



**First-tier Tribunal
(General Regulatory Chamber)**

Community Right to Bid

Tribunal Reference: CR/2018/0003

Before

TRIBUNAL JUDGE SIMON BIRD QC

Between

ST JOHN AMBULANCE

Appellant

- v -

TEIGNBRIDGE DISTRICT COUNCIL

Respondent

DECISION

Representation:

**For the Appellant: Zoe Barton of Counsel
For the Respondent: Christopher Cant of Counsel**

A Introduction, Background and the Claim

1. Pursuant to regulation 17 of the Assets of Community Value (England) Regulations 2012 (“the Regulations”), the Appellant appeals against the decision of the Respondent, following a review under regulation 16, to refuse the appellant’s claim for compensation which it had brought under regulation 14. The review decision is dated 7 April 2018. The claim, as revised at the hearing, is in the total sum of £71,578.04 together with interest, which is claimed in relation to the inclusion on the Respondent’s list of assets of community value (“LACV”) of the St John Ambulance Hall, Ashburton (“the SJAH”).
2. The Appellant is a charitable body and has owned the SJAH since 1939 when it was acquired with the assistance of local funds. As a result of a process of review and rationalisation of its property assets, the Appellant took the decision to sell the SJAH in early 2015. Agents, Alder King Property Consultants (“Alder King”), were instructed to prepare a marketing report which was produced in February 2015. Alder King advised that the property would appeal to local developers or investors as well as those requiring a meeting place and anticipated securing a purchaser within 6 months of marketing. Whilst the report did not provide a formal valuation, it advised that the “*present realisation*” based on the current condition of the property was in the order of £90,000 to £100,000, and it recommended an asking price of £125,000.
3. The Appellant gave instructions to Alder King to market the SJAH in March 2015 and a Marketing Brochure was produced containing an asking price of £125,000 for the freehold interest. The brochure highlighted the potential for redevelopment of the SJAH subject to obtaining planning permission, but made no reference to the planning policy implications of its lawful use as a community facility. Sealed bids were invited by midday on 11 May 2015.

4. The Appellant's decision to sell the SJAH was locally contentious. The decision was discussed at various meetings of the Ashburton Town Council and following an initial withdrawn nomination, the nomination which led to the inclusion of the SJAH on the LACV was made on 16 April 2015. The nomination body was "*The Unincorporated Friends of Ashburton Ambulance Hall*" ("the Friends"). The Appellant was given notice of the subsequently withdrawn nomination on 2 April 2015 and of the making of the second ultimately successful nomination on 6 May 2015. This information was not initially passed on to Alder King or to any interested purchasers of the SJAH.
5. On 11 May 2015, Alder King notified the Appellant of the number and details of the bids received for the SJAH. Only two bids had been received for it. The first from a Mr Adrian Ager ("the Purchaser") which was made "*Subject to contract only*" and in the sum of £135,135.13. The second was "*Subject to change of use to residential from D2 to C3*" and in the sum of £126,000. Alder King recommended sale to the Purchaser. The Purchaser also agreed to purchase a garage premises in Ashburton owned by the Appellant which is referred to in some of the documents before the Tribunal, but is not material to this appeal.
6. The Appellant accepted Alder King's advice and a Memorandum of Heads of Agreement was prepared on 12 May 2015 which recorded the agreed terms of sale and the details of the solicitors instructed by the parties.
7. By the end of May 2015, the sale to the Purchaser had been authorised by SJAH and conveyancing was at an advanced stage, with additional enquiries having been raised. Execution copies of the contracts were prepared and issued in early June 2015. At about this time, the Purchaser was made aware by the Appellant of the Friends' nomination that the SJAH should be included on the LACV for the first time.
8. A further unconditional offer for the SJAH was made by another purchaser at a late stage (29 May 2015) in the sum of £170,000, but not progressed.

