



Appeal number: CR/2018/0006

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
COMMUNITY RIGHT TO BID**

DAVID FIELDER

Appellant

- and -

HARROGATE BOROUGH COUNCIL

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

**Preliminary issue determined on the papers,
the Judge sitting in Chambers on 29 April 2019**

RULING ON PRELIMINARY ISSUE

Background

1. The Appellant is David Fielder, the owner of the former Henry Jenkins public house, Main Street, Kirkby Malzeard (“the Property”). He appeals against the Respondent’s refusal of his request for compensation under regulation 14 of the Assets of Community Value (England) Regulations 2012 (“the Regulations”).
2. The Respondent is Harrogate Borough Council (“the Council”), which listed the Property as an Asset of Community Value (“ACV”) on 29 June 2017. On 23 July 2018, the Council refused the Appellant’s claim for compensation for losses and expenses said to arise from the listing.
3. The refusal of compensation letter dated 23 July 2018 is the decision which is the subject of an appeal to this Tribunal under regulation 17 of The Assets of Community Value (England) Regulations 2012¹.
4. This Ruling decides a preliminary issue, as directed by the Chamber Registrar on 2 October 2018. The preliminary issue for determination is “*whether compensation can/should be paid (i.e. liability) and, if so, under what heads*”. The Registrar directed that if the Judge found that the Respondent were liable to pay compensation, she or he would then make directions to the parties to enable the Tribunal to deal with the question of quantum (i.e. how much compensation is due).
5. The material facts are as follows:
 - (i) The Henry Jenkins public house has not traded since before December 2012 when the Appellant acquired the freehold interest in it;
 - (ii) The Appellant notified the Council of his intention to change the Property’s use from A4 to A2 (Financial and Professional Services) on 11 March 2017;
 - (iii) The Property was nominated as an ACV following the submission of a nomination form dated 5 May 2017. On 29 June 2017, the Council decided to list the property as an ACV. On 26 September 2017, the Council reviewed its decision to list the property as an ACV and upheld its earlier decision, informing the Appellant by letter sent on 5 October 2017;
 - (iv) On 5 July 2017, the Appellant gave the Council notice of his intention to enter into a relevant disposal. On 17 April 2018, he disposed of part of the Property. The transferred part of the Property was therefore removed from the Council’s ACV list;

¹ <http://www.legislation.gov.uk/ukxi/2012/2421/contents/made>

(v) On 19 January 2018, the Appellant submitted to the Council his claim for compensation under regulation 14 of the Regulations. The Council refused his claim. The Appellant requested a review of the Council's decision to refuse his compensation claim. The reviewing officer upheld the Council's earlier decision on 23 July 2018;

(vi) Mr Fielder's first planning application, for demolition of the Property and the erection of four dwellings, was made in 2016. It was refused by the Council on 1 March 2017. The ACV listing in June 2017 had the effect of removing permitted development rights under paragraph A1 of part 3, schedule 2 to the Town and Country Planning (General Development) (England) Order 2015², subject to transitional provisions, and later under the Town and Country Planning (General Development) (England) (Amendment) (No.2) Order 2017³. The Appellant submitted a second planning application in respect of the Property, which was validated by the Council on 18 April 2018. This was for conversion of the property to one dwelling. That application was also refused.

Appeal to the Tribunal

6. The Appellant's Notice of Appeal dated 17 August 2018 relied on grounds that the Council had wrongly refused his claim for £711,000 in compensation for lost profits, because the ACV listing had prevented him from exercising permitted development rights to change the Property's use. This, in turn, had affected his planning application for residential conversion because different planning considerations would have applied if the change of use had been effected prior to the ACV listing. Alternatively, that the Council had been wrong to refuse his claim for £355, 000 in respect of a diminution in value of the property attributable to its ACV listing.

