FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Community Right to Bid

Tribunal Reference: CR/2015/0006

Appellant: Catherine and Oliver Chadwick

Respondent: Rossendale Borough Council

Judge: Peter Lane

DECISION NOTICE

The legislation

1. The Localism Act 2011 requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Once an asset is placed on the list it will usually remain there for five years. The effect of listing is that, generally speaking, an owner intending to sell the asset must give notice to the local authority. A community interest group then has six weeks in which to ask to be treated as a potential bidder. If it does so, the sale cannot take place for six months. The theory is that this period, known as "the moratorium", will allow the community group to come up with an alternative proposal – although, at the end of the moratorium, it is entirely up to the owner whether a sale goes through, to whom and for how much. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed. The present appeal concerns a claim for such compensation.

2. Section 99 of the 2011 Act makes provision for regulations regarding the payment of compensation. The relevant regulation is to be found in the Assets of Community Value (England) Regulations 2012:

> **"Compensation**
>
> 14.—(1) An owner or former owner of listed land or of previously listed land… is entitled to compensation from the responsible authority of such amount as the authority may determine where the circumstances in paragraph (2) apply.

(2) The circumstances mentioned in paragraph (1) are that the person making the claim has, at a time when the person was the owner of the land and the land was listed, incurred loss or expense in relation to the land which would be likely not to have been incurred if the land had not been listed.

(3) For the avoidance of doubt, and without prejudice to other types of claim which may be made, the following types of claim may be made—

(a) a claim arising from any period of delay in entering into a binding agreement to sell the land which is wholly caused—

(i) by relevant disposals of the land being prohibited by section 95(1) of the Act during any part of the relevant six weeks that is on or after the date on which the responsible authority receives notification under section 95(2) of the Act in relation to the land, or

(ii) in a case where the prohibition continues during the six months beginning with that date, by relevant disposals of the land being prohibited during any part of the relevant six months that is on or after that date; and

(b) a claim for reasonable legal expenses incurred in a successful appeal to the First-tier Tribunal against the responsible authority's decision—

(i) to list the land,

(ii) to refuse to pay compensation, or

(iii) with regard to the amount of compensation offered or paid.

(4) In paragraph (3)(a) "the relevant six weeks" means the six weeks, and "the relevant six months" means the six months, beginning with—

(a) the date on which the responsible authority receives notification under section 95(2) of the Act in relation to the land, or

(b) if earlier, the earliest date on which it would have been reasonable for that notification to have been given by the owner who gave it.

(5) A claim for compensation must—

(a) be made in writing to the responsible authority;

(b) be made before the end of thirteen weeks after the loss or expense was incurred or (as the case may be) finished being incurred;

(c) state the amount of compensation sought for each part of the claim; and

(d) be accompanied by supporting evidence for each part of the claim.

(6) The responsible authority must give the claimant written reasons for its decisions with respect to a request for compensation.

3. Regulation 16 provides that a person who has made a claim under regulation 14 may ask the responsible authority to review its decisions as to whether compensation should be paid and, if so, the amount of that compensation. Where a request for a compensation review is made in accordance with paragraph 2 of Schedule 2 to the Regulations (that is to say, before the end of eight weeks beginning at the date on which the responsible authority provides the

owner with notification of its reasons in accordance with regulation 14(6), or such longer period as the authority may in writing allow), then the responsible authority must review the decision or decisions regarding which review is requested. Following the review, the authority must give written notification of its decision and the reasons for it.

4. Regulation 17 provides that where the local authority has carried out a compensation review, the person who requested the review may appeal to the First-tier Tribunal against any decision of the authority on the review.

The Club

5. This appeal concerns a building known as the Bacup Conservative Club. On the nomination of a charity, the Council determined in October 2013 that the Club met the criteria of the 2011 Act and the Regulations for listing as an asset of community value. The listing took place on 3 October 2013 and the Council applied to the Land Registry to have the relevant restrictions recorded. The property was also made subject to a local land charge.

6. Also in October 2013, the Council was informed that the Club was for sale, on the instruction of the Law of Property Act Receiver. It appears that Mr and Mrs Chadwick purchased the Club in January 2014. The Council learned of this fact via a press release on 4 February 2014. The Land Registry completed the transfer of the relevant restrictions to the new owners on 20 February 2014.

7. Mrs Chadwick is a property developer. In the autumn of 2013 she began to be concerned that she might have a serious illness. In early 2014, these concerns proved to be well-founded. On 2 April 2014, she spoke to an officer of the Council concerning her wish to dispose of all her business interests in Bacup, including the Conservative Club. Having done so, she wrote to the Council on 2 April 2014

> "to give you the notice to exercise part 95.2 of the Localism Act 2011 Part 5, Chapter 3. … according to section 95.6, the interim moratorium is six weeks. The full period is six months. I believe in Bacup and would like the building to go to a community group that wants the best for the town or someone with the same intentions".