9. On 2 June 2015, the Purchaser's solicitors wrote to the Appellant's solicitors referring to a telephone conversation between them on the morning of that day which confirmed that their client "does wish to proceed" with the purchase. However, it went on:

"Please supply us with details of the application to list the hall as an asset of community value. We also need to obtain details of any response given by your client to the Council".

10. On 4 June 2015 the SJAH was included on the Respondent's LACV and notice was given of this fact to the Appellant on 5 June 2015. SJAH immediately instructed its solicitors not to exchange contracts. It also suggested making a contribution towards the Purchaser's abortive costs and indicated that it would offer the Friends an immediate lease of the SJAH so they could run it whilst they raised funds for its acquisition.

11. By e-mail dated 5 June 2015, the Appellant's Head of Property, Mr David Heelas, updated his colleagues on the sale of the SJAH in the following terms:

"This is just to advise you that Teignbridge Council eventually decided they had to list the property as an asset of community value, and we have therefore had to cancel the sale. We gave the purchaser every opportunity to exchange prior to the listing decision, but he decided to await the outcome because the listing would have applied to any future sale by him, and therefore the blighting effect meant he wasn't willing to exchange until he was clear that the building wouldn't be listed".

12. On 5 June 2015 the Appellant also triggered the moratorium provisions, by serving notice under section 95 of the Localism Act 2011. The interim moratorium period was extended into the full period of six months by a notice from the Friends. As a result, in July 2015, the Friends were granted a licence of the SJAH for a peppercorn rent.

13. On 1 July 2015, the Purchaser's solicitors wrote to the Appellant's solicitors in relation to the aborted sale of the SJAH stating:

“My client has asked me to reiterate that the asset of community value listing application was material and should have been disclosed to him before sealed bids were sought for the St John Ambulance Hall. Had our client known this he would not have proceeded with his interest in the property and not incurred costs in the region of £1,900”.

14. During the moratorium period, the Friends made an offer to purchase the Hall for £80,000 by letter dated 30 November 2015. This was based on advice received from agents. Sawdye & Harris had advised a purchase price of £80,000 in July 2015 and Luscombe May, a price of £85,000-90,000 on 29 October 2015. This offer was rejected by the Appellant as being well below the market value of the SJAH. A further offer of £80,000 made through Sawdye & Harris on 25 April 2016 was similarly rejected.
15. Shortly after the end of the Moratorium period, the Head of Planning of the Dartmoor National Park Authority, which is the local planning authority for Ashburton, wrote to the Appellant stating that it understood that the property was being or had been marketed for residential purposes but that:

“In policy terms, as the building is now registered as a community asset, it is considered as having some local value for community purposes and, in that regard, you would have to demonstrate that, in principle, the building could not be sustained for such a use and satisfy the Local Plan policy test, which seeks to retain buildings of community use, unless other compensatory provision is made. Therefore, in policy terms, it is not straightforward to allow residential use.

Neither, as I see it, is a conversion to residential use straightforward in practical terms. There may well be objections raised by neighbouring properties and practical difficulties in creating a residence on this site.

In summary therefore, I would support the retention of this building for community use. Whilst I could not rule out a conversion to residential use there are policy, and practical issues, which you would need to overcome to achieve that.”

16. Having rejected the offer from the Friends, the Appellant decided to sell the SJAH by auction in October 2016. It secured a bid of £80,000 and, after

agents fees of £6126 including VAT, the balance due to the Appellant was £74,294.

17. The Appellant did not wait for the sale of the SJAH before advancing its compensation claim. It first made its claim on 13 April 2016 seeking £63,281.06. A confirmatory letter followed on 14 December 2016 setting out the *“final amount of the effective loss”* claiming £67,873.49.
18. The Respondent’s initial decision on the Appellant’s claim, made on 21 September 2017, was that the Appellant was entitled to £369.35 of the sum claimed. Following the review requested by the Appellant, the Respondent concluded that no compensation was payable.
19. In its written evidence submitted to the Tribunal prior to the hearing, the Appellant further revised its claim to claim £88,567.65. At the hearing itself, the Heads of Claim were further revised as follows:

