NCN: [2022] UKFTT 496 (GRC)

Case Reference: CR/2022/0004

First-tier Tribunal
(General Regulatory Chamber)
Community Right to Bid

Heard in Chambers and determined on the papers

Heard on: 24 October 2022
Decision given on: 11 November 2022

Before

JUDGE J FINDLAY

Between

ANDREW ABBOTT

Appellant

and

STOCKTON-ON-TEES BOROUGH COUNCIL

Respondent

Decision

1. The appeal is allowed. The conditions of regulation 14(2) of the Assets of Community Value (England) Regulations 2012 ("the Regulations") are satisfied. The appellant incurred expenses of £3,711.83 which would be likely not to have been incurred if the buildings and land associated with The Vane Arms Public House, Darlington Road, Stockton, Long Newton, TS21 1DB ("the Property") had not been listed as an Asset of Community Value ("ACV").

REASONS

Procedure

2. The Parties agreed that this matter was suitable for determination on the papers in accordance with rule 32 of the Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009, as amended.

3. The documents referred to are in an open electronic bundle of 98 pages.

4. The appellant in his evidence refers to the existence of an audio recording of the MS Teams planning committee meeting on 10 March 2021. He stated that he had made a Freedom of Information request of the respondent for a copy of this recording and had been told that there was no recording. I considered it was not proportionate to adjourn the hearing to clarify whether there was further evidence available in view of my decision.

5. In his evidence the appellant provided a link to an inactive site (successful-assets-of-community-value-11032020.xlsx (live.com). I considered whether to adjourn to obtain this spreadsheet but decided it was not proportionate to do so in view of my decision.

Background

6. A nomination to list the Property was made on 8 November 2019 and the Property was listed as an ACV on 12 February 2020. The appellant appealed the decision and the appeal was determined and refused on 29 September 2020. The decision was issued on 26 October 2020. The appellant applied late for permission to appeal and the application was refused on 12 March 2021.

7. On 16 January 2020 the appellant entered an agreement with Camfero Homes Ltd ("Camfero") to sell the Property conditionally on the basis of planning permission being granted.

8. Camfero made two separate applications for planning permission. One was for the erection of one 3 bedroom dwelling with associated access and the second was for the conversion and alternations to the existing public house and first floor accommodation to create one residential property with associated access.

9. The applications came before a planning committee meeting on 10 March 2021. The planning case officer made a recommendation to grant permission on both applications. The applications were refused on 16 February 2022 and the appellant appealed.

10. The applications were debated and determined as one throughout the planning process. Planning permission was granted on appeal on 19 October 2021 for the conversion and alteration of the public house and first floor accommodation to create a residential property and erection of one 3 bedroom dwelling with associated access at the Property. The sale of the Property was completed on 14 December 2021.

11. On 6 January 2022 Mr Jim Abbott, on behalf of the appellant, lodged an application for unavoidable expenses of £3,711.83 which he claimed were incurred because the Property was listed as an ACV and the expenses would not have been incurred if the Property had not been listed as an ACV.

12. The respondent's chief solicitor, Ms J Butcher, considered the claim which she rejected on 16 February 2022 on the grounds that the planning application would have been refused even if the Property had not been listed as an ACV and therefore the expenses incurred would still have been incurred.

13. The appellant requested a review of the decision on 2 March 2022. The decision was reviewed by the respondent's director of corporate services, Ms B Brown, on 10 May

2022. Her decision to uphold the decision was emailed to the appellant on 11 May 2022. The conclusion of her review was that the planning appeal would have been necessary even if the Property had not been listed as an ACV and the costs would have been incurred in any event.

14. The appellant lodged an appeal against that decision dated 11 May 2022.

The appellant's case

15. The appellant submits that the planning committee members voted to refuse the planning applications at the end of the planning meeting on 21 March 2021 and at the meeting the most discussed issue was the ACV listing which was the principal factor in their decision-making. The Property could not be sold until the planning application was granted on appeal after eight months. During this time expenses were necessarily incurred. It is very likely that the expenses would not have been incurred if the Property had not been ACV listed. The thinking behind the conscious decision-making of the committee members during voting has to be set apart from the written record of the reasoning for refusal in the decision notice. The latter was created after the vote and also needed to be drafted in order to comply with planning protocol to refer to specific planning policies. This drafting was rather general and clearly added extra material, which had not been important during the vote.

