the House of Fraser store was already at 'rock bottom' having regard to its disadvantages and therefore could not get any lower than what it was already entered at in the 2017 Rating List.
310. The cornerstone of the appellant's valuation was the John Lewis store Cardiff and the value significant differences were regarding size, location and quality.
311. With regard to size, she opined that there was no precise specific calculation to enable an adjustment for quantum between the John Lewis store and the appeal property. Valuing for quantum was purely subjective. Therefore, to look at the John Lewis store in isolation was not safe and not comparable. You require a basket of evidence to look at and to see if anything was sitting out of line or not.
312. As regard to location, she believed that neither the John Lewis store nor the appeal property were in prime locations, however she believed the appeal property was in a stronger location compared to John Lewis.
313. In respect of the relevance of the surrounding Zone rates for small shops adjacent to John Lewis store and the appeal property, she explained that small shops would want to be located in prime Zone A locations and she accepted that large shops would also want to be located in the same prime locations. However large shops were less effected by the Zone A rates than small shops, a point of view also supported by the Independent Expert in his report where he stated that they were destination stores and therefore no adjustment would have to be made.
314. With regard to the relevance of the Zone A rates for smaller shops surrounding John Lewis and the appeal property and whether they give any indication as to the relative merits of being located next to those stores, she commented that Zone A values decreased as you travelled away from the appeal property towards John Lewis store with the prime retail pitch attracting a Zone A rate of £2,250m² and then decreasing from £2,000m², £1,650m² to £1,350 for the shop unit located immediately adjacent to John Lewis. So, it can be seen there was a value significant difference between the area that the appellant had chosen as comparable evidence to John Lewis that being the units located next to the Superdry store which the appellant believed had reduced by some 22%. The VO does not consider it was representative of the values outside John Lewis.
315. Regarding to the two shop units located next to and hidden by the escalator, she agreed with the appellant that there was an issue. However, those units were not representative of all the other units which were not affected and are entered at £1,650m² and £1,350m².

316. She also pointed out that the Zone A rate value of £1,650m² had dropped by some 32-34% between the Rating Lists and similarly with the Zone A rate of £1,350 had dropped by 41%. By comparing those values to those located outside the appeal property the values at a Zone A rate of £1,450m² had dropped by 38% between Rating Lists. So, it can be seen by comparing the location of both stores that the location of John Lewis had fallen by more between the Rating Lists and that its value was lower.
317. In respect of shops located on the first floor she confirmed that those units were valued higher than those located on the ground floor. The original value on the first floor was a Zone A rate of £1,700m² however there were now provisional agreements at £1,700m² for those shops located at the central part, £1,575m² for those shops as you travelled towards the appeal property and as you travelled towards John Lewis the Zone A rate was £1,450m² and £1,000m².
318. The percentage drop in first floor value between Rating Lists was 35% for those shops located next to the appeal property and 56% for those located by John Lewis.
319. She added that not all shops were provisionally agreed in particular the two shops located next to the appeal property, large shops and the one shop next to John Lewis. Also, at the John Lewis end of the first floor there was a high turnover of tenants and a lot of vacant units.
320. Therefore, considering that evidence overall she contended that the location of appeal property was stronger than that of John Lewis.
321. With regard to quality she believed that a deduction of an overall rate of 5% was not unreasonable considering that in 2009 the appeal property was refurbished and extended six years prior to the 1 April 2015.
322. Returning to location, the VO made additional comments in that she concurred with the statement made by the Independent Expert in his report where he stated that the appeal property occupied a strong but not 100% prime location; he considered and accepted the degree to which the appeal property forms a part of Cardiff's dominant shopping centre; stores of this size were invariably destination stores and that the appeal property was centrally located within Cardiff. She believed his assessment of the appeal property was comparative to hers.
323. She believed the fact that Primark relocated in 2014 strengthened the location around the appeal property.
324. The list of national retailers located next to John Lewis provided by the appellant was not comprehensive in that it states they had been attracted to Cardiff since 2010. Six of the retailers however were already in occupation and therefore would have been reflected along with one retailer who occupied in October 2017, which was post the AVD and Material Day for the 2017 Rating List.
325. The appeal property was surrounded by large stores whereas John Lewis was set apart at the end of the retail centre. The appeal property was situated between two peaks with the highest Zone A peak of £2,250m² in SD2 and then a lower value of

£1,800m2 for Queen Street. Therefore, the appeal property was in a stronger location to that of John Lewis.

- 326. Zone A rates had fallen more outside John Lewis than outside the appeal property suggesting therefore that the location value had risen outside the appeal property and as a consequence showed that a greater differential existed than in the previous Rating List.
- 327. Given the subjective nature of the adjustment you would have to make for size, she did not accept that you would rely on that as strong evidence. On the location difference, all the evidence suggested that the appeal property was in a stronger location than the John Lewis store and if you were to make a huge adjustment to a property that was not comparable, it would have to be considered within a basket of evidence and not in isolation.
- 328. When comparing the values of the appeal property and the John Lewis store under the 2010 Rating List to the current 2017 Rating List any change in the market would have been on larger stores as shown in the agreement of John Lewis, which suggested that there should have been a greater differential gap in values between the two Rating Lists.
- 329. She contended that size was the most relevant valuation factor to be considered rather than location specifically in terms of the appeal property and John Lewis. Size would have widened the gap but in the same direction making the appeal property proportionately greater in value than John Lewis. However, whilst both stores were off prime, the appeal property was in a stronger location.
- 330. Responding to Mr Kolinsky in cross examination, Mrs Jones replied as follow:
- 331. She agreed that evidence from the same location on comparable properties was of a benefit and that the VO had placed a lot of weight on the passing rent.
- 332. Having regard to the guidance of hierarchy offered in the *Lotus* decision and the Independent Expert's rental determination, she agreed that the rent review date was the 16 June 2014 approximately nine months before the AVD.
- 333. She also accepted that the Independent Expert was working blind as to open market letting transactions and therefore relied on rent reviews. If open market letting transactions were available, they could have helped in his determination. Assessment of rental value was very subjective and in the absence of those transactions he still arrived at a cautious valuation of £1.95 million.
- 334. With regard to the subject property, the Independent Expert was valuing by assuming two levels with frontages to appropriate use, which was a construction which departed from reality, the departures being the number of levels i.e. two rather than three and to assume a better first floor frontage which was commensurate with a good department store.
- 335. The Independent Expert also commented on the counter factual situation of two 80,000 square feet of assumed floor plates and in particular the opportunity afforded

by the counter factual store which effectively resembles the out of centre regional modern store but in a town centre.

336. She accepted the contention that the Independent Expert's point of view was materially different to hers as the Independent Expert was very animated about the rare opportunity to have two floor plates of 80,000 square feet in a town centre location, which was an exciting counter factual opportunity as you do not get stores with such floor plates in the town centre as they were normally in out-of-town regional centres.
337. With regard to department store rental evidence, she accepted that the transaction in respect of the Debenhams store, Liverpool was a rent passing in May 2013 and by definition was a transaction which was not capable of catching any changes in the market after May 2013. However, as the Independent Expert was an expert in the market and if he felt that there was evidence to suggest a fall since that date, he was then entitled to use that evidence in his determination.
338. She was of the opinion that whilst the Liverpool transaction in May 2013 cannot reflect the economic conditions as at the 1 April 2015, all evidence should be considered given the scarcity of evidence and she does not think that the Independent Expert would dismiss anything out of hand when commenting on the state of the department store market including the deterioration of the market due to online retailing.
339. The independent Expert stated in his report that most occupiers would adapt their trading format to meet the changing retailing environment and to embrace multi-channel sales and that the impact of online has yet to be evaluated or understood. Effectively occupiers may change how they utilised their properties but not the floor space.
340. She confirmed that the Independent Expert did not take into account the sale of the British Home Stores for £1.00 on the 12 March 2015.
341. Having regard to the rental evidence that formed the basis of this valuation, she concurred that with effect from the transaction of the Debenhams store, Bullring, Birmingham, in September 2013, which was eighteen months prior to the AVD, there was no other transactions referenced within the Independent Expert's report.
342. She accepted that within the Independent Expert's report he stated that Liverpool was marginally stronger in location to the appeal property but the configuration of space at the appeal property over two levels was superior and accordingly that was why he made an adjustment. Therefore, it was a counter factual configuration as opposed to the actual configuration.
343. She accepted that for the purpose of the subject appeal that the 2017 Rating List settlement in respect of the John Lewis store Cardiff was at £75m2 and was accepted as evidence of the value of that store within the economic conditions at that time.

344. She confirmed that the John Lewis store original Compiled List entry was at £110m2 giving an assessment of £2,870,000 RV and therefore the value had diminished by a rate of £35m2, which was approximately a fall of 47% in value between the compiled and settled list entries.
345. She had carried out some sense checking in terms of comparison between the House of Fraser, Bristol and the appeal property by looking at the position between the 2010 and 2017 Rating Lists to ensure that the adjustments she had made looked reasonable or not.
346. In the 2010 Rating List it was common ground that John Lewis, Cardiff was entered at £95m2 with an allowance for pioneering and the appeal property was entered at £110m2 therefore there was a differential of 15.7% between the two stores.
347. In the 2017 Rating List the value of John Lewis had reduced to £75m2 falling by 21% from the 2010 value of £95m2 and the appeal property had risen from £110m2 to £113.50m2 therefore the differential had shifted from 15.7% in 2010 to 51% in 2017.
348. The appellant had taken a sense check in applying the same differential to the John Lewis store and the appeal property as existed in the 2010 Rating List, as John Lewis had reduced to £75m2 and as a matter of mathematics that supported a sense check basis of a rate of £86.85m2.
349. However, she would not accept £86.85m2 as a starting point, as you had to look at it in relation to the basket of evidence. It was not a starting point she would use, as she believed there were better ways of sense checking the values she had proposed.
350. Also, by accepting the appellant's sense check you had to assume that nothing had changed in terms of demand for size and how it was all valued. Therefore, if nothing had changed it could be a starting point, however given the evidence available, it suggested that quite a lot had changed in terms of size requirements.
351. She believed it was difficult to compare John Lewis to the appeal property as John Lewis was larger. The appellant had based its argument in that there should be a 15% differential in terms of quantum in the 2017 Rating List based on the Independent Expert analysis where he deducted 5% for size and configuration between the Debenhams, Birmingham and the appeal property and the appellant had adopted that figure and multiplied by three to arrive at a differential of 15%.
352. However, that comparison was between a 15,000m2 store and a 19,000m2 store and therefore it was not unreasonable to assume that any further increase in size between 19,000m2 and 26,000m2 could proportionately have had more impact than the original 4,000m2.
353. Whilst a colleague had stated it was implicit in the John Lewis settlement that there was a quantum threshold of 21,000m2, she had not proposed any such cut off threshold.
354. When looking at the John Lewis agreement, the ranking of the retail centre had been factored in along with the fit of the store. For example, having regard to the John

Lewis agreements comparing Leeds at 23,000m² and Oxford at 13,500m², they were both new builds around the same time, anchoring shopping centres neither in prime locations with rents agreed around the same time, Oxford at £100m² and Leeds at £77.75m². If you then adjusted Oxford to arrive at the quality of Leeds, which was second in the rankings as suggested by the appellant, there would probably be a 15% adjustment to add to that figure. Therefore, you were looking at a differential of £77.75m² on a large store and £115m² on a small store identical in all other ways with a differential in the region of 50%.