8. As a result of this letter, the Council contacted the nominee on 11 April 2014 to notify that it had until 21 May 2014 to confirm whether it intended to submit a bid for the Club. On 11 April 2014, the nominee confirmed an intention to make such a bid. The Council informed Mr and Mrs Chadwick of this on 18 April 2014. Mr and Mrs Chadwick were also informed that the nominee had until 9 October 2014 in which to prepare and submit a bid, following which time, Mr and Mrs Chadwick would be free to dispose of the Club to whomever they chose, within an 18 month period.

9. On 30 September 2014, the Council contacted the nominee, which said it was still attempting to secure the necessary funding. However, the moratorium expired on 9 October 2014 without a bid being submitted. The Council informed Mr and Mrs Chadwick on 13 October 2014 that they were free to dispose of the Club, as previously indicated.

The claim

10. On 8 November 2014, Mrs Chadwick wrote to the Council to say that she and her husband wished to make a compensation claim in respect of the period when the Conservative Club was subject to the moratorium:

> "During this period we lost our buyer for which we had invested a lot of money. The building had gone into disrepair due to being left for that period when we had someone who wanted to buy it, therefore reducing the amount we can get for the building and increase the repair cost."

11. On 26 November 2014 Mr and Mrs Chadwick submitted their compensation claim. Mrs Chadwick said that the six month period had increased the stress and ill-health she had been suffering. Assets in the Club had diminished in value, in that "they are now full of mould and are now deemed unsalvageable". Temporary repairs to the building also had to be undertaken. Parties interested in buying the building "were doing it on the back of the media exposure we had and the ideas expressed in the papers". The gas supply had been cut off "as we could not enter into a contract as we didn't know what was happening with the building". There would accordingly be a reconnection charge.

12. The compensation claim was detailed as follows:-

" Claim

	Amount £
Gas Reconnection	288
Electricity	79.5
Interest oc	838.24
Interest cc	837.46
Rates	385
Wastewater	259.85
Security and repairs	5975.42
Furniture	3000
TOTAL	**11,663.47**

This is not exclusive as there are potential costs for the loss of goodwill and stress. "

13. On 15 December 2014 the Council made a decision not to award Mr and Mrs Chadwick any compensation. That decision was maintained following an internal

review in February 2015. Mr and Mrs Chadwick subsequently appealed to the Tribunal.

14. A hearing of the appeal took place at Blackburn Magistrates Court on 24 September 2015. Mrs Chadwick represented herself and her husband. Mr Michael Whyatt, counsel, appeared for the Council. I heard evidence from Mrs Janice Crawford and Mr Stephen Jackson of the Council; Mr and Mrs Chadwick; Mr Bogdan Bartnick; and Mr Chris Watson. I have taken account of all of their oral and written evidence and of the materials contained in the appeal bundle.

The appeal

15. This is the first appeal that the Tribunal has been required to determine under regulation 17. It is, accordingly, necessary to say a little about the nature of the appeal. As regulation 14(2) makes plain, the owner of the listed land needs to have incurred a loss or expense in relation to that land, which would be likely not to have been incurred if the land had not been listed. In regulation 14(3), two types of claim are described in detail, "without prejudice to other types of claim which may be made". The first type involves a claim arising from any period of delay in entering into a binding agreement to sell the land, which is wholly caused (my emphasis) by the six week or where relevant the six month "moratorium" on sale and other relevant disposals of the listed land. The Department for Communities and Local Government's non-statutory advice note for local authorities (October 2012) states that the "assumption is that most claims for compensation will arise from a moratorium period being applied; however the wording allows for claims for loss or expense arising simply as a result of the land being listed".

16. The burden is on an appellant to show, on the balance of probabilities, that a loss or expense has been incurred, which would be likely not to have been incurred if the land had not been listed. In determining that matter, the Tribunal is not restricted to considering the evidence that was placed before the responsible authority, whether in connection with the claim for compensation or the review under regulation 16. However, regulation 14(5) means that the nature of the claim must be properly articulated, when it is made to the responsible authority, with the result that it may be difficult for a person to persuade the Tribunal to award compensation in respect of a claim (or part of a claim) which has simply not featured in the process hitherto.

17. Secondly, despite the opening words of regulation 14(3), it appears that the legislature did not intend an owner of a listed property to recover compensation in respect of the diminution of the value of that property, by reason of its listed status. I agree with Mr Wyatt that, had the intention been otherwise, one would

have expected to see express reference being made in regulation 14 to this type of claim.

