IAC-AH-DP-V1

FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
COMMUNITY RIGHT TO BID

Appeal Reference: CR/2017/0002

Heard at Field House
On 31 May 2017
Further Submissions 29 June 2017

Before

JUDGE PETER LANE

Between

STEPHEN WHITEHEAD

Appellant

and

TUNBRIDGE WELLS BOROUGH COUNCIL

Respondent

Representation:

For the Appellant: In person
For the First Respondent: Mr Robin Harris, Mid Kent Legal Services

DECISION AND REASONS

A. Introduction and background

1. The appellant appeals, pursuant to regulation 17 of the Assets of Community Value (England) Regulations 2012, against the respondent's decision, following a review

under regulation 16, to refuse the appellant's claim for compensation, which he had brought by reference to regulation 14. The claim, itemised at pages 68 and 69 of the appeal bundle, totals £18,743.93.

2. The background to the appeal is as follows. On 1 March 2013, the appellant and his wife purchased the Royal Oak Public House in Pembury. The purchase price was £240,000. The pub had been closed for some time and had been on the market for nine months. The appellant had no interest in running the Royal Oak as a pub. His intention, when he bought it, was to convert it into a private dwelling for himself and his family.

3. Within a very short time, the appellant had come to the conclusion that it would be too costly for him to convert the Royal Oak in the way he wanted. On 26 April 2013, the appellant accepted an offer from Mr Longhurst, to purchase the Royal Oak for £340,000, subject to contract and subject to planning permission being granted for conversion of the property to residential use.

4. On 3 October 2013, the appellant and his wife applied to the local planning authority for permission to change the use of the Royal Oak from A4 (drinking establishment) to C3 (dwelling house).

5. On 29 October 2013, the respondent informed the appellant in writing that it had placed the Royal Oak on the list of assets of community value, maintained by the respondent pursuant to the Localism Act 2011.

6. On 28 October 2013, the offer for sale of the Royal Oak to Mr Longhurst was withdrawn. The appellant and his wife also withdrew the planning application. The appellant contends that both of these events occurred entirely as a result of the listing of the Royal Oak as an asset of community value under the 2011 Act.

7. On 14 March 2014, the appellant informed the respondent that the Royal Oak was for sale. Under the provisions of the 2011 Act and the 2012 Regulations, this notification triggered the initial moratorium period, during which time a sale cannot take place. The purpose of the moratorium is to give a relevant community group an opportunity to indicate to the respondent whether it is interested in making an offer for the purchase of the asset of community value.

8. After the six week period, the moratorium lapsed, as there had been no such expression of interest from a community group.

9. Following the Royal Oak being put on sale in March 2014, negotiations took place with a prospective purchaser, who wished to buy the pub on a commercial basis. The offer price was £260,000 but, according to the appellant, the prospective purchaser did not have the necessary finance and, on the day of the planned exchange of contracts, the prospective purchaser lowered the offer to £215,000. The appellant said that the prospective purchaser told him this was because the Royal

Oak was listed as an asset of community value and that, according to the appellant, the prospective purchaser had decided that the appellant was "in a bad place", as a result.

10. On 12 June 2015, the appellant and his wife submitted a fresh planning application to the local planning authority. This was identical in all material respects to the one made in October 2013.

11. On 30 September 2015, the local planning authority granted the planning application, with formal consent being issued on 7 October 2015.

12. On 26 October 2015, the appellant informed the respondent that he was proposing to bring a compensation claim under the 2012 Regulations.

13. On 7 December 2015, the appellant received an email from the respondent, stating that the respondent intended to remove the Royal Oak from the list of assets of community value.

14. There is some debate between the parties as to when the appellant may have become aware of the removal of the Royal Oak from the list. The respondent has given evidence that removal took place on 8 December 2015.

Regulation 14

15. Regulation 14 reads as follows:

> "(1) An owner or former owner of listed land or of previously listed land, other than an owner or former owner specified in regulation 15, 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."

C. Timeliness

16. The respondent resists the appellant's claim on several bases. First, the respondent submits that the claims made to it by the appellant on 25 September 2016 are out of time, having regard to regulation 14(5)(b). According to the respondent, the claims should have been submitted no later than thirteen weeks after 8 December 2015.

17. The appellant submits that this is wrong. One of his heads of claim relates to the fact that he had to continue to pay business rates on the Royal Oak until the Valuation Office ceased to rate the Royal Oak as commercial premises. That occurred on 8 January 2016. It was not until 19 September 2016 that the appellant received from the

respondent the final non-domestic rates demand of £509.16 for the period 16 September 2015 to 8 January 2016.

18. The appellant's stance, accordingly, is that business rates of £10,522.99 would not have been incurred but for the fact that the Royal Oak was listed as an asset of community value. Since this is one of the appellant's heads of claim under regulation 14, his global claim fell to be made no later than thirteen weeks after 25 September 2016, when he received the demand for the final business rates payment. In this respect, the appellant points to the words "was incurred or (as the case may be) finished being incurred" in regulation 14(5)(b) and to the words "for each part of the claim", which occur in sub-paragraphs (c) and (d).