355. She concurred that she had based her opinion on a lot of assumptions however if you look at the rental agreement of Leeds at £77.75m² and compare to Oxford at £100m², even without making those adjustments, it was in excess of the adjustments suggested by the appellant.
356. Whilst she referred to the appellant's valuation matrix in her evidence, she was not relying on the matrix. She was simply highlighting what the appellant had produced detailing that the value of larger stores had fallen more than smaller shops. Whilst she does not agree with the values proposed in the matrix itself, she can agree on the approach on the general principles that the value of larger shops had fallen in comparison to smaller shops.
357. She had not chosen to make an adjustment to reflect what the additional quantum allowance should be in 2017 as compared to 2010 for a store of John Lewis size compared to the appeal property, as it was very difficult to make a specific adjustment. Also, as there was no specific evidence in Cardiff, you had to look further afield and consider that evidence along with the Promis Retail Rankings adopted by the appellant in order to make adjustment between cities.
358. Referring to her evidence of new lettings and lease renewals she highlighted the adjustments made by the appellant which suggested that the value of large shops had fallen.
359. She believed that she could isolate the general principle from the evidence that was said to support, just as the Independent Expert had done in his report, where there were certain aspects of the report that you would accept and others you would not.
360. Regarding the exercise she carried out in respect of Leeds comparing a 10,000m² Debenhams store with a John Lewis store located fundamentally in a different part of the city centre, she intimated it was similar to the circumstances in Cardiff. She concurred that whilst Leeds had undergone vast changes to its retailing offer those changes would be reflected in the 2017 values.
361. She was not offering the House of Fraser store as a definitive basis for her quantum allowance as all the changes that occurred in Leeds are reflected in the agreements by looking at the impact of what size can be, which in this instance was 93% and in Cardiff it was 50% therefore it showed what she had done was not unreasonable.
362. She was not intimating that it was her positive thesis that there had been negative market conditions for only larger stores, she was suggesting that the value of larger stores had fallen more than smaller stores. Referring to the John Lewis agreements,

it can be seen that smaller weaker stores are valued higher than larger stores in a stronger location.

363. The John Lewis agreements were based on rental evidence and when that evidence was analysed and adjusted in a consistent way, it was plain to see that small stores are worth more than larger stores on a price per square metre basis and that the appellant's adjustment and analysis of those rents supported her contention.
364. Whilst she did not accept the appellant's analysis that if you adopt a consistent approach and analysed consistently then you had a consistent method where you can compare values between each other. She commented that it did not mean that the end values were correct but that you can still compare values as long as you have carried out an analysis adjustment consistently. It did not mean that the values were correct but you could use it as a basis for comparison.
365. Regarding the House of Fraser settlement in Cardiff and in terms of size there was little difference between this store and John Lewis and that the level of value had gone down by £0.60m².
366. Based on the evidence of two stores in Cardiff which were above 21,000m², the value of John Lewis had gone down based on size and the value of the House of Fraser could not go any lower as it was at rock bottom already and whilst she did not have a clear number on the differential based on size for John Lewis from the 2010 Rating List, she pointed out that she was not making an adjustment for size as it was a big valuation issue and was too subjective.
367. With regard to quality and the Independent Expert's report detailing the John Lewis store to be the dominant store, she accepted that it was modern, well configured, a part of SD2, detached, connected to the first floor via a walkway and had car parking, however in terms of it being the dominant store, she accepted that it was the anchor store for SD2 in terms of size but not dominant in the terms that it stood out.
368. She accepted that the John Lewis store was a modern store of high quality fit out built in 2009. However, the appeal property was constructed in the 1980's and the promotional documents in relation SD2 state that the appeal property was extended and refurbished. Before 2008 the appeal property was approximately 14,600m² and to facilitate the new development Debenhams gave back part of the store for the development so the size of the appeal property went down to 12,800m² and following that refurbishment it increased to 15,400m² creating an extra space of approximately 3,000m², along with new fittings and was going to be a part of the new development. Therefore to add 5% for the fit out was not unreasonable.
369. Having regard to the sum of money spent on the refurbishment, the VO did not believe that the appeal property looked particularly tired and dated as at the 1 April 2015.
370. She accepted that the John Lewis store had good circulation planned around a central atrium with no disruption to flows. In contrast the first floor on the appeal property had a poorer layout with an 'L' shape configuration integrated into the SD2 development. However, she had no issues regarding to the ground and second

floors. She added that whilst something maybe worse, it did not mean that it was value significant and was under the impression that there was no point of difference between the parties and that the appellant had not made any adjustments from the John Lewis store. She accepted that the layout of the appeal property was inferior to John Lewis.

371. In respect of car parking whilst John Lewis had its own park of 550 spaces, lift and stair access to all floors along with a collection bay, she explained that whilst the appeal property did not have a car park it had good access to car parking albeit it was somewhat of a circuitous walk. However, the first floor car park to the appeal property was located nearby with pedestrians taking the short cut from the first floor car park through the appeal property to gain access to SDC and Queen Street. Therefore, the car park on the first floor was good in terms of location, a situation which existed in 2010 and was reflected in the values at which the appeal property was valued at a higher rate than John Lewis.
372. She agreed that public transport was located next to the John Lewis store and Cardiff Central train station was located closer geographically than the appeal property. However, when pedestrians walk from the train station on to The Hayes, the John Lewis store was not in a prominent position at all as the only occasion in which the store was visibly prominent was if you were walking towards the store from the opposite direction.
373. In respect of entrances, she accepted that John Lewis had a prominent position within the Hayes if you were travelling from a westerly to eastly direction and that access was gained by exiting from the ground floor entrance of John Lewis under a covered walkway into the prime Zone A area located within the Grand Arcade of SD2. She also accepted that you could travel effortlessly into the John Lewis entrance located on the first floor via an escalator located within the ground floor of the Grand Arcade located within SD2.
374. She did not however accept that the escalators located on the ground floor provided a design line taking you up the escalators into the first floor entrance of John Lewis as the escalators were set off to the side. It was a personal choice of which part of the department store you wished to visit either via the ground or first floor entrances.
375. The appeal property did not have ground floor access to SD2 however it did have a small entrance with additional window frontage to the first floor of SD2.
376. Prior to the SD2 development, the appeal property's traditional main entrance was that which fronts St David's Way in the original SDC.
377. With regard to the Promis Retail Report, she accepted that Cardiff's historic prime pitch was traditionally the pedestrianised area of Queen Street and that the appeal property was not a part of that compact pitch where top rents were being achieved in the Grand Arcade exceeding those of Queen Street. John Lewis however was not identified in the report as one of the prime pitch occupiers.
378. Whilst The Hayes fashion offer had strengthened with a gradual shift in pedestrian flows from east-west to north-south, she did not accept it was as a consequence of

the introduction of John Lewis, as pedestrian footfall would travel pass the appeal property if travelling in a north-south axis.

- 379. SDC focuses more on mass market and non-fashion retailers whereas SD2 was a high fashion pitch and a prime location within the city centre.
- 380. The Zone A values of shops located at The Hayes Arcade, the main entrance to the south of SD2, were valued at £1,700m2 whereas the Zone A values of shops outside John Lewis were valued at £1,350m2 therefore it does not indicate that the value of The Hayes has strengthened as a consequence of John Lewis.
- 381. Whilst the Promis Retail Report suggested that in the hierarchy of the value the Grand Arcade was the highest in terms of Zone A, she pointed out that the 2017 Rating List identified the highest value at the entrance of The Hayes which was entered at £1,700m2 and the peak of Queen Street at £1,800m2. The Zone A values were agreed in the Valuation List.
- 382. There was a broader quality of value between Queen Street at £1,800m2 and the highest value on the first floor of SD2 at £1,700m2, however some of the first floor values had been provisionally reduced.
- 383. She accepted that there was a relationship between the values of Grand Arcade, the First Floor of SD2 and The Hayes to John Lewis and that the appeal property had a direct relationship with the first floor of SD2 and St David's Way but not with the Grand Arcade.
- 384. The surroundings around John Lewis and The Hayes were reflective of a landlord's strategy of attracting and bringing high quality and luxury lettings around the areas close to John Lewis which had been broadly successful.
- 385. Whilst the appellant commented that the area around St David's Way and Cathedral Walk was dogged by a series of short term lets followed by vacations with extended periods where units remained empty, she referred to the Promis Retail Report which highlighted that between the audits of 2014 – 2015, vacation rates in SDC had fallen significantly with 4 vacant units in 2015 compared to 10 vacant units in 2014, suggesting that around the AVD that the vacancy rate had decreased.
- 386. She accepted the Independent Expert's contention that the only credible hypothetical tenant that would be negotiating for the appeal property as at the 1 April 2015 was Debenhams.
- 387. Whilst the appellant contended that Debenhams had come under great pressure from Primark, a retailer which did not offer an online service but was driven by foot fall, and therefore it would be disadvantage being located close to a competitor who drives down prices, she opined that Primark being located nearby to the appeal property would be an advantage as Debenhams would benefit from the footfall created by Primark rather than being located elsewhere within the centre with less footfall.

388. She accepted the mathematical analysis provided by the appellant in relation to the change in Zone A values between the 2010 and the 2017 Rating List to the area in respect of 33 St David's Way and 13 & 15 Grand Arcade.
389. In respect of rental evidence and in terms of size, she would not use the large stores in Cardiff as a direct comparable to the appeal property, however those large shops are good evidence of their own value and therefore indicated that the appeal property should be at a higher value. Consequently, whilst there are currently no settled assessments in respect of those large stores and are not directly comparable in terms of size, she opined that the VO's valuation in respect of the appeal property was not unreasonable.
390. Whilst the Independent Expert referred to the Next store in Cardiff as a compromised store, she gathered that the Independent Expert was suggesting that he would have valued the appeal property at a higher value considering that the Next store was only approximately 9,000m².
391. Whilst her colleague had opined that he did not consider the market in Wales to be a reliable indicator of the market for the rest of the United Kingdom as there would be different economic conditions in different regions, she was of the opinion that you cannot take one individual case and apply it as a blanket to the rest of the United Kingdom. She had made the relevant adjustments between locations having regard to the Promis Retail Rankings utilised by the appellant and accordingly she did not consider that it was an unreasonable approach.
392. She accepted that you had to make an adjustment for location in accordance with the Promis Retail Rankings where you need to understand the relationship of the relevant store with its location and then be able to compare with the relationship of the appeal property with Cardiff i.e. where the store sits within the city. There was nothing unreasonable in utilising the Promis Retail Rankings as a guide as to the strength of location of a retail centre, as you had to make subjective judgements and pick what you feel were comparable to the appeal property and make the necessary adjustments.
393. In respect of other assessment evidence, she had made a number of adjustments for quality and location. With regard to the John Lewis store Oxford, she had looked at the advantages of both this store and the appeal property and determined that they were on a par however she had made an adjustment as the Oxford store was located in a regional centre.
394. The VO had made two adjustments, an adjustment for the actual store from the Oxford store to the appeal property and then a further adjustment to reflect the quality of the retail centre. The John Lewis store in Oxford was at the back of the centre and was not in a prime location, whereas the appeal property was in a strong central location.
395. She felt that the appeal property was in a much stronger location than the John Lewis store in Cheltenham which was located within a regional centre.