Capital Loss	£55,135.13
Deferred Consideration	£6396.24
Searches	£776.96
Allsops (Agents)	£3726.00
Alder King	£2400.00
Legal	£1500.00
Grant of Lease to Friends	£580.80
Internal Management Costs	£2107.20

20. This gave a revised total of £72,622.03, on which, save for the deferred consideration, the Appellant claims interest. After the hearing, the claim in relation to the Deferred Consideration was amended to £5352.25 to correct an error in the calculation, thus reducing the value of the claim to £71,578.04. The Appellant also claimed interest at a revised rate of 6.118% and sought to add a claim in respect of the costs incurred in pursuing the claim and of this appeal in the sum of £35,281.

21. In preparation for the appeal hearing, the Respondent approached the Purchaser's solicitors seeking his consent to the disclosure of their file, or failing that, his response to a series of questions. On 23 March 2018, the Purchaser responded by e-mail in the following terms:

".....I have incurred costs [of] £11,000 as a result of the listing of St John's Ambulance Hall as a community asset and had to withdraw from the purchase. If there is a compensation claim relating to this matter I wish to register my interest as regards costs incurred.....I wait [sic] your response.

1. *Would he have gone ahead if told there was considerable public opposition?*

He was aware of the public opposition and regardless was prepared to go ahead. He was proceeding with the purchase until he was made aware of the fact that the building was community listed. By that time he had spent £11,000 worth of costs and was advised by Graham Bedford that he should obtain counsel's advice regarding the repercussions of it being community listed. He was advised that this would incur another couple of thousand pounds in costs. At that point he decided to withdraw from the purchase. Which was very disappointing indeed.

2. *Would he have bid if he had been aware of public opposition before bidding?*

Mr Ager did bid.

3. *Did he withdraw because of the listing or because there was public opposition from the community? See point 1. He withdrew because of the listing.*

4. *Was there any consideration of the Hall being a community facility before bidding?*

Yes Ashburton community tried to raise funds to purchase it.

5. *Was any information provided on the effect of the Hall being a community facility by St John's Ambulance before bidding (i.e. was he aware that he would have had to show that the community facility was unsustainable in order for planning permission to be granted)?*

He was not aware of the fact that it was a community listed building until well after the bidding ie when he was going ahead with purchase enquiries.

4. *[sic]*
What did SJAs agents say to Mr Agar about the effect of the hall being an [sic] community facility on any potential planning permission?
The agents gave no information about this fact.
5. *Was he intending to chip the price at any stage?*
No
6. *Was he reliant on funders for the purchase price?*
No
7. *What experience had he had of obtaining planning permission locally and was he aware of the issues raised by community facilities?*
He has a general understanding of planning but was not aware of the issues raised by community facilities.
8. *Did he receive a contribution towards his wasted costs from St John's Ambulance as requested?*
No he did not receive any contribution to costs."

A. The Law

22. Regulation 14 provides 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”.*

23. Regulation 16 provides that a person who has made a claim under regulation 14 may ask the responsible authority to review its decision 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, then the responsible authority must review the relevant decision. Following the review, the authority must give written notification of its decision and the reasons for it.

24. 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.

B. The Explanatory Memorandum, Impact Assessment and Guidance

25. The Explanatory Memorandum to the Regulations addresses compensation at paragraphs 7.36 et seq. Paragraph 7.36 states:

“Section 99 of the Localism Act allows for compensation to be provided under the scheme. We consulted on whether to restrict compensation to expenses incurred, for example the security and overheads of maintaining an empty building. However, there was a significant level of support in the consultation responses in favour of allowing compensation for loss of value of an asset due to listing, especially any delay in sale due to the interim or full moratorium. Debate in Parliament also gave rise to Government assurances that the regulations would include private landowners being able to claim for loss as well as expenses.”