The respondent's case

16. The respondent submits that the planning appeal would have been necessary even if the Property had not been listed as an ACV and the costs, therefore, incurred in any event. Ms Butcher, chief solicitor, referring to the decision to refuse planning permission in her decision of 16 February 2022 stated: "the reason for refusal did not relate solely to the property being listed as an ACV."

17. The respondent submits that Ms Brown, director of corporate services, in her review of the decision stated that the reasons for refusal of the planning applications must be read as a whole. The words "Loss of Village Pub/Asset of Community Value" is a heading for the paragraph, and the full reasoning is set out below it, including, in particular, the policies to which the decision relates.

18. The respondent submits that Ms Brown refers to three policy sub-paragraphs namely; TI2(1), TI2(2)(a) and (b) and TI2(3). The policies are set out in full in the compensation decision letter. She states that only TI2(3) refers to Assets of Community Value. The other policies seek to protect community facilities regardless of whether they have been listed as an ACV. The appeal decision also confirms this view, in that it considers the sub-paragraphs of the policy separately and is not limited to protecting an ACV. The fact the pub is an ACV is not referred to until paragraph 21. Ms Brown agrees that a significant amount of time was spent on the fact that the property was an ACV at planning committee, but she disagrees that this was the only issue discussed and the reasons for refusal were agreed by members of the committee and extend beyond the listing as an ACV.

The relevant legislation

19. The relevant legislation is contained in the Regulations. Regulation 14(1) provides that 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.

20. Regulation 14(2) provides 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.

21. Regulation 14(3) provides that 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.

22. Regulation 14(4) provides that in relation to 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.

23. Regulation 14(5) provides that 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.

24. Regulation 14(6) provides that the responsible authority must give the claimant written reasons for its decisions with respect to a request for compensation.

Conclusions

25. In reaching my decision I have borne in mind that the burden of proving the claim falls on the appellant to show, on the balance of probabilities, that the expenses have been incurred, which would be likely not to have been incurred if the Property had not been listed. I am not restricted to considering the evidence that was before the respondent whether in connection with the claim or the review.

26. I find that the claim was made in writing and before the end of the 13 weeks after the expenses finished being incurred as required by Regulation 14(5).

27. In reaching my decision I have borne in mind that the circumstances in which a claim for compensation can be made as set out in regulation 14(3) are by way of example only and are non-exhaustive.

28. I find that between 6 May 2021 and 15 December 2021 the appellant was the owner of the Property and during this period the Property was not residentially occupied. The appellant has claimed the following expenses:

Insurance premium	£662.24
Council Tax	£585.21
Non-domestic rates	£1262.40
Water and sewerage rates	£759.17
Natural gas supply	£144.95
Electricity supply	£236.18
Bank charges	£61.68
Total	£3,711.83

29. I find that the expenses were incurred at a time that the appellant was the owner of the Property and at a time the Property was listed. This is not in issue between the parties.

30. The issue before me is whether the expenses listed above were incurred in relation to the Property which would be likely not to have been incurred if the Property had not been listed.

31. There is no guidance in the Localism Act 2011 or the Regulations as to what test of causation should be applied when deciding whether, and if so to what extent, expenses have been 'incurred … in relation to the land which would be likely not to have been incurred if the land had not been listed.'

32. The respondent submits that the planning appeal would have been necessary even if the Property had not been listed as an ACV and, therefore, the expenses would have been incurred even if the Property had not been listed. The respondent agrees that the reason for the refusal of planning permission was not "solely" because the Property had been listed as an ACV but also because the application would lead to the loss of a valued pub and alternative comparable facilities were not available elsewhere.

33. The appellant has submitted that the ACV listing was the principal factor in the refusal of planning permission and the delay in obtaining planning permission was the cause for the expenses being incurred.