396. She confirmed that Debenhams still had an appeal outstanding in respect of the Wolverhampton store and she apologised if she had misled the Tribunal.
397. Regarding the settlements in respect of the House of Fraser stores at Bristol and Reading, she opined that they were both useful settlements to be considered as a part of the basket of evidence which she would use to support her valuation in respect of the appeal property.
398. She contended that the House of Fraser store Reading was in a better location within that city compared to the appeal property and when making adjustments to reflect the advantages and disadvantages of both those stores, she opined that the appeal property would be 7.5% lower than the House of Fraser store Reading, she would however make a 10% adjustment to reflect the location of the House of Fraser store in a retail centre.
399. The overall figure of 7.5% reflected the location of the store within that centre along with its size and parking provisions.
400. With regard to the hierarchy of rent review evidence and looking at the shell figures where there were no fit issues involved and by taking the appellant's adjustments to get to the actual store instead of the hypothetical store, the Independent Expert had valued the appeal property higher than the House of Fraser stores located in Reading, Bristol, Bath and the Debenhams store in Bristol. Accordingly, she believed her adjustments were more than reasonable by what was shown in the rent review evidence.
401. She accepted that HoF store Bristol was located in a prime position.
402. She was not relying solely on one piece of evidence as she had a basket of evidence which encompassed rents post 1 April 2015 along with agreements and therefore was not simply just historically looking back, as the basket of evidence comprised all evidence.
403. In his closing submission, Mr Ormondroyd referred the Tribunal to the guidance provided in *Lotus & Delta v Culverwell (VO) (1976)* and reiterated the Upper Tribunal's recent summary of that guidance in full.
404. He stated that where the hereditament which was the subject of consideration was actually let, that rent then should be taken as a starting point and the more closely the circumstances under which the rent was agreed both as to time, subject matter and conditions relate to the statutory assumptions, the more weight should be attached to it.
405. Where rents of similar properties were available, they too were properly looked at through the eye of the valuer to confirm, or otherwise, the level of value indicated by the actual rent of the subject hereditament.
406. Rating assessments of other comparable properties were also relevant. When a valuation was prepared these assessments were to be taken as indicating comparative values as estimated by the VO.

407. In light of all the evidence, an opinion can then be formed of the value of the subject hereditament. In cases where there was no evidence of rents of comparable properties, a review of other assessments may be helpful, however in such circumstances, it would clearly be more difficult to reject the evidence of the actual rent.
408. Mr Ormondroyd considered that the appellant had paid lip-service to the guidance laid down in the *Lotus* hierarchy, since the starting point of its valuation was not the passing rent but the assessment of John Lewis and all other evidence was discounted in favour of that one assessment. The Appellant claimed that the inversion of the normal *Lotus* hierarchy was justified and relied upon a very radical approach to rent review evidence.
409. Turning his attention to the rent review evidence in general, he considered that the appellant had based its case on the radical proposition that an “agreement on a rent review is, in its nature, fundamentally different to an open market transaction of the kind posited by the rating hypothesis”. He commented that this was not a legal proposition, or if it was, it was incorrect and not supported by any decision of any court or tribunal. He maintained that it was a novel approach to valuation, which if correct would have enormous implications in which the Rating List was prepared and maintained.
410. He commented that a rent set under rent review provisions would have varying weight depending upon the way it had been set. Where some leases simply require that the rent was increased at each review by a formulaic amount, a rent set on that basis was of no assistance and was not relied on by the VO. Similarly, if the rent review clause only allowed for an increase in the rent, and the rent had not been increased upon review, it was of little assistance, an issue reinforced by Lord Briggs in *Hewitt (VO) v Telereal Trillium (2019)*.
411. Whereas a rent review which required the parties to agree to an open market value without any relevant restriction, in that case, the rent was likely to provide very good evidence of open market value particularly if the parties were represented by professional surveyors or if the rent was determined by an Independent Expert.
412. The appellant suggested that a rent set to ‘open market value’ was not subject ‘to higgling of the market’ and the respondent was not clear as to what was meant by this, as the rent could clearly be negotiated between the landlord and tenant just as much as a new rent can. He suggested that just as a tenant cannot walk away to find other premises neither can the landlord walk away and find another tenant. Accordingly, it was no reason to disregard the outcome of the actual negotiation.
413. It was for those reasons he submitted that such rent review evidence was commonly used in the valuations of many other classes of hereditament and not just department stores. He intimated that the rating system would not operate if the appellant were correct in its assertion that rent review evidence can be written off as being ‘fundamentally’ different to an open market transaction. He urged the Tribunal to beware of the appellant’s radical and novel, approach, which evidently was not shared by any other major department store operator.

414. Mr Ormondroyd then considered the evidence available to value the appeal property in line with the order suggested by the *Lotus* decision i.e. the actual rent, other rents and other assessments.
415. In respect of the actual rent, he reminded the Tribunal that the appeal property was let under two leases. The rent for 'Store A' was subject to a yearly increase of 2.5% and as such carried no weight. By contrast, the rental value for 'Store C' was determined to open market value and therefore was worthy of further investigation and provided a sound starting point for the valuation.
416. The rent in respect of 'Store C' was set by the Independent Expert Keith Whale, who was able to apply his considerable knowledge and experience of the market with his determination referenced to a date in June 2014 and concluded on the 23 April 2015, very close to the 1 April 2015.
417. Whilst the appellant dismissed the rent as it was determined in respect of a 'hypothetical store' which bears little resemblance to the actual store and was made without regard to market circumstances and new lettings, the VO believed it was very good evidence of the appeal property for rating purpose, as it indicated a rent of £126.48m², which was entirely supportive of the VO's valuation at £113.50m² and entirely inconsistent with the appellant's valuation at £67.50m².
418. In respect of the adjustments between the hypothetical store and the actual store, the appellant suggested an overall adjustment of -10% (-5% number of floors, -7.5% frontages, +2.5% fit out) giving a figure in the region of £114m² and even by adopting that figure suggested by the appellant, it was still higher than the VO's at £113.50m² and inconsistent with the appellant's valuation.
419. When addressed with the appellant, the appellant made a different point in that the Independent Expert had determined a reduction in rent however the VO's valuation saw an increase between the 2010 and 2017 Rating Lists. The Independent Expert determined a reduction of £1.00m² and when deducted from the appeal property's value of £110m² in the 2010 Rating List logically reflected a reduction to a valuation of £109m², which was consistent with the VO's figure of £113.50 and inconsistent with the appellant figure of £67.50m².
420. With regard to rent review evidence, Mr Ormondroyd challenged the appellant's general stance that department stores rent reviews were said to be removed from the state of the market in the real world and instead formed a closed bubble of ever increasing rents driven by other rent reviews.
421. He submitted that there was an issue with the appellant's argument in that the Independent Expert did have regard to the state of the market and did not determine an increased rent, where he explained that he had "undertaken extensive research and enquiries to assist... my examination of the dynamics in the market place"; he had also had "cogent and highly persuasive reports" from "two highly experienced practitioners" and in the light of that information he concluded that Debenhams would be the only bidder. He referred to the highly incentivised nature of new lettings, the increasing prevalence of online shopping/multi-channel retailing and stagnation in the relevant market.

422. As a consequence of those factors, the Independent Expert applied a “cautious approach to valuation” and on that basis, he determined a small reduction in the rent passing. All of the general market factors now relied on by the appellant were fully considered by the Independent Expert at the time he made his determination and were reflected in that determination. As the Independent Expert had stated in his report it was “very clear to me that the dynamics of the market were changed by mid-2014”:
423. Mr Ormondroyd opined that the comments from Independent Experts Mr Oates and Mr Rakkar do not contain anything material that was not already reflected in Mr Whale’s remarks and as an informed observer of the relevant market, he would clearly have been aware of the challenges posed for department stores by internet retailers. Indeed, as the VO had pointed out, Mr Whale referred specifically to the emergence of multi-channel retailing, drawing the conclusion from his research that those challenges were not expected to change the space requirements of department stores.
424. Whilst accepting that the Independent Expert acknowledged the necessarily “subjective” nature of the valuation he was required to conduct, it did not in itself assist the appellant, as the appellant accepted that in itself was no reason to discount the outcome, as any valuation would require subjective assessments to be made.
425. Accordingly, the appellant was forced to state that there was specific evidence now available which would have led to a different determination from the Independent Expert in 2015 and the most significant factor about that argument was that the appellant had not produced a clear statement from the Independent Expert to that effect, which was highly surprising given that he was clearly retained by the appellant and had provided a report for use in these proceedings. However, that report had evidently been worded with care and it stops far short of saying that the determination of the rent passing on the appeal property was, with hindsight, too high and by what amount, a factor which was what one would expect it to say, and to say clearly, if it were to support the appellant’s case.
426. The report concluded that, had full knowledge of various transactions been available to rent review practitioners, “there would have been every likelihood of different outcomes arising in settlements where rents have increased”. The rent for the appeal property did not increase in 2015 and therefore this statement does not assist. Nor where it states that “there is every probability that many settlements would have been negotiated (where the rent increased), determined or awarded at lower levels than have actually occurred”. This statement fails to help the Tribunal on the crucial point – was the appeal property one of those settlements in which there would have been a probability of a different outcome? Nor does it explain, if that were the case, how likely it was that the outcome would have been different and by how much.
427. Mr Ormondroyd highlighted the fact that he had addressed some of those points with the appellant during cross examination. The appellant however had failed to make good the omission by submitting a supplementary letter from the Independent Expert explaining how, if at all, his remarks applied to his own determination in respect of the appeal property. The Independent Expert had also not been called as a witness, which inferred that the appellant cannot make good the deficiency in its case as the

Independent Expert believed his award in respect of the appeal property was not too high.

428. The Appellant has also not produced evidence which was said to justify a different conclusion to that reached by the Independent Expert in 2015, which specifically related to new lettings to John Lewis in Birmingham and Leeds, where it was claimed that those transactions were said to be “highly relevant” in that the determination and should have been “derived primarily” from them.
429. Mr Ormondroyd commented that somewhat bizarrely and given those contentions, the appellant did not in fact produce or seek to rely on the John Lewis Birmingham and Leeds lettings itself. The appellant had analysed those rents to £31.43m2 and £45.19m2, respectively, yet the rateable values for those stores had been agreed at £65m2 and £77.75m2 respectively. During cross examination, the appellant made clear that it did not attack those rateable values as being incorrect, nor could it, given that its whole valuation rested on an agreement between the VO and John Lewis. He opined that it was clear that the rents were not regarded by either the VO or John Lewis itself as a good indicator of open market rental values at the 1 April 2015. He submitted that those rents were far from being the ‘primary’ source for the valuation and were an unreliable guide.
430. The VO had provided reasons why they were an unreliable guide and explained that the landlord making a new letting had many factors on his mind that were not pertinent to the rating hypothesis. The landlord would be concerned to establish, or strengthen, the rental values of the other units in the centre and can therefore afford to grant an anchor tenant a reduced rent. The hypothetical landlord of rating, on the other hand, was only the landlord of the subject premises and would not be prepared to grant any similar discount, as he would not have the same interest in increasing rental values throughout the centre.
431. The respondent remarked that whether that was true or not, what was clear was that the appellant had simply not provided the evidence to make good its claim that the Independent Expert’s determination in 2015 was flawed. Accordingly, the actual rent provided the strongest evidence available of value for the subject property and consequently strongly supports the VO’s valuation.
432. Continuing with the order suggested in the *Lotus* decision, Mr Ormondroyd then had regard to other rents in particular rents for large shops in Cardiff.
433. He commented that the VO had conscientiously followed the *Lotus* guidance and considered various rents on large shops in Cardiff and after careful analysis was able to disregard certain rents. In oral evidence the VO clarified that it would not seek to rely on rents set by an arbitration award and accordingly, the only rents to which the Tribunal could attach weight were those for in respect of Next and Matalan.
434. During cross examination of the VO, the appellant dismissed the rents in respect of Next and Matalan as they had not been used as “direct comparables”. The respondent remarked that whilst the rents were not direct comparables in the sense that like other stores of very different size they cannot be used easily to derive an

exact figure., they still were however of considerable use in confirming which of the two figures before the Tribunal was most likely to be right.