26. The Community Right to Bid – Impact assessment Localism Act 2011 issued in June 2011 states:

*“61. **Compensation claims for loss of asset value:** it is possible that an asset being sold at a later date than it would otherwise have been, as a result of triggering the moratorium could lead to a fall or a rise in the capital value of listed assets. We have estimated that there could be between 4-22 successful compensation claims, with a mid-range of 13 claims per annum”.*

27. This assessment was based on the anticipated number of cases reaching the full moratorium stage under the Regulations. Paragraph 66 of the Impact Assessment goes on:

“The compensation scheme will therefore compensate for loss or expense as a direct result of complying with any of the procedural requirements of the scheme, including the listing process, or any delay in entering into a binding agreement to sell, as a result of the interim or full moratorium period. This would include loss, such as the provable reduction in the value of an asset as a result of the delay, or expense such as additional business rates or security costs. The costs would have to be additional to costs normally incurred during a transaction of land and where the owner had taken reasonable steps to avoid or minimise the expense...”

28. In October 2012, the then Department for Communities and Local Government issued guidance to local authorities entitled *“Community Right to Bid: Non-statutory advice note for local authorities”*. Section 10 addresses compensation and states:

“10.1 Private owners may claim compensation for loss and expense incurred through the asset being listed or previously listed. The Regulations specifically provide that this will include a claim arising from a period of delay in entering into a binding agreement to sell which is wholly caused by the interim or full moratorium period; or for legal expenses incurred in a successful appeal to the Tribunal.

.....

10.2 The time limit for making a compensation claim is specified in Schedule 2 to the Regulations as whichever is the earlier of 13 weeks from the end of the interim or full moratorium period (as appropriate) or from the date when the land ceases to be listed. The assumption is that most claims for compensation will arise from the moratorium period being applied: however the wording allows for claims for loss or expense arising simply as a result of the land being listed.

....

10.6 As with the other costs incurred by local authorities in meeting the requirements placed on them, we have reflected the estimated costs of compensation within the new burdens funding. The compensation elements of new burdens funding are estimated on the basis of 40 successful claims

for compensation across all administering local authorities over a year.

10.7 In addition to the amount included within the new burdens assessment, the Government will meet costs of compensation payments over £20k of compensation costs in a financial year. This could occur through a local authority paying out over £20k in one financial year either on one large claim or as a combined total on a number of smaller claims.”

C. The Evidence

29. The evidence before the Tribunal is contained in a Trial Bundle, a Supplementary Bundle and a number of additional documents submitted both during and after the hearing. The Supplementary Bundle was submitted by the Respondent after the date for the lodging of an agreed bundle set by my Directions of 30 July 2018, but I gave permission for it to be relied upon as, to the extent that it contained new evidence, that evidence appeared likely to assist the Tribunal and, having heard from the parties, I was satisfied that it could be admitted without prejudice to the Appellant.
30. On the second day of the hearing, the Appellant sought to submit a revised interest calculation with a different rate to that employed in its claim. This was very late in the appeal process and I heard submissions on whether I should allow the Appellant to rely on it. Given that a claim for interest had always featured in the Appellant' claim and the Respondent's principal response to that element of that claim has been an 'in principle' objection, I concluded that I should admit the evidence, subject to the Respondent having the opportunity to respond to it in writing after the hearing. The Respondent submitted an additional skeleton argument dated 26 September 2018 addressing the revised claim for interest.
31. At my request, the Appellant also provided clarification on when the internal costs which comprised one head of its claim were in fact incurred. This was provided in the form of a document entitled "*Appellant's Schedule of Losses*" with a stated total loss of £72,622.03. This contained

an error in relation to the deferred consideration head of claim perpetuating an error in the figures before the Tribunal at the hearing. This error was corrected by e-mail dated 9 October 2018, with that element of the claim revised to £5,352.25. The Respondent submitted a further skeleton argument addressing the Schedule of Losses on 30 September 2018 and responded to the revised schedule on 9 October 2018.

32. At the hearing, I heard oral evidence from Mr David Heelas on behalf of the Appellant and Mr David Kiernan on behalf of the Respondent.