19. The appellant further submits that, if his construction of regulation 14 is not correct, then claimants would be compelled to make multiple claims, relating to multiple losses or expenses. That, he submits, cannot be in the interests of either party.

20. For its part, the respondent submits that sub-paragraph (b) is in the singular and that each loss or expense does have to be so treated.

21. I consider that the appellant's interpretation is correct. So long as one loss or expense has not finished being incurred, then, at least as a general matter, a claimant will not be time barred by reason only of the fact that a particular head of loss or expense was incurred earlier. The respondent's submission founders on the fact that the Interpretation Act 1978 provides that, unless the context otherwise requires, the singular includes the plural in legislation, including the 2012 Regulations. I do not consider that there is any reason for the context to require otherwise in the present case. On the contrary, I am persuaded that it would be administratively problematic, for both claimants and councils, if multiple claims had to be made in order to comply with the thirteen week limit.

D. The heads of claim

22. I have already mentioned that one of the heads of claim related to business rates. The appellant's full list is as follows:-

1.	Legal expenses incurred in respect of a failed sale:	£2,494.40
2.	Rates for the period from October 2013 to December 2015:	£10,522.99
3.	Letters, telephone calls and sundry expenses "connected with the ACV":	£285
4.	Withdrawn planning application fee, October 2013:	£385
5.	Maintenance costs:	

	Flood repairs (burst radiator)	£85
	Pest control (rat infestation)	£375
	Roof repair (following high winds)	£215
	Fence repair (following high winds)	£380
6.	Consultant/advisors attending council offices:	£180
7.	Costs incurred conducting survey of local residents:	£80
8.	Buildings insurance (proportion of)	£505
9.	Heating and lighting:	£3,236.54
	Total Compensation Claim:	£18,743.93

E. Unsupported heads of claim

23. The respondent submits that the heads of claim for which no invoices, receipts or other such evidence has been provided are not valid. Whilst I accept that there is no express requirement in the legislation for there to be written evidence, as a general matter a council faced with a compensation claim under the 2012 Regulations is entitled to expect to see cogent evidence of loss, in the form of invoices and so forth, before parting with public money. There is, I find, no such evidence here.

24. In the present case, I conclude that, in any event, the heads of claim that are unsupported by such materials are, in their own terms, far too vague to satisfy the requirements of regulation 14(2). Thus, "letters, telephone calls and sundry expenses – connected with the ACV" is entirely obscure and the appellant has put forward no evidence to elucidate this head of claim.

25. Likewise, "consultant/advisors attending council offices" fails to differentiate between such visits occasioned by the planning applications and those occasioned by the listing of the Royal Oak.

26. The "costs incurred conducting survey of local residents" is, I consider, insufficiently related to regulation 14(2) to be claimable. The appellant gave evidence at the hearing that considerable local opposition arose, once local residents discovered he had purchased the Royal Oak in order to close it permanently as a pub and convert it into a house for himself and his family. The character of that opposition, according to the appellant, became vitriolic. Although one apparent consequence of the residents' campaign was to nominate the Royal Oak as an asset of community value, I am far from satisfied, on the evidence, that the appellant's planning application would not have faced local opposition, quite apart from the fact of listing. Indeed, the appellant withdrew the planning application, on advice, in October 2013.

27. I have to say I have difficulty with the appellant's evidence that his advisors thought the planning application would receive unfavourable consideration:

> "as the ACV would override any planning consent who, in their right mind would buy residential property with an ACV Order on it for 5 years and with no prospect of gaining a mortgage or other loan along with a possibility of paying commercial rates and having to invest a substantial amount of money to make the property habitable?"

28. That statement, whether or not attributable to the appellant's advisors, overstates the relationship between listing and the planning regime. It also raises a matter to which I shall return in due course: namely, the appellant's contention that it is not possible to raise a mortgage on a property that is listed as an asset of community value.

29. For these reasons, I find that the heads of claim unsupported by documentary evidence fail to be claimable.

F. Failed sales

30. It is noteworthy that, although the appellant says he had been aware of the Royal Oak for some time before purchasing it, and although he bought it with a view to renovating it for exclusively residential use, within a very short period of time he was involved with Mr Longhurst in the proposed sale of the property.

31. After the hearing, the Tribunal received an email from the appellant, copying an email of 31 May 2017 from the appellant to Mr Longhurst. The email states that the appellant was asked at the hearing why Mr Longhurst had "pulled out of buying the Royal Oak as per our agreement of May 2013". Mr Longhurst was given the opportunity to elaborate.

32. By an email of 29 June 2017, Mr Longhurst apologised for the delay in getting back to the appellant "but its been so busy".