435. With regard to Next, it was a fitted rent for a unit of 8,881.55m² from 4 February 2012, analysing to £171.64m² and valued in the 2017 Rating List at £175m² and was referred to by the Independent Expert in his 2015 determination as a “compromised store”. Plainly, a rent at those levels was entirely inconsistent with the appellant’s valuation of the appeal property. The only response offered by the appellant was that the rent was three years before 1 April 2015, a surprising point to make given the importance attached by the appellant to the John Lewis Birmingham and Leeds lettings dated from 2011 and 2012. Certainly, the appellant had produced no evidence to show a dramatic change in the market between those dates and 2015.
436. In respect of Matalan, it was a new rent as at 1 July 2014, so close to 1 April 2015. The rent was for a unit in a shell condition; the existing fittings were removed and new were installed by the incoming tenant. It analyses to somewhere between £143.53m² and £116m² depending on what approach was taken to the rent free period. He submitted it was not necessary to resolve that debate to conclude that, on either basis, as it was consistent with the VO’s valuation and entirely inconsistent with the appellant’s valuation. If £116/m² were adopted for the Boots store opposite to Matalan, that store at 9,000m² would, on the appellant’s approach, have a higher value than the appeal property at 15,441m², even though they are located very close to one another. He proposed it was a clear warning sign that the appellant’s valuation was simply in the wrong ballpark.
437. Mindful, perhaps, of those problems, the appellant’s approach to the ‘mode or category’ argument was initially sought to deploy another radical ‘in principle’ argument to assist it, where no regard could be had to such lettings, as they related to shops in a different ‘mode or category’ of occupation.
438. This argument was developed in the appellant’s legal submissions where it argued that a Primark store for example was in a different mode or category of occupation to a Debenhams store; to have regard to the possibility of such a use would be to take into account ‘development value’, which the respondent remarked were extreme submissions with no support in law, in fact or in the practice of the market.
439. In respect of the law, Mr Ormondroyd referred to the Court of Appeal in *Williams (VO) v Scottish and Newcastle Retail Ltd (2001)* where the legal principles inform that we must value “a shop as a shop, but not as any particular kind of shop”. Furthermore, the Upper Tribunal in *Hughes (VO) v Exeter CC (2020)* gave warnings against the overly narrow subdivision of broad categories. The extent of the guidance provided by the law was entirely contrary to the appellant’s attempt to subdivide the category of large retail premises into department stores and non-department stores.
440. As to the facts, the appellant’s legal submissions made various factual assertions and submissions as to the difference between department stores and other stores. The VO disagrees with its assessment as they are not a matter of law. Those matters relied on by the appellant reflected the business models of different retail operators, not anything intrinsic about the hereditament or the nature of the activity taking place

at it. If other retail operators could and would occupy a department store hereditament, without making physical changes which were more than 'minor', then it would be artificial to exclude them from the pool of potential hypothetical tenants.

441. The legal submissions also referred to "authorities" in support of the appellant's position, which the respondent dismissed as they were nothing of the sort. They were not, as they were decisions of the Lands Tribunal on their own facts, which may be persuasive but do not have any binding authority on points of law; in the first, *Harrods Limited v Baker (VO)*, the Tribunal did not have to consider the question of whether department stores were in a separate mode or category of occupation and therefore this decision was silent on the issue; and the second, *John Lewis v Goodwin (VO)*, dates from 1979 and there was no reason why it should provide an accurate guide at 1 April 2015. Insofar as it remained relevant it differentiated department stores on the basis that they had a substantial trading area above the first floor, which would support the view that they were in the same mode or category as other retail operators who would operate from such space.
442. Regarding the practice in the market, in the Independent Experts determination of 2015, it was very apparent that he had regard to lettings by large shop retailers such as Next, albeit he gave such evidence reduced weight for various reasons. With regard to the market such retailers are regarded as potential occupiers of space which would otherwise be occupied by a department store operator. Again, the appellant invited the Tribunal to deviate from the market approach on account of misplaced technical arguments.
443. Mr Ormondroyd suggested that if the appellant's invitation was rejected, or as appeared to be the case was not pursued, then there was a further category of evidence which was wholly inconsistent with the appellant's valuation on any basis.
444. Referring to rents from other cities in addition to consideration of rental evidence from Cardiff, the VO had also carefully assembled relevant rental evidence from other cities. The VO's Rating Manual, upon which the appellant repeatedly relied, states that "location is the most important factor affecting value"; and by 'location' in this context it was referring to the location of the department store by retail centre, not its location within that centre, which was also value significant, but less so.
445. Therefore, when valuing department stores such comparisons across different towns were useful, which would be expected in a "national market" and followed the practice of rent review surveyors, such as Mr Whale, who made comparisons between retail centres. It was also a practice adopted by the appellant's valuers, who in the Swansea appeal had relied on various such comparisons, which were facilitated by the existence of the widely recognised and accepted 'Promis Retail Rankings', which provided a basis of comparison between different cities.
446. The appellant's suggestion that comparisons between towns were invalid was out of step with how valuers approach such matters. The appellant's attempt to strengthen the suggestion with a single sentence from one of the VO's reports came to nothing. The VO explained it was simply stating that a single rent from Cardiff should not be taken as setting the national picture, which does not invalidate comparisons between

Cardiff and other similarly ranked retail centres. If it had, the valuation of department stores would become almost impossible.

447. Mr Ormondroyd provided samples of relevant rents relied upon by the VO from other cities excluding those determined by an arbitrator:
448. Debenhams, Bath, a rent of £116.25m2 agreed on 2 September 2015 where both Cardiff and Bath were of equal strength on retail rankings; whereas the Bath store had more floors and was in a worse location within city but was smaller and newer. Its value was on par with the rent and showed an increase in headline rents between 2010 and 2015 and was not consistent with a massive drop in the market by 1 April 2015.
449. Debenhams, Bristol, a rent of £77.50m2 agreed on 1 January 2013 where the appeal property was significantly better overall and in a better city. The rent sets a floor value suggesting that the value of the appeal property should be more than the rate per metre square and more than the overall value of the Bristol store.
450. Debenhams, Birmingham, a rent of £140.00m2 agreed on 4 September 2013 where the Independent Expert suggested that a hypothetical Cardiff store should be 2.5% below and by making the relevant adjustments suggested £123m2 or £115m2 if working from rateable value agreed at £130m2.
451. House of Fraser, Reading, a rent of £121.63 agreed on 25 June 2014 where the store was in a better location within the city and smaller, however Reading was significantly a worse location compared to Cardiff suggesting that the value for Cardiff should be higher.
452. He suggested that this evidence painted a consistent picture of value in the region of £113.50m2 as submitted by the VO and in any event far in excess of £67.50m2 as suggested by the appellant. Accordingly, it was consistent with the rent passing and the VO's valuation and entirely inconsistent with the appellant's valuation.
453. As the evidence originated from rent reviews, the appellant's response was to write all of this evidence off. The radical nature of this position, and its implications for the rating system, have already been noted. It should also be noted that it was an isolated position. It was apparent from the settlements on John Lewis stores referred to above, and from the House of Fraser settlements, which have occurred since the last hearing, that the other main department store operators do not think this point had any force.
454. If the Appellant's position on the rent review evidence was not accepted, its valuation plainly cannot stand.
455. In respect of rents for small shops, the appellant placed considerable reliance on evidence as to the letting of small shops despite refusing to refer to rents either on new lettings or reviews of other department stores. The comparison with small shop rents was made generally and specifically in terms of the Zone A rates around John Lewis and the appeal property with the appellant submitting that rents had decreased

in Cardiff since 2008 and consequently was an indicator that the rateable value for the appeal property should also be less than it was for the 2010 Rating List.

456. Mr Ormondroyd challenged this argument as the appellant had stated “There is an entirely different market for unit shops compared to the large shops”. During cross examination the appellant was reluctant to agree in that its own evidence was correct on this point and, if further confirmation was needed that the comparison with rents for small shops was unhelpful, it could be found in the following places:
457. The fact that since the opening of SD2 in 2008 the supply of small shops in Cardiff had increased dramatically, whereas the supply of large shops did not increase except for the occupation of John Lewis;
458. The fact that the Independent Expert made no reference to small shop rents in his determination or his later report for the appellant, suggested that he considered them relevant, he clearly could and would have referred to them;
459. The fact that settlements for department stores elsewhere had been made at values which did not correspond to the move in values for small shops. For example, House of Fraser, Bristol, which showed an increase of 15% on the 2010 Rating List compared to a fall of 20% in prime Zone A rates. As the Rating Manual states: “As large shops are valued on a different basis... there is no direct relationship between patterns of Zone A levels nor valuation trends between the revaluation dates”.
460. The respondent submitted that it follows that rents on small shops provided no direct assistance in the valuation exercise.
461. In respect of assessment evidence, Mr Ormondroyd reminded the Tribunal that the crux of the appellant’s valuation was the assessment on John Lewis, Cardiff at an assessment of £1,960,000 for a store of some 26,000m². During cross examination of the appellant on other points of its evidence, time and again it referred back to the assessment of John Lewis, which it said provided “certainty” as against doubts in respect of all the other evidence, which it gave little or no weight. He remarked however that far from providing certainty, a valuation by reference to this single comparable assessment was inherently unreliable for three reasons.
462. First, it was agreed that the tone of the list was not settled and therefore assessments cannot prevail against actual rental evidence. Therefore, in order to reach the appellant’s valuation, you had to reject the rent on the store and all of the other rental evidence which supported that. It was therefore misleading to say that the John Lewis assessment offered a simple way through the disputed issues. It could only be relied on if the appellant was correct in all of its somewhat extreme propositions regarding rent review evidence.
463. Second, as the assessment was simply evidence of the VO’s opinion as to comparative values, as stated in the *Lotus* decision. Its opinion was very clear in that the appeal property was more valuable on a pound per square metre basis than John Lewis, as it had been in the 2010 Rating List, and which was the basis on which the John Lewis assessment was agreed. In order to succeed, the appellant had to show that the VO’s opinion as to comparative values was wrong and in doing so has

simultaneously undermined the reliability of the John Lewis assessment as a piece of evidence, which was based on the self-same opinion of the VO. The Appellant was therefore seeking to saw off the branch on which it sits.

464. Third, as it provided only one indirect comparison, both valuers agreed that there were value significant differences between John Lewis and the appeal property not least, in terms of size. The VO was clear that the size differential was such that it was not possible to make direct adjustments or comparisons between them. Furthermore, with just one point of comparison there was no cross check for the necessarily subjective adjustments that had to be made, hence making for a very unstable foundation for the valuation.
465. Mr Ormondroyd remarked that Mr Kolinsky sought to overcome the third of these points by asserting that the appellant's quantum adjustment was derived from a quantum adjustment made by the Independent Expert. He claimed the appellant had taken the 5% differential assessed by the Independent Expert, as between Debenhams, Birmingham at 19,205m² and the appeal property at 15,441m² and then multiplied it by three to reflect the difference between the latter and John Lewis, Cardiff at 26,176m². Contrary to what Mr Kolinsky said, that process was not set out anywhere in the appellant's written or oral evidence. If it was, it therefore assumed that the quantum adjustment moved in a straight line as the store gets larger, a proposition for which there was no evidence. It also starts from a subjective judgment by the Independent Expert. Ultimately, therefore, the instability referred to above remained.
466. Accordingly, the VO does not agree with the premise of the appellant's valuation. Instead, the John Lewis assessment was one piece of evidence which must be considered in conjunction with the rental and other assessment evidence and it would be revisited once other assessments have been dealt with.
467. In respect of other assessment evidence, Mr Ormondroyd suggested it was strange that the appellant had rested its case entirely on a settled assessment, when it had sought to discredit the settlements made by John Lewis and House of Fraser on the basis that they were being 'held over a barrel' and therefore forced to settle. He commented that it was wild speculation which seemed to disregard the fact that those settlements were made on the advice of a leading rating surveyor and rating QC. The other assessments cannot be disregarded, however convenient that would be for the appellant's current case.
468. In the context of large shops/department stores, comparisons between towns was an important and valid valuation tool and the VO made the necessary detailed comparisons in the context of the assessment evidence, the results of which were illuminating.
469. The assessments for John Lewis, Oxford at £100/m² and John Lewis, Cheltenham at £95/m² reflected slightly smaller stores which was agreed with the appellant that the differences in size would not make a significant difference to the rate per metre square, which were newer than the appeal property but arguably were worse located within their respective centres and broadly there was a measure of comparability with the appeal property.