Mr Heelas

33. Mr Heelas confirmed the content of his witness statement dated 8 February 2018. In cross examination he stated that the Appellant had considered applying for planning permission for re-use of the SJAH before offering it for sale but decided not to. It had not, however, sought the views of the planning authority on potential re-development/re-use. The marketing material produced on its behalf did not refer to the prospects of obtaining planning permission in the light of the community use of the SJAH, but it was always the case that, if a purchaser wanted to convert a building, planning considerations might weigh against that.
34. He confirmed that he had thought it inevitable or at least very likely that the SJAH would be listed once the nomination had been made by the Friends. No representations were made by the Appellant because there were not thought to be any grounds to resist its listing. Mr Heelas stated that he believed the nomination would kill the sale to the Purchaser and that, had it known that a nomination was to be made, the Appellant would probably not have marketed the SJAH until the result of the nomination was known.
35. The Purchaser was told of the nomination. Mr Heelas could not recall when this was, but it may have been 27 May 2015. He had been ill in early May which may explain the late notice. The Purchaser had been unaware of the nomination when he made his bid which had to be

submitted by 11 May 2015. Mr Heelas thought there might have been informal discussions before the 27 May 2015 but he was not sure.

36. Mr Heelas was not sure as to the context of the Purchaser's solicitor's e-mail of 2 June 2015 and, although his own e-mail of 4 June 2015 referred to the Appellant having to cancel the sale, the Purchaser had been pretty clear that if the SJAH was likely to be listed then he would withdraw or amend his offer. However, the Appellant did cancel the sale.
37. Mr Heelas stated that the Appellant would have told the Purchaser of the nomination prior to exchange of contracts because it was important that he should know of it because it impacted on the prospects of securing a residential planning permission and could affect the value of the property. It was an important and material factor.
38. When the sale fell through, the Appellant had felt under an obligation to pay the Purchaser's abortive costs although not to the extent of offering an open cheque. After its listing and the expiry of the moratorium period, the Purchaser subsequently offered a much lower price for the SJAH, equating to £65,000,
39. After the inclusion of the SJAH on the LACV, the Appellant's valuations of it reflected the advice of its agents. The £150,000-160,000 figure Mr Heelas advanced to the Friends was based on the Purchaser's bid with a 10% uplift to reflect a rising market. However, he made it clear that a deal could possibly be done at a lower figure and the higher figure was just to give guidance.
40. The Appellant rejected two offers of £80,000 from the Friends and put the SJAH up for auction to attract interest from a wider area with a reserve of £80,000. The initial suggested reserve was £100,000, but the Appellant had been advised that the prospects of achieving this were not that high. It took advice and a reserve of £80,000 was endorsed.
41. The price obtained at auction was at a different date and in different circumstances to those which pertained during its original marketing. The

market value had been tested by the Appellant and formal valuations had been produced, although Mr Heelas was not sure whether these were all before the Tribunal. The views of the Dartmoor National Park Authority expressed in the letter of 4 February 2016 did not persuade the Appellant to change its view on value, albeit the planning authority sought to link the inclusion on the LACV to its value as a community building.

42. Mr Heelas also explained the revised calculation of the deferred consideration head of claim. In 2011/12 the Appellant had formulated a budgetary policy requiring the identification of properties for disposal in that year with the budget fixed by reference to the anticipated sales receipts. A failure to dispose of an identified property or a sale at less than the anticipated sales value impacted on that year's budget and a transfer from investment funds was required to compensate for that. The loss of the return on the invested funds was claimed. The target return for the investment funds was RPI +3% over a full market cycle and this was usually exceeded. The sum claimed in relation to deferred consideration reflected the period from 4 June 2018 to the date of completion of the sale of the SJAH.

Mr Kiernan

43. Mr Kiernan confirmed the content of his witness statement of 24 August 2018. In cross-examination, he agreed that the focus of the Dartmoor National Park Authority's letter of 4 February 2016 was one consequence of the listing of the SJAH for any future planning decision. In any such planning decision, whether the building had a sustainable community use would be a material factor. In his authority's area, this would require detailed accounts over a period of time and demonstration that there was no alternative community use which would be viable.
44. As to the Purchaser's e-mail of 2 June 2015, whilst the first paragraph was consistent with a sale proceeding, his view was that the bulk of the letter referred to conditions and Mr Kiernan did not know what the Purchaser's intention was.