7. The Respondent's Response dated 28 September 2018 relied on grounds of opposition that the compensation claim was time-barred in any event, and that the heads of loss relied on by the Appellant were not capable of founding a valid compensation claim under the Regulations. It is also denied that there was a diminution in value.

8. The Appellant's Reply dated 11 October 2018 denied that his claim was time-barred, as he submitted that the Regulations envisaged that continuing losses could be compensated. Further, he submitted that the losses claimed were capable of compensation under the statutory scheme.

9. The parties and the Tribunal agreed that the preliminary issue was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure

² <http://www.legislation.gov.uk/uksi/2015/596/contents/made>

³ <http://www.legislation.gov.uk/uksi/2017/619/contents/made>

(First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended⁴. I have considered carefully the agreed bundle comprising some 400 pages, plus a second bundle containing legislative materials, case law and submissions.

The Law

10. The Localism Act 2011 (part 5 chapter 3)⁵ provided for local authorities to maintain a list of land in their area which is land of “community value”. Land of “community value” is, pursuant to s. 88 of the 2011 Act, land where in the opinion of the local authority:

- (a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and*
- (b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.*

11. The 2011 Act sets out a procedure for including land in the list, imposes a moratorium period on certain disposals of land which has been included in the list, and provides at s. 99 for a compensatory regime to be established as follows:

- (1) The appropriate authority may by regulations make provision for the payment of compensation in connection with the operation of this Chapter.*
- (2) Regulations under subsection (1) may (in particular)—*
 - (a) provide for any entitlement conferred by the regulations to apply only in cases specified in the regulations;*
 - (b) provide for any entitlement conferred by the regulations to be subject to conditions, including conditions as to time limits;*
 - (c) make provision about—*
 - (i) who is to pay compensation payable under the regulations;*
 - (ii) who is to be entitled to compensation under the regulations;*
 - (iii) what compensation under the regulations is to be paid in respect of;*
 - (iv) the amount, or calculation, of compensation under the regulations;*

⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779790/tribunal-procedure-rules-general-regulatory-chamber.pdf

⁵ <http://www.legislation.gov.uk/ukpga/2011/20/part/5/chapter/3>

(v) the procedure to be followed in connection with claiming compensation under the regulations;

(vi) the review of decisions made under the regulations;

(vii) appeals against decisions made under the regulations.

12. The Assets of Community Value (England) Regulations 2012⁶ provide at Regulation 14 that :

Compensation

14.(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—

⁶ <http://www.legislation.gov.uk/ukxi/2012/2421/contents/made>

- (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.

13. A local authority's decision about compensation is challengeable under Regulations 16 and 17 of the Regulations, as follows:

Review by local authority of compensation decision

16. (1) A person who has under regulation 14 made a claim for compensation may ask the responsible authority concerned to review either or both of its decisions, made in response to that claim, as to—

- (a) whether compensation should be paid to that person, and*
- (b) if compensation is to be paid, the amount of that compensation.*

(2) If a request for a compensation review is made in accordance with the provisions of paragraph 2 of Schedule 2, the authority must in accordance with the procedure in Schedule 2 review the decision or decisions of which review is requested.

(3) Where an authority carries out a compensation review, the authority must give written notification to the person who asked for the review of—

- (a) the decision on the review, and*
- (b) the reasons for the decision.*

Appeal against compensation review decision

17. Where a 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.

14. Counsel for both parties have referred me to a wide range of extraneous materials in support of their preferred interpretation of the statutory materials, but without

making an application under the rule in *Pepper (Inspector of Taxes) v Hart* [1992] UKHL 3⁷. That rule requires me to adopt a plain reading of statutory materials unless that reading leads to ambiguity or absurdity. If that were to be the case, then a limited class of extraneous materials only may be taken into account in construing the legislation, namely clear statement to Parliament from the promoter of the legislation. I have not been referred to material which falls within that category.