470. However, according to the Promis Retail Rankings, Oxford and Cheltenham were very significantly worse locations than Cardiff in that they were small regional centres compared to a capital city. Accordingly, you would expect the appeal property to show a somewhat higher level of value overall than Oxford and Cheltenham and certainly not a significantly lower level of value. This evidence was thus consistent with the VO's valuation, and entirely inconsistent with the appellant's valuation.
471. The appellant suggested that those comparables, or at least Oxford, should attract little weight for the reasons provided by the appellant, which proceeded on a completely mistaken basis as to the nature of the VO's valuation approach. The VO does not seek to apportion value to the fit out works and the shell separately and accordingly suggested that it was bizarre and completely misleading to deduct £35-£40 for fit out at Oxford and then add only 2.5% for fit out in Cardiff, which was to devalue in one way and value in another.
472. The VO clearly states that was not the correct approach which was clarified by the appellant during cross examination. In reality, the appellant's evidence, insofar as it is relevant to any issue in the case at all, was simply an attempt to go behind the agreement of the rateable value on John Lewis, Oxford. As the appellant stated: "I would not have arrived at £100/m²". It was, of course, far too late for that argument given that the list value had been agreed.
473. Following the agreement of all House of Fraser assessments, the VO was able to point to further helpful assessment evidence, namely:
474. House of Fraser, Bristol agreed at £112m², which was somewhat a stronger store in a somewhat weaker city and supported a value in the region of £112m²;
475. House of Fraser, Reading agreed £103m², a somewhat better store in a much weaker city and supported a value in the region of £105m².
476. As the VO explained, the comparisons made in this respect were supported by the hierarchy of values set out in the rent review evidence. That evidence however was analysed and it supported the view that the appeal property was considered more valuable in the market than either of the House of Fraser stores in Bristol or Reading.
477. Mr Ormondroyd commented that the appellant made the striking claim that rent review surveyors, as well as being wrong about the absolute values of individual stores, were wrong about the relative values of different stores. This claim was not even supported by its own evidence and was simply implausible, and a further indication of how out of step the appellant was from the reality of the market.
478. These assessments, with or without the support from the rent review evidence, were again broadly consistent with the VO's valuation but entirely inconsistent with the appellant's valuation.
479. He remarked that the relationship between the House of Fraser and John Lewis assessments in Leeds, both of which were now agreed, were also of some assistance. The House of Fraser was an older store of 10,275m² at £150m² and John Lewis was a 2016 store of 23,214m² at £77.75m². The Zone A values

surrounding House of Fraser were lower than those around John Lewis. Nevertheless, the smaller, older House of Fraser store had been agreed at a value very significantly higher than that of the newer, larger John Lewis store, showing an uplift of 93% for the smaller store as against 51% in Cardiff. This tends to confirm that the VO's view of the correct relative values of John Lewis Cardiff and the appeal property was not at all unreasonable.

480. Finally, Mr Ormondroyd considered the John Lewis assessment and its comparison to the appeal property and suggested that should the Tribunal, like the appellant, disregard all other evidence and simply make a comparison with John Lewis Cardiff, he suggested that that exercise still would not support the appellant's value.
481. To demonstrate his opinion, he referred to the 2010 Rating List when Saint David's 2 opened in 2009 and therefore was present at the material day and reflected in the 2010 Rating List valuations as if it had been present at 1 April 2008. In the 2010 Rating List, John Lewis was valued at £95/m² and the appeal property at £110/m². Therefore, the appeal property was agreed by all parties to be significantly more valuable per square metre than John Lewis.
482. He reiterated that the relevant value significant factors differentiating between the properties were size, age/quality, location.
483. Following cross examination of the appellant, it was agreed the difference between the stores in terms of age/quality had not changed since the 2010 Rating List.
484. Clearly, the size of the two stores had not changed between the two Rating Lists. Indeed, the appellant acknowledged that the changes in the market identified by the Independent Expert in 2014/15 would have hit larger stores harder. As such, the change here suggested a widening gap in the same direction, namely that John Lewis should have become less valuable in comparison to the appeal property. Indeed, that was what the VO stated had happened. It was correct that the House of Fraser store, Cardiff did not decrease materially in value between the Rating Lists, but that was because it was an extremely poor store and thus already, as the VO stated at "rock bottom" in the 2010 Rating Lists. So far, then, the appellant's case finds absolutely no support.
485. Accordingly, the appellant's whole argument rested on location. Clearly neither store changed its physical location compared to 2010 and they were in the same location both relative to each other along with the surrounding shops in St David's 2 and the car park in both Rating Lists. Nevertheless, the appellant argued that there was a radical change in respect of this factor and so great was the change that it not only outweighed the change suggested by consideration of the size and quality of the stores, but also produced a complete reversal of the original relationship between the stores in 2010.
486. Mr Ormondroyd questioned what was the evidence for this radical change. The appellant referred to a drop in Zone A rents, arguing that they had dropped by more around the appeal property than they had on the Grand Arcade, which could be considered prime. However, as the VO observed and agreed by the appellant in

cross examination, John Lewis was not on the prime pitch albeit that it was slightly nearer to it than appeal property.

487. Furthermore, the Zone A rate value of £2000m² chosen by the appellant for its exercise was in fact not representative of values next to John Lewis on the ground floor, which stepped down to £1,650 and then £1,350, compared to values outside the appeal property at £1,450. Similarly, the reductions from 2010 on the values nearest to John Lewis were in the 30-40% range, compared to a 38% reduction at the appeal property end. Also, at the appeal property's end, the first floor values showed higher Zone A values and smaller reductions from the 2010 Rating List. Given that department stores were essentially destination stores and given that small shops were in a different market, the appellant's exercise of considering Zone A rates was of limited assistance. However, insofar as it does assist, it completely fails to demonstrate the radical change required by the appellant's valuation.
488. Looking at the matter qualitatively, the appeal property was surrounded by 'big name' retailers, whereas John Lewis was somewhat out on a limb, with vacancies at the appeal property end filling up to the material day, whereas vacancies at the John Lewis end had increased.
489. Mr Ormondroyd considered that all of this supports the conclusion that the appeal property had a superior location compared to John Lewis, or at the very least, its location had not got radically worse when compared to the position in the 2010 Rating List and if either of those conclusions were correct, the appellant's case cannot succeed. It follows that, even if approached entirely on the appellant's preferred basis, the appeals should be dismissed.
490. The VO maintained that it was appropriate to have regard to a wider basket of evidence and the appellant retorted that the VO needs to find a new basket, a basket able to hold only one piece of evidence, which was a dangerous approach. As the very experienced valuer member of the Lands Tribunal, Mr Emlyn Jones, put the matter in the *Lotus* decision, it was difficult to recognise a sore thumb in a vacuum. In closing Mr Ormondroyd submitted that at £67.50m², the appellant's valuation was just that, a sore thumb, and should be seen for what it is.
491. In his closing submission, Mr Kolinsky submitted that the whole structure of the VO's case was based around the normal hierarchy of the *Lotus & Delta v Culverwell (VO) and Leicester City Council* case and accordingly requested that the Tribunal be careful around the word hierarchy, as the Upper Tribunal had made it very clear in the *Lamb (VO) v Go Outdoors* case that the hierarchy was not a straight jacket, as it was a framework for analysis and the weight to be placed on any piece of evidence was context specific.
492. The appellant had considered the rent on the appeal property, the rent review evidence and the settlement evidence and given reasons why in the particular circumstances surrounding the subject appeal, where elements had been found of the general framework, not hierarchy, to be unreliable, which in the particular circumstances of the subject appeal was not a radical analysis just an analysis.

493. He commented that the VO had mis-characterised the appellant's case as an affront to rent review evidence generally. It absolutely was not, as the appellant's case was an evidenced based critique of rent review evidence as an appropriate proxy for valuation of a department stores in Cardiff in the economic conditions of the 1 April 2015. The critique was very specific to that context.
494. Department stores were a smaller market in comparison to many other markets such as Zone A shops and the appellant would highlight that the evidence supported the proposition that at that time the department store market was undergoing stark economic changes.
495. Therefore, the issue which arises was not a general defence of rent review evidence as a general proposition but a specific analysis of whether in this unprecedented economic climate specific to 1 April 2015 that the rent review evidence was or was not fit for purpose as a proxy for the rating hypothesis. Accordingly, it was a focused and evidenced based case which the appellant promoted on behalf of the ratepayer and was a question for the Tribunal to consider.
496. With regard to what the evidence showed about the state of the department store market at the 1 April 2015 with a particular focus on Cardiff, the appellant's basic proposition was that of what the Independent Expert stated that there was drastically reduced demand from retailers seeking to occupy stores of the size used as a department store. Whereas the VO's case appeared to be that there was no evidence of a decline in the market for stores of that size and the VO offered a positive analysis that the market declined after the 1 April 2015.
497. The VO also contended that the market was still reasonably strong at the 1 April 2015 and more importantly that there was no evidence that stores were oversized.
498. The VO's market analysis was radically different to the analysis of the Independent Expert, whose expertise in this field was widely recognised. The VO's economic thesis was that the rising vacancies in department stores arose in 2016 after the 1 April 2015 with the negative spike resulting in the collapse of BHS.
499. However, what the VO overlooked was the incontrovertible evidence that the seeds of this decline were readily apparent at the 1 April 2015, which was clearly documented in the contemporaneous report in the financial press which was explored with the VO. For example, October 2014 Debenhams was struggling with the threat of online shopping and its implications for its use of space; January 2015 Beales department store was the subject of a hostile takeover at a heavily discounted price; March 2015 BHS was sold for a £1.00 to an inexperienced retailer; November 2015 Financial Times article which encapsulated the relevant economic conditions of department stores at the 1 April 2015 pithily and devastatingly, quoting Neil Sanders, Managing Director of Conlumino, a retail research group, stating that 'the department store of the past was useful. You could get everything under one roof and it was convenient. The problem is that model is just dead because you can do all that online'.
500. The VO expressly accepted in cross examination that the informed hypothetical parties would appreciate this at the 1 April 2015, which was significant, as it

fundamentally undermined the thesis on which the VO's evidence was prepared. The appellant suggests it threatens on which the basis of the 2017 Rating List in Cardiff was prepared for department stores because there was a clear change in the department store retailing model which adversely affected the relationship of physical space to value and the appellant submits that this would be very much true in relation to an old town centre store such as the appeal property.