34. The appellant has submitted that the existence of the ACV listing helped to energise and focus objections to the applications. He states that more than a dozen references to it were made by many objectors and members and these appear throughout the minutes of the planning committee meeting held on 10 March 2021. The appellant submits that the listing of the Property was a pivotal factor in the decision being

reversed from recommendation for approval by the case officer to rejection by the planning committee.

35. In reaching my decision I have taken account of the reasons given by the planning committees as follows:

Loss of village pub/Asset of Community Value

In the opinion of the Local Planning Authority the proposals would result in the loss of valued public house and asset of community value where a comparable local equivalent alternative facility is not available to meet the community's day to day needs, contrary to policy T12 (1, 2 (a and b) and 3) of the local plan.

36. The Community Infrastructure Policy TI2 provides as follows:

T12 1. There is a need to ensure that community infrastructure is delivered and protected to meet the needs of the growing population within the Borough. To ensure community infrastructure meets the education, cultural, social, leisure/recreation and health needs of all sections of the local community, the Council will:

a. Protect, maintain and improve existing community infrastructure where appropriate and practicable;

b. Work with partners to ensure existing deficiencies are addressed; and

c. Require the provision of new community infrastructure alongside new development in accordance with Policy SD7

2. Proposals which would lead to the loss of valued local shops, services and facilities, including public houses and village shops, and reduce the community's ability to meet its day-to-day needs will not be supported unless:

a. There is no demand for the facility in the locality and its continued future use would be economically unviable, or

b. Equivalent alternative facilities are available nearby and the proposal would not undermine the community's ability to meet its day to day needs.

3. The Council will take into account listing or nomination of 'Assets of Community Value' as a material planning consideration.

37. On the basis of the planning committee meeting minutes of 10 March 2021, I find that in reaching its decision the planning committee correctly took into account the Community Infrastructure Policy TI2.3 as a 'material planning consideration.'

38. It is not necessary to make a finding as to how much weight was attached by the planning committee to the listing in reaching the decision to refuse planning permission. On the basis of the evidence I find that the listing was a factor in the decision to refuse planning permission. In my view that is sufficient to satisfy the conditions of regulation 14(2).

39. The legislation does not state 'wholly incurred' or 'predominantly incurred' or 'directly incurred' only that the expenses would not have been 'incurred.' In my view the language of regulation 14(2) is clear, plain and unambiguous and it would be inappropriate to introduce words into the legislation which would be inconsistent with Parliament's intention.

40. Accordingly, I agree with the respondent that the reason for the refusal of planning permission was not "solely" because the Property had been listed as an ACV but also because the application would lead to the loss of a valued pub and alternative comparable facilities were not available elsewhere. However, the fact that the Property had been listed as an ACV was a factor in the decision to refuse planning permission and that is sufficient. In reaching this decision I have attached weight to the fact that the committee asked for and received a full and detailed summary of the tribunal's decision and reasons dated 29 September 2020 (pages 22 and 23).

41. The respondent has submitted that the applications for planning permission would have been refused even if the Property had not been listed. I reject this submission because the evidence suggests that the listing and the tribunal's decision for upholding the listing were a factor in the decision. In accordance with the Local Plan applications for planning permission affecting an ACV would have been determine in accordance with policies in the development plan and taking the ACV listing as a material consideration the weight afforded to the different factors varies on a case by case basis. It would have been a balancing activity for the committee at the meeting on 10 March 2021.

42. I find that that because the ACV listing was a factor that was weighed by the planning committee in reaching its decision it cannot be said that the applications for planning permission would have been refused in any event on the basis of the evidence available.

43. I find that the expenses listed in paragraph 28 were incurred after the planning committee meeting and between 6 May 2021 and 15 December 2021.

44. There is no requirement in the legislation for the claimed expenses to be reasonable. However, I find that each one of the expenses claimed was incurred in relation to the Property which would be likely not to have been incurred if the Property had not been listed.

45. Accordingly, the appeal succeeds.

Signed: J R Findlay Date: 24 October 2022