15. A number of Tribunal Decisions have been made in relation to this part of the 2011 Act. The First-tier Tribunal Decisions have no precedent value. Two Community Right to Bid appeals have been decided by the Upper Tribunal (Administrative Appeals Chamber), which do have precedent value. These are *BHL v St Albans City and District Council and Verulam Residents Association I* [2016] UKUT 0232 (AAC)⁸ and *ATL v CW, CC and FPC* [2018] UKUT 15 (AAC)⁹. Both of the Upper Tribunal cases concern listing decisions. Judge Peter Lane (as he then was) commented at first instance (and arguably *obiter*) on the ambit of the compensation provisions in *Chadwick v Rossendale Borough Council*¹⁰ but otherwise this is the first appeal to concern the particular matters raised here.

16. There is a helpful discussion of the relevant legislation in the only published textbook that I am aware of, which is *Assets of Community Value: Law and Practice* by barrister Simon Adamyk.¹¹

Evidence

17. I have considered the witness statement filed by the Appellant dated 10 January 2019. He describes himself as an experienced property developer with a career spanning some 40 years in relation to more than 500 properties. He states that he originally planned to convert the Property into an estate agents' office for his own use and that he intended to exercise permitted development rights to achieve this. He took permissible preparatory steps to this end and incurred costs in so doing. He says he regarded the change of use to an office as a means of “de-risking” the subsequent proposed application for conversion of the Property to residential use.

⁷[https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKHL/1992/3.html&query=\(Pepper\)+AND+\(v\)+AND+\(Hart\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKHL/1992/3.html&query=(Pepper)+AND+(v)+AND+(Hart))

⁸https://assets.publishing.service.gov.uk/media/57864341e5274a0da900010c/MISC_2_004_2015-00.pdf. I understand permission was given for an onward appeal to the Court of Appeal in BHL, but that no judgment has yet been handed down.

⁹https://assets.publishing.service.gov.uk/media/5a7058b3ed915d265c511f6d/MISC_1_976_2017-00.pdf

¹⁰ <https://www.bailii.org/uk/cases/UKFTT/GRC/2015/CR-2015-0006.pdf>

¹¹ Published by Wildy, Simmonds and Hill 2017.

18. The Respondent has filed no witness evidence.

19. I have considered all the documentary evidence contained in the agreed hearing bundle. In particular, I have considered the terms of the Appellant's compensation claim and the Council's decision letter dated 23 July 2018, which is the subject of this appeal.

20. The Appellant's claim dated 19 January 2018 is set out as follows:

"It is the owners claim that it has suffered loss as a consequence of the listing of the property as an Asset of Community Value. That loss has taken the form of a loss of profits that would otherwise have been made had the owner been able to develop the property.

In support of the owner's claim we enclose a valuation report... These figures are derived from a loss in property value to the owner attributable to the ACV listing, and a loss of profits to the owner attributable to the ACV listing.

The owner relies on the contents of the enclosed valuation report in its entirety, but in particular we draw the following aspects of the report to your attention:

1. the valuation report is supported by a detailed planning report, which evidences the owner's intention to exercise permitted development rights to change use of the property to an A1 use¹² in order to de-risk a planning application for later residential conversion, by removing the council's policy objections to development on the grounds of the feared loss of a community facility.

2. Had the property not been listed as an Asset of Community Value then it is clear that consent for a later planning application may have been obtained and the future path of the property would have followed a different route, attracting a far greater value as well as profits from its development.

Accordingly, the owner claims the sum of £711, 000 from the council as a consequence of the ACV listing and the consequent diminution in value and loss of profits...."

21. In submissions made by letter dated 4 July 2018, the Appellant's claim was further particularised to refer to losses which had not *finished being incurred* as a result of the Property's continuing status as an ACV. It was denied that the Appellant's claim was time-barred for this reason. It is also submitted that diminution in value and loss of opportunity to develop are compensatable types of loss under the Regulations.