501. The VO would have you think that all of this was covered in the Independent Expert's analysis in the Cardiff determination. However, Mr Kolinsky requested that the Tribunal be careful in accepting that submission as the relevant Valuation Date for the appeal property determination was mid-2014. All of what the appellant had shown regarding the systematic collapse of department stores happening in a cascade up to the 1 April 2015 happened after that time. Moreover, it was not that the Independent Expert was not concerned about those issues, as he identified exactly those issues and intimated that department stores were grappling with them and that they may not need less space. However, that does not mean that the space that they do need stays as valuable, it probably means that the space they required becomes less valuable because actually they are not selling just from that space but in a multi-channel world.
502. Therefore, the Independent Expert analysis was entirely consistent with this thesis. However, the point was by the 1 April 2015, the stone had rolled further and gathered a lot more moss in the decline of department stores.
503. The appellant then questioned how the VO dealt with that issue and informed the Tribunal that the VO stated that in any property market the rent will reflect all of the advantages and disadvantages, all the challenging conditions and the prospects of multi-channel trading along with the oversupply and the limited demand and that all those points would be wrapped up in the rents. However, the appellant requested that the Tribunal reflect on this insight, as it was a significant point for consideration about the point of critical issue in the subject appeal.
504. The appellant's evidence based request was that the Tribunal carefully considered the extent to which that general proposition stands up to scrutiny in the context of the available rental evidence for department stores as at 1 April 2015.
505. If there was a satisfactory basket of evidence which related to the relevant date and comprised transactions to fairly reflect the invisible hand of the market, you would then perhaps reasonably expect all of those factors to be reflected in the rents. However, the problem arises when the VO keeps faith with the rents even when the evidence showed that they do not provide a window on the market and the rents in fact being determined by looking back at old evidence and making assumptions of growth which become increasingly subjective and further removed from reality. In fact, it was what the rent review evidence showed.
506. The appellant provided general observations on rent reviews. Firstly, almost all the rent reviews on department stores were based on upward only rent review clauses. However, the Tribunal may recall that where there were downward clauses there was actual evidence of the rents going down such as in Gloucester and Plymouth.

507. Secondly and by definition in a rent review case, the tenant would be in practice an established sitting tenant and in the real world the tenant would be negotiating with a different mind from a tenant fresh on the scene, who would be coming vacant and to let. Also, the rent reviews for department stores in the years up to the 1 April 2015 did not draw on any open market letting transactions as there was very limited activity before the 1 April 2015 and that which did take place was confidential and did not make it into the rent review evidence. It was not available and the Independent Expert makes that absolutely clear in his determination.
508. Therefore, the VO's search for evidence always looked backwards, always making subjective adjustments, always making assumptions to growth and this critique was apparent to this Tribunal from the clear evidence of key participants in that process and the Independent Expert encapsulates those limitations in the appeal property decision.
509. The VO stated no market letting transactions. For many years' determinations had been based on historic rent reviews, the assessment of rental value was necessarily subjective and as the passage of time continues without market evidence it becomes highly so.
510. Therefore, if you had a self-perpetuating body of evidence, growing and reflecting itself in a backwards looking cycle, not tested by open market transactions for many years and becoming increasingly historic, increasingly detached from any market reality, the question to be asked was how fit for purpose was that model to reflect values in a falling market where there were radical changes to the underlying economics in which department stores operate.
511. Mr Kolinsky intimated that you would not find a market of falling rents in a rental world where there were no rental transactions and where rent reviews were dominated by upward only clauses. Also, if the market conditions deteriorated, as the evidence incontrovertibly did in the department store market, that insulated and backward looking system was not fit for purpose for reflecting those changes promptly.
512. Therefore, the Tribunal was invited to reflect critically on the contrast between the economic conditions and the clear evidence as to how the decisions were made looking back in using historic rents.
513. The rationale for placing weight on rent articulated by the VO was not apt to describe the rent review evidence that existed relating to department store at the 1 April 2015 as it was backward looking, not informed by transactions and it did not reflect the disadvantages and advantages of department stores at the 1 April 2015. It did not reflect those conditions because of the obvious lag caused by looking backwards in an almost exclusive upwards only context but it also did not reflect the prospects of multi-channel trading, over supplying limited demand because in those fast deteriorating economic conditions, which were carefully documented that this evidence just cannot move fast enough if it was going back a couple of years and based everything on previous transactions.
514. The appellant explored this with the VO and its evidence was unsatisfactory as the VO had unapologetically followed the market actively embracing the imperfections as

a feature of the market. However, with respect that was not adequate fulfilment of roles and duties as a rating valuer, as it was the VO's responsibility to grapple with the extent which identified the imperfections in this evidence make it fit for purpose as a proxy for rating valuation.

515. The rating valuation must be specific to the economic conditions on 1 April 2015 and not different economic conditions two years earlier. It must contemplate a hypothetical tenant fresh on the scene not a sitting tenant taking a pragmatic approach in a practical situation in the rent review world.
516. Therefore, the evidence that the appellant submitted showed the VO's faith in the body of evidence produced by the rent review world as a proxy for the economic conditions at the 1 April 2015 was unfounded. The experts operating in the rent review world do not share the VO's confidence that the rents were a reliable proxy for the state of the market at the 1 April 2015, which was made clear in the material put before the Tribunal. The VO's evidence was out of step with the experts assessments of the realities and limitations of the rent review process in this particular context.
517. During cross examination the VO went as far as to say that it would take account of the rental evidence even if it did not reflect the economic conditions, however, this showed that the VO had lost sight of the purpose of rent review evidence which was to inform the exercise of valuation judgement and not to replace it.
518. Therefore, with those general observations in mind, the appellant turned to the appeal property rent and requested that the Tribunal note that the appellant was not running away from the *Lotus* hierarchy but offering an analysis of the *Lotus* guidance that was critically evaluating the pieces of evidence.
519. The appellant had explored the reasoning in the rental determination with the VO and referred to the important health warnings regarding the lack of transactional evidence and the reliance on highly subjective assessments made by the Independent Expert.
520. Mr Kolinsky reminded the Tribunal that the Valuation Date was 16 June 2014 not the 1 April 2015.
521. In the Independent Expert rental analysis, he identified how different the store was that he was valuing, where he remarked how unusual and beneficial it would be to have floor layout reminiscent to the modern out of town regional centre in a town centre. The appellant remarked that was an entirely counterfactual benefit as the real appeal property had a very compromised layout over three floors.
522. The Independent Expert also applied evidence from 2013 to the notional store which specifically relied on the advantages of the notional store in adjusting from that evidence.
523. So by standing back and reflecting there was a highly subjective application of rent which was two years out of date to a different store, where the identified value significant judgements rely on differences in that store which are not reflective of what has to be valued in forming a judgement of how to use that rent, all of which was framed around an expressed disclaimer that the Independent Expert was

stumbling for relevant evidence locked into a framework which had proceeded for many years without any light being shed on it by market transactions.

524. The Independent Expert provided a clear window into the deficiencies of the rent review process for department stores at that time and confirmed that he did not have the advantage of open market rents available to him and he also indicated that there would be many review decisions that would have been different if other evidence had been made available.
525. The VO in its closing submission makes great play of the fact that the Independent Expert does not actively disown his own rent review determination for the appeal property. The appellant however considered the submission to be more semantic rather than a real point. The real point to be considered was what the Independent Expert said about the process and consider how he made the decision for the appeal property using old evidence with loads of reservations and applying it to a hypothetical store, the task for the Tribunal to consider. How useful was that information? The appellant submits that it was not useful as the Tribunal's task was to value as at 1 April 2015 taking account the deteriorating market conditions up to that date, in light of all the evidence available, based on the real appeal property not a pretend appeal property.
526. The VO's evidence refers to other rents in Cardiff and the appellant was of the opinion that they were of no assistance, as the VO accepted there were no rating settlements in respect of any of the stores therefore there was no way of grounding the relative values in the key economic conditions as at 1 April 2015.
527. Accordingly, that leaves the Tribunal with a rent in respect of the Next store that was three years old and relating to a much smaller store than the appeal property or an even smaller Matalan store where there was a debate about how you would account for the fittings. The VO clearly stated that it would not use any of these rents as direct comparables and Mr Kolinsky submitted that there was no sensible basis for contending that they provided any meaningful assistance to the valuation task in hand.
528. At this stage of the analysis the appellant commented that regard had to be given to the rent on the appeal property along with the very limited rent for other large stores in Cardiff and how there was a choice. The VO invited the Tribunal to leave Cardiff on a whistle stop or magical mystery tour of disparate parts of England looking at very different properties in different cities based on very limited information trying to compare them to the appeal property, where it relied on a variety of rents and some rating settlements.
529. The preference for Cardiff which formed the basis of the appellant's submissions was not a new point as suggested by the VO in its closing submission but was reflected clearly in the appellant's evidence. The appellant submitted that there were real problems with an approach that takes the Tribunal to different parts of the United Kingdom based on limited information and invited comparison. The appellant's submission was that there were too many variables to make meaningful comparisons and thus provided three examples.

530. Firstly, there was an attempt with the late submission of evidence by the VO to draw some sort of relationship between a 10,000m² House of Fraser store in the middle of Leeds to a completely differently located larger John Lewis store on the periphery of a town centre. Obviously, that would raise far more questions than answers as Leeds had undergone huge changes and its retail offer was geographically diverse. The VO was requesting the Tribunal to make a comparison with insufficient information.
531. Secondly, reliance was placed on the House of Fraser store Bristol but there was an emphatic debate between the parties as to the benefit of that store within Bristol. The appellant explained how advantageous that store was in Bristol and again the Tribunal had very limited information available in order to make the necessary meaningful comparisons on which the VO's case depended. The VO's evidence provided little transparent information about the specific adjustments on which it relied, where the Tribunal was left with ballpark adjustments on asserted relationships which in this case were highly contentious.
532. Thirdly, the brand new John Lewis store in Oxford was said to support a valuation of £100m². However, John Lewis ploughed £7 million into rateable fittings in relation to that store, which was equivalent as shown by the appellant to £36m². Therefore, the Tribunal was looking at a store of entirely different quality to that of the appeal property in a different city and in a different relationship.
533. In the VO's closing submission, it criticises the appellant's evidence for shining the light on adjustments that were implicit in the material put forward by the VO. What it revealed was that the so called adjustment for a fitted rent carried a huge proportion that was attributable to the fitting out and that begged the question as to how useful it was when valuing an old store such as the appeal property to draw on that evidence from a brand new store, where so much money had been sunk into it based on rateable fittings.
534. Mr Kolinsky stated that the headline point was that all the broad-brush comparisons were fraught with difficulty. It was unhelpful to take the Tribunal around the country and to provide it with limited information based on generalisations. Accordingly, the appellant requested that the Tribunal appreciated that from the appellant's evidence, much of which was relied upon by the VO in relation to other cities, was highly contentious.
535. Also, the VO in its closing submission referred to the rating manual which emphasised the importance of location but not the store's position within that location. The appellant opined that was a double point against the VO as the importance of the location meant that you should stay in the city, if at all you can, and the failure of the VO to acknowledge the importance of the role of the store within the city which actually contradicts the VO's witness oral evidence that you should take account of it. However, the problem was how much information do you have in each case to allow you to do so in a robust and meaningful way. All the VO's adjustments were wrapped into one headline figure without any basis for unpacking it.
536. The appellant reminded the Tribunal unapologetically of the VO's assessment where the VO did not consider the market in Wales to be a reliable indicator of the market for rest of the United Kingdom, as there would be different economic conditions in

different regions. The appellant did not wish to take that observation out of context, however it was also not for the VO to disown, as it meant that where you could actually pin down factors such as location to take away the debate, that was a really helpful fixture for the Tribunal, as the economic conditions might be felt differently in different regions and there were geographical considerations between cities but also within cities, so this was a difficult basis for comparison.