18. Neither of these matters, however, needs concern us in the present case. Although Mr and Mrs Chadwick contend that the listing of the Club has made it difficult to sell, no claim has been made for in respect of any alleged diminution in value; nor has any evidence been adduced to support such a claim. So far as the first matter is concerned, Mr and Mrs Chadwick continue to rely upon the heads of claim set out in the attachment to Mrs Chadwick's letter of 26 November 2014.

The evidence

19. Mr and Mrs Chadwick put their claim to compensation squarely on the basis that they incurred loss or expense as a result of remaining the owners of the Club during the moratorium period. But for that statutory period, they would have disposed of the club to a purchaser; namely, Mr Watson, whom it is contended had made a firm offer in early 2014 to purchase the building and its contents for £120,000.

20. On 2 January 2015, Mr Watson, writing under the letter heading "CW Business Logistics Ltd" wrote to Mr and Mrs Chadwick a letter in which he said:-

> "THIS IS TO CONFIRM THAT BACK EARLY 2014 WE WERE IN LATE DESCUSSIONS (sic) FOR ME TO PURCHASE THE IRWELL TERRACE PROPERTY. THE AGREED FIGURE WAS £120,000 INCLUDING ALL FIXTURES AND FITTINGS AND FURNITURE.
>
> I unfortunately backed out of the purchase due to the problems you were facing with the council and I did not want to get involved in a show down bidding war with any other purchaser. I had not accounted for the extent that this restrictions places upon you or the building."

21. On 20 February 2015, Mr Watson wrote a further letter "to whom it may concern". Part of this was in response to the Council's point that the company, CD Business Logistics Ltd, had not been incorporated until late 2014. Mr Watson explained that, in using the companies headed paper he was not to be taken to be asserting that the company was in existence at that time.

22. The letter continued by stating that when Mr Watson contacted Mr Chadwick, Mr Watson's plans were to start a courier logistics company using the Club as base and HQ. Mr Watson was to operate as a sole trader, who would then sub-let parts of the building to other couriers. Although Mr Watson understood there was a community right to bid in respect of the club, he did not at that stage believe that anyone would be interested in the property or serious about it, as it had been empty for over two years. However, he later became worried that, although the Council had said there was another interested party, that party never made

contact or showed real interest. Mr Watson was concerned that "this would happen to us". His other financer was unhappy about the level of Council support and backed out of the deal. Mr Watson's other concerns "were during the period of six months that the property became in a worse state of disrepair and then needed more money spending on it."

23. From Mrs Chadwick's evidence, it is plain that she had no direct dealings with Mr Watson. Such dealings as there were involved Mr Chadwick. Mrs Chadwick's health was, at the time, of serious concern (although, happily, her present position appears to be much better).

24. In the course of her oral evidence, Mrs Chadwick said that, in her view, it was not the restrictions imposed by the 2011 Act that had worried Mr Watson; it was more about the issue regarding shutters on the building (which caused the Council concern) and about how the Council generally had behaved in relation to the building. Mr Watson had not backed out because of the moratorium; it was more to do with the Council's attitude.

25. That evidence was confirmed by Mr Watson. He told me that the postponement in his purchasing the Club had in fact been beneficial to him and his partner; since finance charges in respect of the purchase would, correspondingly, be postponed. What concerned him was that the Council "didn't seem to be playing straight" and that they "kept coming up with restrictions". According to Mr Watson, the Council "seemed to be making things up as they went along". He had not been deterred by the fact of the listing itself and would have been happy if the Council had "played by the rules". As time went on, it seemed to him to be mere "pettiness". Mr Watson considered that the Council should have been encouraging investment in Bacup, rather than discouraging it.

The findings

26. This testimony is, I find, fatal to the compensation claim brought by Mr and Mrs Chadwick. The evidence does not show, on balance, that any of the loss or expenses specified by them "would be likely not to have been incurred if the land had not been listed". There has, I find, been shown to be no valid claim arising from any period of delay in entering into a binding agreement with Mr Watson, which was wholly caused by the statutory moratorium. Any decision by Mr Watson not, after all, to purchase the Club was, I find, not to do with the fact that he was being required to wait until the end of the moratorium period. On the contrary, as his oral evidence made plain (contradicting anything to the contrary in his written statements), he considered the moratorium to be positively advantageous for financial reasons.

27. Mr Watson's general complaints about the Council are, I have to say, clearly articulated. Suffice it to say that his views find no support in the evidence before me, including the evidence of Mrs Crawford and Mr Jackson, who I find correctly applied the relevant legislation and guidance.