22. The Council's final response (after conducting a review) dated 23 July 2018 is signed by the Director of Community and expressed in the following terms:

¹² This was a typographical error and should have read "A2".

“... ”

I refer first to the time limit set out in regulation 14 (5) (b). I am of the view that Mr Fielder's original claim for compensation...relates quite specifically to the listing itself, in other words, a once and for all loss. Nowhere is there any reference to multiple, continuing or fluctuating losses which you describe as 'a continuing state of affairs'.

It seems to me that if the losses are now said to be 'continuing' then they have not yet been 'incurred'. If the claim for compensation consists of future speculative loss, albeit of a type which Mr Fielder's experts have sought to quantify, I do not think it is a loss which has crystallised at a point where it's come be said to have been incurred due to the moratorium.

I conclude that the regulation is intended to cover losses which arise immediately i.e. within 13 weeks from listing itself and conclude that your clients claim for compensation is out of time.

The continuing and arguably fluctuating losses you now describe, and those allegedly quantified by the expert evidence that has been produced on your client's behalf, relates predominantly to losses caused by the operation of the planning scheme and the operation of the property market. As such, even if Mr Fielder's claim were not outside the time limit set out in the Regulations, I would not agree that the Council is liable to pay compensation.

The ACV regime 'only' imposes a moratorium in order to permit a community bid. The loss of permitted development rights, which your client would have preferred to retain, occurred during the moratorium period. However, this was not caused by the listing itself but by the changes in planning law and regulation which, unfortunately for your client, coincided with this particular listing.

The failure to obtain planning permission for residential use at the Henry Jenkins site has resulted in an alleged loss to your client which is caused by the planning and development considerations which apply to the site, not by the ACV listing. An ACV listing does not automatically preclude a successful planning application in every case.

Even if Mr Fielder's claim were not out of time and I were to agree that some compensation is payable it is difficult to select at what point the fall in market value might be assessed as the property markets goes up and down. This adds weight to my conclusion that such an assessment can only occur at the point of listing and within the 13 -week time limit thereafter- that is a time limit which has been exceeded.

I cannot agree to uphold your clients claim for compensation and the Council does not agree to make any such payment to him.

... ”

Submissions

23. I am grateful to Jonathan Wills, counsel instructed by Freeths LLP, for his helpful written submissions on behalf of the Appellant. I am also grateful to Ruth Stockley, counsel instructed by the Council, who provided helpful written submissions on behalf of the Respondent.

24. The Appellant's submissions fall into three principal categories, as follows:

(i)Compensatability

(a) The reviewing officer was wrong to place weight on Judge Lane's first-instance comments in *Chadwick v Rossendale* as these were *obiter* and ran contrary to the clear words of the legislation which is to permit claims of the type made by the Appellant;

(b)Regulation 14 (3) of the Regulations is clear that the examples at regulation 14 (3) (a) and (b) are without prejudice to other types of claim that can be made. The other types of claim that can be made are determined by regulation 14 (2), which sets out the test for a compensation of loss and regulation 14 (1), which determines who is entitled to compensation.

(ii)Causation

(a)The reviewing officer misdirected himself in relation to the various potential causes of the Appellant's losses. He applied an incorrect test in rejecting the compensation claim. The test in regulation 14 (2) does not require the owner to establish that the ACV listing is the sole or even the main cause of the loss but rather that the loss would be likely not to be not to have been incurred if the land was not listed;

(b)The documentary evidence regarding the first planning application shows that the Appellant would have made a significant profit from his proposed residential development of the property if he had been able to exercise permitted development rights. The exercise of those rights would have removed the only reason given for the refusal of the first planning application. The ACV listing endured until after the expiry of the permitted development rights. This meant that the Appellant lost the ability to implement the otherwise permitted change of use. The Appellant is now unable to pursue a planning application for change of use to residential. The Appellant has therefore been prevented from making a profit and this loss is likely not to have been incurred if the property had not been ACV listed;

(c)In relation to the diminution in value of the property, the ACV listing has had a negative impact. The diminution in value would be likely not to have been incurred if the property had not been ACV listed.