537. So, the appellant agreed with the VO in so far that it would be better to stay in Cardiff as far as it was possible to cut down on the number of unsafe assumptions that you had to make to ensure that you were able to act upon detailed evidence.
538. With regard to John Lewis store Cardiff and the VO's closing submission, the VO assured that it was only helpful as an opinion of comparative value and therefore if the appellant succeeded in its case in respect of the relationship of the appeal property to John Lewis 'sawing off the branch on which it sits' then that was fundamentally inconsistent with the expressed and unequivocal acceptance by the VO in its evidence, in answer from a question from the appellant, that the VO accepted the John Lewis settlement as evidence of value of that department store in Cardiff at the relevant time of the economic conditions.
539. The appellant stated that the Tribunal had the benefit of settlement evidence from the most closely comparable department store to the appeal property in Cardiff namely John Lewis and the Tribunal would recall that it was entered in the 2017 Rating List at £110m2 but reduced by agreement to £75m2. By having regard to that information, focus can be given to the economic conditions at 1 April 2015 in the correct city along with the detailed evidence on the relationship of John Lewis to Cardiff's retail offer, as compared to that of the appeal property. Therefore, the tools were available to understand the relevant relationships as at 1 April 2015 and to the extent that it existed, examine the extent of changes that had taken place since the last Rating List.
540. For context, the John Lewis store was in the 2010 Rating List at £95m2 and the appeal property at £110m2. Therefore, if for example the same differential were to be maintained as shown by the appellant, it would point to a valuation in respect of the appeal property at the 2017 Rating List based on £86.85m2.
541. The VO's position was that John Lewis had gone down between Rating Lists by 20%, £95m2 to £75m2, however the appeal property had increased and the differential of 15.7% in the 2010 Rating List has apparently grown to the differential of 51% in the 2017 Rating List. In the appellant's opinion that looked and felt wrong as it was difficult to explain how that approach could fit into any coherent view of market conditions. It certainly did not fit into the view of market conditions that the VO advanced in its evidence that there was no decline in department stores and no evidence of oversize. Also, there was nothing in the appellant's closing submission that came close to or even to justify such a stark discrepancy.
542. The appellant did state that the John Lewis settlement offered a credible basis for valuing the appeal property as it fixed the Tribunal in the correct city in the correct market conditions and therefore the Tribunal could make a comparison between the two.

543. The VO challenged the appellant on the use of starting point and based on what the appellant had stated, the starting point was the rent but you start with the rent and actually realise how flawed as a proxy for value that rent actually was. Therefore, the question was where do you go next? Do you leave Cardiff and enter a world where you have lots of information but no detail, or do you stay in Cardiff where you actually have one key relationship to consider where you are not concerned about economic conditions nor worrying about the city and you actually have the benefit of detailed evidence. Therefore, it was not about the starting point but about where you would get to if, as the appellant states, the starting point did not help you.
544. Therefore, assuming the Tribunal was in this comparative exercise, it was obvious that regard must be given to size, an adjustment to reflect the larger size of the John Lewis store was clearly necessary and was accepted by the appellant, it is also necessary to compare location. The appellant states that John Lewis had the best location and the VO states that the appeal property was far superior. The appellant invited the Tribunal to reject the VO's skewed evaluation of the Cardiff retail offer.
545. It will also be necessary to compare quality where the appellant stated that that John Lewis was newer with better fit out, better layout, better vertical circulation, better entrances and much better parking and these should be reflected in the overall comparison between the two properties even though these benefits were the same in 2010, it was relevant to the Tribunal's judgement about what the nature of the relationship into this piece of evidence and what the appeal property rates should be.
546. Therefore, the comparison in short as far the John Lewis store was concerned was that the appeal property's rate should go up for size, down for quality and then up or down for location dependent on which view is taken by the Tribunal. The appellant requested that the Tribunal carefully consider the clear evidence it had presented, which clearly showed how to adjust from the John Lewis, Cardiff settlement to value the appeal property.
547. Dealing with the issues in turn and starting with size, Mr Kolinsky intimated that the appellant had been consistent in its evidence where it accepted that a size adjustment should be made to reflect the larger size of John Lewis. It also accepted the coherent market conditions that larger shops would be worse affected by adverse market conditions. It is also explained precisely how it was drawn on the rental evidence to arrive at 15% adjustment for size. Accordingly, VO was wrong to assert in its closing submission that the appellant had not dealt with this.
548. By contrast the VO had not offered any consistent or satisfactory evidence based approach to size. Having regard to the variables the VO had put before the Tribunal, Mr Kolinsky commented on seven of the VO's references.
549. Firstly, the VO stated that it was difficult to compare.
550. Secondly, that there should be an adjustment for size but the VO had utilised the appellant's Valuation Matrix as the basis for so asserting, which did not make any sense, as the VO asserted the valuation matrix was wrong therefore the VO had not offered any basis for its approach to size.

551. Thirdly, in the VO's Swansea report, a 15% adjustment was made comparing Gloucester to Swansea therefore 20,400m² to 13,593m² warranted an adjustment of 15% not just for size but for a better store in a better location in the city, which the appellant commented did not sit comfortably with the VO's first comment that it was difficult to make a comparison.
552. Fourthly, the VO's evidence was on the basis that the rental evidence did not support the stores being oversized and its whole economic thesis was that there was no market decline in the department store. The reality was that the VO was wrong on both accounts.
553. Fifthly, the VO relied on previously undisclosed and unarticulated quantum boundaries of about 21,000m², which it claimed was inherent in the John Lewis settlements. However, the VO could not provide the evidential basis in the rents or otherwise to support this contention.
554. Sixth, the VO relied on the House of Fraser, Leeds as providing a framework for reaching conclusions about very significant increases for allowances for quantum being due to the alleged differences between a much smaller House of Fraser store in a completely different location in Leeds as compared to a larger John Lewis store on the fringes of Leeds, which cannot be used as a proxy for Cardiff as there was no information available as explained by the appellant.
555. Seventhly, the House of Fraser, Cardiff cannot be compared to the John Lewis store or appeal property having regard to its configuration and layout as it was undoubtedly a poor store in a poor location however it was the same size as John Lewis. The VO accepted that you would expect poor large stores to experience a greater decline than high quality large stores of similar sizes in adverse economic conditions, yet the House of Fraser store hardly declined between Rating Lists which does not fit with the VO's central thesis that there was tangible evidence of decline over and above that already acknowledged by the appellant for larger stores in Cardiff, which the VO stated did not manifest itself as it had already hit rock bottom which does not bare scrutiny. It was a valuation change. Therefore, that evidence challenged the new thesis advanced that John Lewis may have declined more than what the appellant had accepted between the Rating Lists.
556. Accordingly, and overall, you had a consistent explanation from the appellant along with a range of inconsistent points scattered around by the VO, which do not fit with its micro economic thesis at all and which was not based on any evidence. So, the appellant requested that the Tribunal accepted its careful and evidence based submission to the shifting sands of the VO's new case based on Leeds and unsupported with the apparent treatment of House of Fraser, Cardiff itself.
557. Having dealt with size the appellant then had regard to other factors comparing John Lewis to the appeal property. It is accepted that John Lewis was of higher quality compared to the appeal property, which must be reflected in the comparison albeit those factors were probably already baked into the comparison that occurred in 2010. However it should be noted that the John Lewis store had a much better layout than the appeal property, it had a central atrium, it had clean spaces, much better entrances, it had kerb appeal on The Hayes, it had ground floor covered access from

the ground floor prime Zone A area of the Grand Arcade in SD2 along with an excellent entrance from the first floor of SD2 which had an escalator from the ground floor to the first floor, which was clearly a part of the design of SD2. It had excellent car parking with direct access to the store from the car park, it was a high quality modern store, the SD2 development had been designed around the store as an anchor and it was dominant surrounded by high quality luxury branded shops reflecting the landlord's strategy of targeting luxury quality which had been successful. Therefore, the VO's analysis that the John Lewis store was out on a limb was with respect inaccurate.

558. By contrast the appeal property had a compromised layout effectively 'L' shaped and suffered from pillars, it had a poor 5.4 meters frontage on to SD2 on the first floor with no access from the ground floor into SD2 but had access to the old St David's Way of SDC, which was neither of the parties prime area within the parties analysis, which was located near to the rear entrances of stores which front the old prime area of Queen Street.
559. The appellant explained that the appeal property was not particularly well placed for pedestrian flows with two of its entrances now dead frontages, it was remote from car parking, it was surrounded with value stores and short term lets highlighting weakened covenant strength with Zone A values around the appeal property falling between Rating Lists, which suggested that the rate should be assessed overall at a lower rate than the real prime area of the ground floor area of the Grand Arcade and The Hayes.
560. Mr Kolinsky challenged the VO's reliance that it was an advantage to be located near to the Primark store and had to be handled with care, as it was accepted between the parties that the only hypothetical tenant was the appeal property. Therefore, it was the appellant's submission that it would not be an advantage for the appeal property to be located next to its prime competitor, which the evidence suggested would actually have a negative impact on the appeal property's trading performance by under-pricing and under cutting.
561. By taking all these factors together, the VO's thesis on which it puts its value to the Tribunal that the appeal property had a far superior location to the John Lewis store was absolutely out of step with reality, as it contradicted the analysis in the Promis Retail Rankings report and also the Independent Expert's assessment that John Lewis was the dominant store and therefore the Tribunal was invited to reject that unrealistic assessment of Cardiff's retail hierarchy and to be reflected in the valuation that it adopts.
562. The appellant had documented that the Zone A rates were moving, and it provided a proxy for the best area of Zone A on the Grand Arcade and the best area next to the appeal property which suggested a 38% decline as opposed to a 22% decline, which the Tribunal was requested to have regard to in the context of the totality of the evidence of how values had fared across the whole of Cardiff.
563. Ultimately, the appellant requested that the Tribunal preferred its contention that John Lewis has fared better than the appeal property in the changes that had happened to Cardiff, which should be reflected in the valuation with its primary case

that it was so significant that the appeal property should be valued below John Lewis on a pound per square metre basis.

564. However, should the Tribunal disagree with the appellant's contention and it considered the position with regard to location was more nuanced, the appellant suggested that the Tribunal's decision may well start from reflecting on the extent which if there were any changes or whether the 2010 differentials remained a realistic proxy, and if the Tribunal considers it might, then £86.85m² may be an appropriate basis to start.
565. Accordingly, the appellant's primary case was that the Tribunal should base its valuation on making an informed comparison with John Lewis as at the economic conditions at the 1 April 2015 staying in Cardiff and therefore cutting down on the variables. Whereas the VO's primary case contrasted starkly with the appellant's case where the VO attempted to draw the Tribunal around the country along with other settlements.
566. Regarding those settlements, the appellant had already dealt with John Lewis, Oxford, a vastly different type of store with a materially different location and city, therefore the two stores were not comparable. The appellant then commented that the same was true of the House of Fraser stores in Bristol and Reading albeit the House of Fraser store in Reading suggested that the settlement undermines the VO's valuation rather than support it.
567. In returning to what the subject appeal was ultimately about, the appellant challenged the VO's emphasis regarding the starting point and the rent. Whilst the appellant accepted the general principal that you should start with the rent and that you should interrogate to the extent how much that rent was capable of being of assistance, the appellant submitted that it did not assist. The Independent Expert's determination in the context of the changing of the economic conditions and the reality of the information available was the Independent Expert's best attempt to look back and apply evidence that was two years out of date to a hypothetical store, which was not a sound valuation for valuing the appeal property in the right economic conditions.
568. The remainder of the evidence from Cardiff was completely different as it was old and unhelpful and that it was where you arrive at the fork in the road where you either remain in Cardiff and you consider the detailed evidence provided by the appellant or you go on the tour provided by the VO. However, the problem with that was when it was based on rents it suffered from flaws already identified by the appellant but there was also an information deficiency supporting that approach. So, the appellant invited the Tribunal to give careful consideration to John Lewis as the best proxy of value in all the circumstances based on the particular context identified.
569. The appellant emphasised that it was not subverting a valuation hierarchy and invited the Tribunal to question the VO's report and ask was it confident having regard to what was known about the rent review process and the changing economic conditions, a fact claimed by the VO that should be reflected in the rents were in fact reflected in the rents so as to give a reliable foundation for value in Cardiff in the right economic conditions.