D. The Parties' Submissions

Summary of the Appellant's Submissions

45. There is little doubt that in the 'no scheme' world, which is the correct counterfactual situation, a sale at £135,000 would have completed. Further, the necessary consequence of the imposition of the full moratorium period, was some duplication of costs. From a legal causation point of view, the costs incurred in the second sale are expenses which would not otherwise have been incurred had the initial sale gone ahead and are recoverable. The claim in relation to the abortive costs of the initial sale is not therefore pursued. Whilst the Appellant's claim was initially made before these sale costs were incurred, it had already worked out that it was likely to suffer a diminution in value and therefore prematurely made its claim 13 April 2016.
46. The Respondent's principal position in respect of the Appellant's claim has been that a loss of the principal type suffered, namely diminution in value of the relevant asset, is simply irrecoverable as a matter of law. It is plainly a proposition in which it has little faith as evidenced by what is otherwise a wholly illogical offer to settle the Appellant's claim made on 13 September 2018 which offered to pay various sums consequential on the lost sale to the Purchaser, apart from the principal loss, namely the capital value.
47. The terms of Regulation 14(3)(a) and (b) are not intended to narrow the broader language employed in the preceding sub-section or otherwise constrain Regulation 14(1) or (2). The wording simply indicates that there are other forms of claim which are not provided for.
48. In interpreting Regulation 14, the Tribunal must be guided first and foremost by the statutory language and that is crystal clear in not precluding categories of loss. However, where there is ambiguity or doubt, then the Tribunal may be assisted in understanding the purpose and overall operation of the scheme by other material such as the explanatory

memorandum to the Regulations, the Impact Statement and the non-statutory guidance.

49. Paragraphs 10.2 and 10.7 of the Non-Statutory Advice Note and 7.36, 7.37 and 7.38 of the Explanatory Memorandum to the Regulations support the Appellant's interpretation of the scope of Regulation 14.
50. The Respondent has relied upon the *obiter* comments of Judge Peter Lane in *Rosendale v Chadwick* CR/2015/66 that, despite the statutory language, it does not appear that the legislature intended an owner to recover compensation in respect of diminution in value of the asset. However, in *Whitehead v Tunbridge Wells Borough Council* CR/2017/0002, Judge Peter Lane considered claims for loss, some of which flowed from failed sales. In determining the matter, he did not consider that they were irrecoverable as a matter of statute; the claim failed for reasons of causation. The Respondent nowhere addresses or acknowledges the inconsistency between the two decisions. Further, the statutory language presents the Respondent with an insurmountable challenge: far clearer statutory language would have been required had it been Parliament's intention to restrict categories of loss.
51. In the absence of such circumscription and given the wording specifically preserving other claims, the Respondent's statutory interpretation is wholly without merit. The specific references to categories of claim other than capital loss is explicable by reference to the fact that Parliament and the draftsmen may have anticipated that the pure diminution in value cases would be rare, relative to claims for delay in a sale of the ACV.
52. Unlike in the *Whitehead* decision, in the instant case, the causation of the listing of the SJAH leading to the sale to the Purchaser not proceeding, is clear. The Respondent's suggestion that it was the Appellant's marketing of the SJAH which was the cause of any loss, is illogical and pays no heed either to the statutory restrictions to which the Appellant is bound in respect of the sale of land and none to the law of real property, either in relation to the common law duties of a seller or conveyancing practice.