(iii) Evidence

The Appellant produced a valuation report in support of his claim for compensation. However, the disposal of part of the property 2018 means that the valuation aspect of the Appellant's claim was inaccurate and needed to be revisited. The Appellant seeks the Tribunal's permission to adduce expert evidence on quantum if the preliminary issue is determined in his favour.

25. The Respondent's submissions also fall into three principal categories, as follows:

(i) The time-bar

(a) It is submitted that, under regulation 14 (5) (b), a claim must be made before the end of 13 weeks after the loss or expense was incurred or (as the case may be) finished being incurred. It is submitted that any losses caused by the listing of the property were incurred at the point in time when the property was listed or at the latest when the review upheld the decision to list the property;

(b) It is submitted that the Appellant's case relies on a contention that the change of use under permitted development rights would have removed the planning concern which had previously prevented planning permission being granted. The Council's case is that it was in fact the loss of the Appellant's ability to exercise permitted development rights which caused any loss of profits, and not the listing of the property;

(c) It is submitted that the permitted development rights on which the Appellant sought to rely were removed on 23 May 2017 by virtue of the Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2017. Transitional provisions in article 5 of that Order permitted a 56-day period for exercising permitted development rights in relation to the Property, which expired on 8 May 2017. After that date, the property did not have the benefit of relevant permitted development rights while it was listed as an ACV. The Council's case is therefore that the loss which the Appellant claims crystallised when the property was listed or when the review of the listing was unsuccessful. The opportunity to make the profits claimed was lost at that time and no further loss continued to be incurred thereafter. The Council therefore disputes the Appellant's contention at paragraph 40 of the grounds of appeal that the losses finished being incurred on 12 March 2018. The claim for compensation was made in January 2018, which was after the 13-week period during which a valid claim for compensation could be made.

(ii) Diminution in value

The Council submits that the claim for diminution in value of the property is similarly time-barred. Any such losses would have occurred at the point in time when the property was listed, namely 29 June 2017. The claim for such loss was not made within 13 weeks of that date.

(iii) *Causation*

(a) If the claim for compensation has been made in time, the Council submits that the Appellant has not been demonstrated that it was the listing itself which caused the claimed losses. The Appellant must demonstrate that the claimed losses “would not have occurred” but for the listing;

(b) The claim for loss of profits is based upon a lost opportunity to make profit from the development of the property. The Council’s case is that that opportunity was removed by the listing of the Property as an ACV but rather due to the operation of the planning system;

(c) The 2015 Order precluded the exercise of permitted development rights from a class A 4 use to a class A 2 use in relation to a building that had been nominated or listed as an ACV. It is submitted that it was a consequence of that Order that the Appellant was unable to exercise permitted development rights in relation to the property. The 2017 Order went further and removed the opportunity to make profits even after the property was no longer listed as an ACV;

(d) The Council submits that the Appellant would have had to clear numerous hurdles in order to obtain the relevant planning permission to realise the profits for which he contends. These included: exercising his permitted development rights by 12 March 2018; the property actually being used as an estate agent’s office so as to change its lawful use in planning terms; an application for planning permission for residential development being made; the planning policy framework being supportive of that proposal; no other material considerations arising for example whether consultees would have raised objections; the site of the property being developed pursuant to any planning permission granted and the prevailing market conditions at that point in time. The claim that the profits would have been achieved if the property had not been listed is therefore submitted to be speculative;

(e) The claim for diminution in value of the property is also resisted. It is submitted that the property can still be brought back into use for its lawful use as a public house. The listing has not caused any diminution in value of the property because it is the planning system which precludes the use of the property for other purposes;

(f) It is submitted that neither of the claimed heads of loss are capable of compensation. In particular, the claim for loss of profits is predicated on the loss of permitted development rights but it is submitted that the ACV legislation does not permit compensation for loss of permitted development rights.