28. In any event, I find that the evidence regarding the alleged informal agreement to purchase the club for £120,000 is unreliable. It is significant that Mrs Chadwick, an obviously talented and energetic businesswoman, played little or no part in the dealings with Mr Watson. Given that Mr and Mrs Chadwick had purchased the club for £82,000 only a few weeks earlier, and that the alleged value of the furniture being stored in the club was £3,000, the overall supposed purchase price of £120,000 is, frankly, wholly implausible. Mr Watson's written evidence states that he wished to purchase the Club for the purpose of running a road transport business (and providing facilities for others to do the same). He had no satisfactory explanation to give Mr Wyatt for why, in those circumstances, he had decided to purchase a large amount of ornate furniture, which was being stored in the Club and which was previously used in connection with a commercial tea room. In oral evidence, Mr Watson stated that he was interested in the Club as a development opportunity, something which had not hitherto featured in his evidence.

29. Mr Chadwick stated that other potential purchasers for the Club had been in existence during the moratorium period. The only details provided, however, were of a couple who wanted to use the Club as a restaurant but who concluded the premises were too large for that purpose. Plainly, that had nothing to do with the moratorium period. The evidence regarding other potential purchasers was entirely vague, whether from Mr and Mrs Chadwick, Mr Watson or Mr Bartnick. Certainly, there is no evidence to show, on balance, that any such potential purchasers were in a position to buy the Club, but for the running of the moratorium period.

30. Accordingly, the claim for compensation must fail. None of the matters set out by Mr and Mrs Chadwick, relating to costs and expenses incurred during the moratorium period, has been shown to be a loss or expense falls within regulation 14(2).

31. If I had not reached that firm finding upon the evidence before me, I have to say that I would, in any event, have found that the claims in respect of security and repairs (£5,975.42) and furniture (£3,000) fail on their own terms.

32. Mr Bartnick is, I am satisfied, a hardworking and skilled builder, whose work commended itself to Mr and Mrs Chadwick. Even making every allowance for the fact that Mr Bartnick's first language is not English, his evidence regarding the sums he is supposed to have charged Mr and Mrs Chadwick is not sufficiently reliable to discharge the burden of proof. Nothing that can be properly said to constitute an invoice appears to have passed between Mr Bartnick and Mr and

Mrs Chadwick at the relevant times. The document, described as a "quote", to be found at page 112 of the bundle, is undated. It refers to a sum of £5,975.42, of which the great majority is said to be for security monitoring for 183 days. That period, however, is considerably longer than the 144 days, between 12 May and 2 October 2014, which are the dates set out in Mr Bartnick's (again undated) letter at page 132. Since that letter also refers to £5,975.42, the discrepancy is significant.

33. So far as the claim for furniture is concerned, it is stated that this was severely damaged by water ingress. During the course of oral evidence, it became clear that Mr Bartnick, as part of his duties, moved furniture around within the building so as to ensure that it was not subjected to water damage. However, at some point in the early summer of 2014, it is said that part of the ceiling of the building collapsed, onto this furniture. Mr Bartnick's evidence was that he took prompt action to remove the furniture. If so, then I agree with Mr Wyatt that it is, to say the least, difficult to understand how that furniture could have been so severely damaged by water penetration. In any event, there is no photographic or other relevant evidence to demonstrate what, in fact, happened to the furniture. It therefore follows that both of these claims would, notwithstanding what I have said above, not be recoverable in any event. Neither would the claim for reconnection of the gas supply, for the simple reason that this cost never materialised.

The appellants' sense of grievance

34. It is not hard to see why Mrs Chadwick is a successful property developer, well-regarded in the local community. In her oral evidence, she was both engaging and forthright. She presented her and her husband's case with skill and good humour. It is, I find, plain that Mrs Chadwick's basic grievance is that she feels the Council could have engaged with her in a more cooperative manner. She was, in particular, hoping that her serious illness (for such it was) might have enabled the Council to waive or, at least, modify the requirements of the 2011 Act. She also considers that the Council could have got back to her on aspects of her compensation claim, rather than following process set out in the 2012 regulations.

35. Mrs Chadwick told me that she is, in fact, a supporter of the community right to bid legislation and, in another capacity, is engaging with it as a nominator.

36. There is, however, no "leeway" that the Council could have given to Mrs Chadwick, as regards the operation of the 2011 Act and the Regulations. Listing carries certain legal consequences, which are not for a Council to ignore or dilute. So far as the compensation claim process under the 2012 Regulations is concerned, I find the Council followed this correctly. It gave adequate reasons for rejecting the compensation claim. It is not my function to say whether the Council could or should have engaged at that stage in any greater dialogue with Mr and Mrs Chadwick. At all events, there is force in Mrs Crawford's point, that by

setting out the reasons why the claim was not accepted, Mr and Mrs Chadwick were able to make a response to those reasons in the compensation review process.

The future

37. Mr and Mrs Chadwick still own the Club. They have obtained planning permission to convert it into residential units. Mr Bartnick is their builder on this project. No doubt Mrs Chadwick will be discussing with the Council, in due course, what the completion of the development may mean for the continued listed status of the Club.

Decision

38. This appeal is dismissed.

Peter Lane

Chamber President

Dated 22 October 2015