570. If the Tribunal accepted the appellant's criticisms that they do not, the appellant suggested that the best next step was to anchor in the economic conditions in the city, which therefore takes the Tribunal to the John Lewis store where the information was available to make a judgement.
571. Finally, with regard to mode and category of occupation, Mr Kolinsky opined that it was a complete no point in respect of the subject appeal, as the point was purely academic because everybody accepted that there was only one hypothetical tenant for the appeal property and that was Debenhams. Therefore there was no example of an occupier such as Primark bidding for it and therefore submit that the Tribunal did not need to go into that point and to continue with the route as to what it considered was the best evidence to valuing the appeal property in the economic conditions taking into account the submissions made by the appellant as to the changes to the department store market and the concerns the rent review evidence in this particular context plays out having concerns to that rental evidence.

Decision of the Tribunal

572. Having considered the evidence placed before it, the Tribunal arrived at its decision and gave the following reasons.
573. When valuing the appeal property, it had regard to relevant legislation in particular the basis of valuation as defined in paragraph 2 of Schedule 6 to the Local Government Finance Act 1988, as amended by section 1(2) of The Rating (Valuation) Act 1999, which states:

"The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non-domestic rating shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions:

the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above."

574. In respect of the 2017 Rating List, the Antecedent Valuation Date was the 1 April 2015 and the Material Day was 1 April 2017. Accordingly, the Tribunal was required to determine the rental value of the appeal property on full repairing and insuring terms as at the 1 April 2015 whilst reflecting the physical state of the appeal property and its locality as at the 1 April 2017.
575. Whilst both parties provided an abundance of documentary and oral evidence, the Tribunal was aware that the sole issue to be determined was the overall rate per square metre to be adopted in the valuation of the appeal property as at the 1 April 2015 reflecting all associated advantages and disadvantages.

576. The Valuation Officer contended that the appeal property's assessment should be reduced to £1,750,000 Rateable Value based on a rate of £113.50m2 and the appellant sought a further reduction to £1,040,000 Rateable Value based on a unit rate £67.50m2.
577. The appellant sought a base rate of £67.50m2 based on the assumption that the rent review evidence was not fit for purpose having regard to the economic climate as at 1 April 2015 suggesting there was a drastically reduced demand from retailers to occupy stores the size utilised as department stores with the seeds of decline being apparent, coinciding with the sale of BHS in March 2015 and along with the fact that department stores were dealing with the new relationship between space and sales caused by on-line sales.
578. Whereas the VO sought a base rate of £113.50m2 based on the thesis that there was no rental evidence to support the appellant's contention that the department store market had declined nor was there a rise in vacancies in department stores after 1 April 2015 with a negative spike resulting in the collapse of British Home Stores in 2016.
579. In reaching its decision, the Tribunal had regard to the Lands Tribunal judgment of *Lotus & Delta Limited v Culverwell (VO) and Leicester City Council (1976)*, as referred to by both parties, which established six principles giving clear guidance to follow when assessing rateable value, namely:
- (1) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.*
 - (2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1976 the more weight should be attached to it.*
 - (3) Where rents of similar properties are available they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.*
 - (4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.*
 - (5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.*
 - (6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.'*
580. The Tribunal was aware that the *Lotus* decision allowed the Lands Tribunal to set out six propositions which recognised and helped establish a procedure for considering conflicting rental evidence and attach appropriate weight that would be needed to demonstrate the understanding of both the market and the hypothetical basis of rating.

581. The Tribunal was also mindful that in the judgement of *Lamb (VO) v Go Outdoors Limited (2013)*, the Upper Tribunal identified that whilst the propositions in the Lotus decision provided guidance on the usefulness of different types of evidence, those propositions should not be regarded as rules to be followed prescriptively and therefore, it was necessary to have regard to relevant evidence of all types, if available, but always with a clear focus on the statutory valuation hypothesis.
582. Whilst the Tribunal accepted the appellant's contention that the word 'hierarchy' in the context of the Lotus decision was not a 'straight jacket' and was simply a framework for analysis and the weight to be placed on any piece of evidence, it was of the opinion that the appellant's reversal of the Lotus 'hierarchy' was not justified and was suggesting a very radical approach to rent review evidence, which was not supported by any legal proposition nor any decision of any court or Tribunal.
583. The Tribunal was of the opinion that rent review evidence was generally acknowledged as good evidence behind that of open market lettings and therefore such evidence should not be disregarded. Rent review evidence was based on market value, as prescribed by the lease and statute respectively, and such transactions were generally representative of the level of rent being achieved at open market letting at that time, although it could be influenced by factors such as the availability of comparable evidence, especially if the review involved professional surveyors or by an Independent Expert, as was the case in the rent review carried out in respect of the appeal property.
584. The Tribunal was persuaded by Mr Ormondroyd that rent review evidence was commonly used in the valuations of many classes of hereditaments and did not accept Mr Kolinsky's assertion that it should be disregarded as being fundamentally different to an open market transaction and consequently to then discount all other evidence in favour of the rent passing on the John Lewis, Cardiff.
585. The rent review determination in respect of the appeal property was determined by the Independent Expert, Mr K H Whale BSc FRICS ACI Arb, on the 23 April 2015, with a rent review date of 16 June 2014, reflecting a clause for an upward only review.
586. The appellant contended that this rent review should be dismissed as it was determined in respect of a hypothetical store and not the actual store and failed to have regard to market circumstances and new lettings, whereas the VO submitted that the rent review determination was good evidence.
587. The respondent challenged the appellant's point of view that in the 'real world' department stores rent reviews were supposedly removed from the state of the market and therefore formed a 'closed bubble' of ever increasing rents driven by rent reviews.
588. The Tribunal concurred with the respondent's challenge that at the date of the review the Independent Expert did have regard to the dynamics of the market and where he had undertaken extensive research along with reports from two highly experienced practitioners concluded that Debenhams would be the only bidder. The report also referenced to the highly incentivised nature of new lettings, the increasing presence

of online shopping, multi-channel retailing and stagnation in the market. Consequently, the Independent Expert applied a cautious approach to valuation and determined a small reduction in the passing rent.

589. The Independent Expert acknowledged the subjective nature of the valuation he was required to carry out and also made reference to specific transactional evidence that was available, which in every probability would have led to a different determination.
590. The Tribunal accepts that the Independent Expert at the date of the review made his determination based on all evidence that was available to him and the fact there was transactional evidence shrouded in confidentiality and secrecy which he was unable to gain access to was irrelevant, as the Independent Expert made his decision based on the evidence available at that time.
591. The Tribunal was also aware that the appellant had failed to provide evidence to support its claim that the rent review carried out by the Independent Expert on the 16 June 2014 was flawed.
592. In line with the conclusions of the Independent Expert in his rent review determination in respect of the appeal property, the Tribunal considered that there was no evidence of growth in the market for department stores immediately prior to and at the 1 April 2015. The Tribunal accepted that market conditions were challenging at the 1 April 2015 due to an increase in online sales, as evidenced by the sale of BHS for £1 shortly before this date, but it considered that there was no direct rental evidence to suggest a decline in the market for very large stores at that time. In the absence of any evidence either way, it was extremely likely that the market was stagnant; a conclusion that had been reached by the Independent Expert in his assessment of the market with regard to the rent review reflecting conditions in June 2014.
593. Although the Independent Expert had valued a “model” store rather than the actual property occupied by Debenhams, the Tribunal considered that the differences between what was valued and what was “on the ground” were adequately reflected by the rate used by the Valuation Officer in its assessment, which was lower than the unit rate indicated in the rent review.
594. The Tribunal considered that the availability of new letting rental evidence would in all probability have been of little assistance in reaching a conclusion for rent review purposes, bearing in mind that many department stores acted as anchors for new retail developments and initial rents were often highly incentivised to make them attractive to the incoming high-profile tenant. It agreed with counsel for the Valuation Officer that, under the rating hypothesis, the landlord was only the landlord for the subject premises and would not be concerned with strengthening the other rents in a portfolio of properties within a retail development by attracting the anchor tenant at a reduced rent but would be more concerned with obtaining the optimal rental value for his property in isolation.
595. The Independent Expert had expressed an opinion that the appeal property, albeit not 100% prime, formed part of Cardiff’s dominant shopping centre. Department stores were destination stores by definition and the Tribunal considered that appeal property’s central location was generally more valuable than that of John Lewis

which, although performing the function of an anchor for shops in SD2, was located towards the fringe of Cardiff's central shopping area. In addition, Zone A rates applied in respect of assessments appearing in the 2010 and 2017 Rating Lists for smaller properties located close to John Lewis had comparatively fallen by more than those for smaller properties around the appeal property, which also suggested that Debenhams was in a more robust retail location than John Lewis. Vacancy rates for smaller retail units were also higher in the immediate area of the John Lewis property in comparison to those around the appeal property. The Tribunal considered that this provided some justification as to why the differential between the overall rates adopted for the respective department stores had widened between the 2010 and 2017 Rating Lists.

596. Finally, the assessment of the appeal property did not appear to be anomalous when compared with the assessments in respect of other large stores situated within Cardiff city centre, albeit they were not directly comparable in terms of size or location. Although Debenhams and John Lewis were both department stores, the appeal property was marginally over 40% smaller than the John Lewis property and was thus not directly comparable. Adjustments for location were fraught with difficulties and the Tribunal did not endorse the wholesale use of unit rates adopted in other towns or cities for the purpose of valuing properties in distant retail centres. However, their analysis did serve to provide further assurance that the unit rate adopted in the valuation of similar type properties was consistent. The Tribunal considered that the unit rate adopted by the Valuation Officer in the assessment of the appeal property did not appear to be incongruous with rates adopted for like retail properties situated in similarly ranked retail centres in other parts of the UK.
597. Evidence of settlements on John Lewis stores, that were based upon the consistent analysis of rents, appeared to exhibit that smaller department stores were far more valuable on a price per unit area than larger stores and that they were more resilient to any downturns in the market.
598. The Tribunal considered that the analysis of rents passing and the rating assessments on large stores in Cardiff (although not comparable in size to Debenhams or John Lewis) provided a useful check on the relative value assigned to stores in the city. It was inconceivable that very large department stores should be assessed at lower rateable values than considerably smaller, but still relatively large, shops within the city centre.
599. The crux of the matter is that John Lewis is 70% larger than Debenhams and is not particularly comparable other than it is in the same mode and category of occupation i.e. a department store. Foregoing differences in age and quality, it is quantum that explains the difference in the unit rate adopted and the magnitude of any reduction for quantum is extremely subjective.
600. In conclusion, the Tribunal dismiss Appeal Number 681533600437/285NV17 on the grounds that it is superseded by the Valuation Office Notice of Alteration and effectively is historic. In respect of Appeal Number 681534939907/285NV17, the Tribunal confirm the appeal hereditament's existing assessment at £1,750,000 Rateable Value with effective from 1 April 2017 and as a consequence dismiss the appeal.