Conclusion

26. I have adopted a plain reading of the Regulations and have not sought to interpret them with reference to the various extraneous materials supplied to me. I conclude that this is the correct approach in the absence of a *Pepper v Hart* application.

27. I remind myself that the preliminary issue for determination is whether the Council is in principle liable to pay compensation in the circumstances of this case.

28. My reading of the Regulations as applied to this case is as follows:

(i) The Appellant is the owner of listed land for the purposes of regulation 14 (1);

(ii) The Appellant is therefore “entitled” to compensation from the Council if the “circumstances” in regulation 14 (2) apply. The Council must determine the amount of compensation if the “circumstances” apply;

(iii) The “circumstances” in regulation 14 (2) are that an owner has incurred “loss or expense” which would be likely not to have been incurred if the land had not been listed;

(iii) Regulation 14 (3) sets out a non-exhaustive list of possible types of claim but this is expressly without prejudice to other types of claims which may be made. The Appellant’s claim is therefore “another type of claim” as it is not of a type in the list;

(iv) Regulation 14 (5) provides that a claim for compensation “must” be made in conformity with sub-paragraphs (a) to (d), and at (b) provides that a compensation claim “must” be made before the end of thirteen weeks after the loss or expense was incurred or (as the case may be) finished being incurred.

29. There are some puzzling aspects to these provisions. I note that the owner of listed land is not merely “entitled to make a claim” but is “entitled to compensation” if she or he makes a claim in particular “circumstances”. I note that regulations 14 (1) and (2) do not cross-refer to regulation 14 (5), and that there is no specified consequence of a failure to make a compensation claim in accordance with regulation 14 (5). On a plain reading of the Regulations, I conclude that the use of the word “must” in regulation 14 (5) means that the “circumstances” entitling an owner of listed land to compensation under either regulation 14 (2) or 14 (3) must be understood to include the “circumstance” that their claim for compensation is made in conformity with the provisions of sub-paragraphs (a) to (d) of regulation 14 (5). These provisions include the *sine qua non* of any compensation claim, such as the amount claimed and the evidence in support of the claimed losses, but also create a thirteen-week window for making a valid claim.

30. This leads me to decide that a claim which did not comply with all aspects of regulation 14 (5) could not give rise to an “entitlement” to compensation. With reference in particular to regulation 14 (5) (b), I doubt that my interpretation above strictly creates what the parties have referred to as a “limitation period” or a “time-bar”, but the effect is the same, namely that in order to give rise to an *entitlement* to

compensation a claim *must be made before the end of thirteen weeks after the loss or expense was incurred or finished being incurred.*

31. I go on to consider whether the Appellant's claim for compensation made on 19 January 2018 complied with regulation 14 (5) (b). The claim there made clearly refers to him having *suffered loss as a consequence of the listing of the property as an Asset of Community Value.* My clear understanding of the claim which was actually made is therefore that it was for losses flowing from the decision to list the Property as an ACV. That decision had an effective date, which I consider further below.

32. The terms of the Appellant's claim have been refined in the later correspondence, the grounds of appeal and the written submissions. In the Appellant's most recent submissions (dated 28 February 2019), his claim is described as a claim for losses attributable to the effect of the ACV listing in removing the Appellant's permitted development rights, which would have been exercisable were it not for the listing of the Property as an ACV. As I understand it, that description supports my view that the claimed losses flow from a particular event on a particular date.

33. The date of the listing was 29 June 2017. I note that there was a right to review of that decision, and that the Council's decision to confirm the listing was sent to the Appellant under cover of a letter dated 5 October 2017. It is usual, where there is a statutory right of review, to take the review decision as the decision from which consequential time limits (such as the right of appeal to the Tribunal) start to run. It also seems reasonable to take the review decision as to ACV listing as the starting point for the requirements of regulation 14 (5), as that is the date on which I understand the Council to have become *functus officio* under the Regulations.