33. The email continues:

> "We were very excited about buying the Royal Oak in 2013 and actually passed up the opportunity to buy another property in Pembury because we thought we would be buying the pub. Having spent the best part of a thousand pounds on solicitor's work on the draft contract of purchase, lined up complicated finance to purchase a commercial property and invested a huge amount of time working with the architect to draw up conversion plans, we had to pull out due to the ACV Order that was applied to the property.
>
> The ACV basically precluded us from moving forward within the timescales that were practical and we had to accept the fact that the time and money invested in the proposed purchase was in fact wasted".

34. I find this evidence does not assist the appellant. At the hearing, the appellant made reference to mortgages not being available in respect of properties subject to listening under the 2011 Act. No actual evidence to that effect was, however, put forward. It would, I consider, have been a relatively easy matter to ask a lender or lenders to confirm the assertion.

35. So far as Mr Longhurst is concerned, however, he had had to line up "complicated finance to purchase a commercial property". This suggests that he was buying the Royal Oak as a pub, as indicated by the appellant at the hearing, who said that the condition of sale relating to planning permission for change of use was subsequently dropped.

36. In any event, Mr Longhurst's email notably does not say that the listing of the Royal Oak caused problems regarding finance. It was, rather, with "timescales" with which he was concerned. The nature of that concern is, however, entirely vague.

37. Overall, I do not accept that the evidence shows, on balance, that the appellant's failure to sell to Mr Longhurst occasioned the appellant loss or expense, which would be likely not to have been incurred if the Royal Oak had not been listed.

38. I also do not consider that the appellant has shown on balance that there is a causative link between the listing and the collapse of the second set of negotiations, involving the commercial purchaser. The evidence shows that this prospective purchaser entered the picture after the Royal Oak had been listed. Although the appellant said that this prospective purchaser dropped the asking price, at the point of exchange, citing the listing as a reason, it is more likely than not that this was merely an instance of the type of brinkmanship that is often encountered in property sales. The prospective purchaser had, after all, begun negotiations, knowing that the Royal Oak was listed.

39. The appellant also said, candidly, that he had wanted to have a clause in the sale agreement, to the effect that the purchaser would not change the use of the Royal Oak for five years. I consider that this factor, which cannot properly be ascribed to listing, is at least as likely, if not more likely, to have accounted for the breakdown in negotiations between the appellant and the prospective commercial purchaser.

40. Since I find on balance that neither of the failed sales can be ascribed to the listing, in terms of regulation 14(2), it follows that I must reject the claim of £2,494.40 in respect of legal expenses.

G. Business rates

41. I return to the issue of business rates. On the totality of the evidence, I do not find on balance that this head of claim falls within regulation 14. The reality of the matter is that the appellant purchased the Royal Oak as a pub, with ancillary residential

accommodation, intending to convert it to residential use. Within a very short period of time, he had changed his mind and wanted to sell. I have already found that neither of the prospective sales has been shown, on balance, to have been rendered abortive by reason of listing. Accordingly, irrespective of listing, the evidence shows that the Royal Oak is more likely than not to have retained its commercial character as a pub.

42. The moratorium period had been triggered on 14 March 2014 and ended on 25 April 2014, following the absence of any expression of interest from a community group. The fact that the appellant did not see fit to file a second planning application for change of use until June 2015 shows, on balance, that there is no causal connection between the listing and the decision to revive the planning application.

43. Accordingly, I conclude that it cannot be said the continued business rating status of the Royal Oak was more likely than not to have subsisted because of listing. As the respondent says "it is completely separate to the issue of the land being listed".

H. The remaining heads of claim

44. Finally, I agree with the respondent that the remaining heads of claim, comprising maintenance costs, building insurance and heating and lighting, are also outside the scope of regulation 14. The position would be otherwise if, but for the listing, the appellant would have sold the Royal Oak. For the reasons I have given, however, the evidence does not support such a conclusion.

45. In any event, the appellant had purchased a property with an existing planning use as a pub, which he knew would take a considerable amount of money to convert to an exclusively private residence. He also knew, or should have known, that it would be necessary to obtain planning permission for change of use. Quite apart from the issue of listing, those matters would be likely to have taken considerable time to resolve. In the interim, the building had to be kept safe and insured. So far as the heating and lighting is concerned, although the appellant said that it would not have been his wish to reside in the Royal Oak until the necessary works were complete, he decided to do so, in order to prevent squatters entering the premises. That consideration, I find, has no apt connection with the issue of listing. Furthermore, the appellant would have saved on heating and lighting in respect of the property in which he would otherwise have lived.

I. The appellant

46. I must pay tribute to the appellant, who presented his case in a professional and attractive manner. At times, he gave the impression that he was putting forward his case, to an extent at least, in order to enable further light to be shed on what is, at present, a relatively little traversed area of the law concerning assets of community

value. Although, in the event, it has brought him no financial benefit, the appellant has enabled light to be shed on the issue of timeliness (see Part C above).

J. Decision

47. The appeal is dismissed.

Judge Peter Lane

3 August 2017