34. The letter of 19 January 2018 was sent more than thirteen weeks after 5 October 2017. If, as I read it, the Appellant's claim was for losses incurred from the date of the listing, then the claim made did not in my view give rise to an entitlement to compensation because it did not comply with regulation 14 (5)(b). If, as appears in later articulations of his case, the Appellant claims compensation for losses which are continuing so long as the Property remains listed as an ACV, then the claim he made failed to comply with regulation 14 (5) (b) for another reason, which is that the losses had not finished being incurred at the date of the claim.

35. For all these reasons, my ruling is that the Appellant did not make a valid claim for compensation under the Regulations on 19 January 2018. I therefore decide the preliminary issue on the basis that the Respondent is not liable to pay compensation to the Appellant in this case. Determining the preliminary issue in this way means that this appeal may not proceed to a final determination of the remaining issues.

36. In the circumstances, I have not found it necessary to decide whether the Appellant's claims are of a type which founds an entitlement to compensation under the Regulations or how to approach the question of compensation where the losses may be said to arise from multiple contributing factors. I have also not decided the matters raised by the parties in final submissions, which strayed a long way from their pleaded cases. It might be helpful if I explain here that this statutory Tribunal has no

supervisory jurisdiction and may not determine an appeal with reference to public law concepts such as legitimate expectation. See *HMRC v Abdul Noor* [2013] UKUT 071 (TCC)¹³.

37. Finally, I acknowledge that this is the first Decision of its type and that there is no direct precedent for my interpretation of the Regulations. I would be minded to grant permission to appeal to the Upper Tribunal (Administrative Appeals Chamber) if the Appellant were to apply for permission to appeal against this ruling.

(Signed)

ALISON MCKENNA

DATE: 30 April 2019

CHAMBER PRESIDENT

¹³

http://taxandchancery_ut.decisions.tribunals.gov.uk/Documents/decisions/HMRC_v_Abdul_Noor.pdf



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GENERAL REGULATORY CHAMBER
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Applicant

- and -

HARROGATE BOROUGH COUNCIL

Respondent

**Judge Alison McKenna
Sitting in Chambers on 3 June 2019**

**RULING ON APPLICATION FOR
PERMISSION TO APPEAL**

1. Permission to appeal is granted on all grounds.

2. I have considered in accordance with rule 44 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 whether to review the Tribunal's Decision but have decided not to undertake a review, as I am not satisfied that there was an error of law in the Decision.

REASONS

3. This matter concerns Harrogate Borough Council's refusal of the Applicant's claim for compensation arising from its listing of his property as an Asset of Community Value. The refusal was the subject of an appeal to this Tribunal under regulation 17 of The Assets of Community Value (England) Regulations 2012¹.
4. In a Ruling dated 30 April 2019, I decided a preliminary issue on the papers, as directed by the Chamber Registrar on 2 October 2018. The preliminary issue for determination "*whether compensation can/should be paid (i.e. liability) and, if so, under what heads*" was decided so as to prevent the Applicant's claim from proceeding further to a determination of quantum.
5. By application dated 24 May 2019 the Applicant applies for permission to appeal.
6. I have considered whether the grounds of appeal are arguable. This means that there must be a realistic (as opposed to fanciful) prospect of success – see Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538. I have concluded that all the grounds relied on by counsel have a reasonable prospect of success. As I indicated in my Ruling of 30 April 2019, there is no precedent on the issues raised in this case and it will be helpful to the parties and to the First-tier Tribunal to obtain the Upper Tribunal's Ruling.
7. Accordingly, permission to appeal is hereby granted.

¹ <http://www.legislation.gov.uk/ukxi/2012/2421/contents/made>

(Signed)

Dated: 3 June 2019

**Alison McKenna
Chamber President**

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