53. There was a consistency of value for the unlisted SJAH as shown by the stated value on the Registered Title of £125,000 and the bids received. Equally, the price secured at auction was consistent with the various valuations of the SJAH with no development potential. Prior to the listing, the Tribunal has the benefit of the market value as represented by the Purchaser's bid of £135,000. There was no indication that he was a 'special purchaser' and his bid cannot be said to be an outlier. It was plainly a serious bid, as evidenced by the progress of the sale up to the point of listing.
54. It can be inferred from the e-mail of 5 June 2015 that the sale would have proceeded had the nomination not been successful. It was not the nomination itself which led to the sale falling through. Whilst it may be right that the fact that the SJAH was a community building would be material to the determination of a planning application irrespective of listing, the evidence before the Tribunal is that the fact of listing was treated as affecting its attractiveness and value to purchasers.
55. As the Purchaser's responses to the questions posed to him by the Respondent show, he did not withdraw or amend the purchase price on becoming aware of the nomination. He specifically answers that he was not intending to 'chip the price'. Absent the process by which the SJAH became listed, then the parties would have proceeded to sale. The Tribunal does not have the benefit of hearing from the Purchaser himself, but it will have to consider whether on the balance of probabilities the sale would have completed but for the listing.
56. The Purchaser was not, as the Respondent seeks to insinuate, 'hoodwinked' into making the bid he did in respect of the SJAH and it is well established that the best evidence of market value is, unsurprisingly, the price to be paid by a willing purchaser to a willing vendor, such as the bid of the Purchaser of £135,135.13. Further, whilst the Respondent at one point indicated an intention to call the Purchaser as a witness, it has failed to do so, despite it being front and centre of its case that the manner

in which the SJAH was marketed (as opposed to its inclusion on the LACV) caused the Purchaser to withdraw. The inference to be taken from that failure to adduce evidence is that his evidence would have been unhelpful to the Respondent.

57. In any event, it is self-evident why the Purchaser would have adopted the course that he did of withdrawing from the sale upon listing of the SJAH. Being listed as an ACV has a deleterious effect on the prospects of obtaining planning permission, such as for a change of use and its listing would be considered as a material consideration in the determination of any planning application. This much is evidence from the Dartmoor National Park Authority's letter of 4 February 2016.
58. It is, furthermore, wrong to contrive a separation between the listing of the SJAH and its nomination by the community (which necessarily precedes it). The proper counterfactual situation to a Regime world, is the no-Regime world. There is no doubt that in a no-Regime world, the Purchaser would have proceeded with the purchase of the Property at £135,135.13. Had the Respondent been able to adduce evidence (which they have not) that if the Purchaser knew of the community nomination for listing as an ACV, he would not have made his bid in the sum he did, that must logically be a consequence of a risk that such a nomination would succeed.
59. In terms of the other heads of claim, it was appropriate to claim the costs associated with the sale of 14 October 2016 in the total sum of £8406.96, because it is these, rather than the aborted costs, which had been incurred as a result of the listing. The deferred consideration head reflects a paradigm cost of delay. The interest rate used reflects the budgeting of the SJAH which anticipates receipts from property disposals. Where those do not occur as anticipated, a transfer from investment funds is made. The target return from those funds is RPI +3% which for the relevant period of the claim was 6.118%. The delayed receipt therefore led to a loss of investment returns. Whilst on a compound basis this would give rise to a claimed loss of £7,092.10, Mr Heelas' evidence to the Tribunal

was on the basis of a simple interest calculation and it is the sum of £5,352.25 which is claimed.

60. The cost of the lease to the Friends is claimed in the sum of £580.50 and is not time barred as the Appellant's overall loss did not crystallize until disposal of the SJAH in October 2016.
61. In relation to the internal costs, those are recoverable in the sums claimed. The Courts have taken a pragmatic approach to such costs holding that they are recoverable because, but for the work being done internally, it would have been outsourced (see *Re Eastwood* [1975] Ch 112 and *Sidewalk Properties Ltd v Twinn* [2015] UKUT 0122).
62. In reliance on regulation 14(3)(b), the Appellant has also submitted a claim for costs in the event that the appeal succeeds. It should not require another claim to recover costs of a successful appeal; there is a single loss comprised of various heads of which the costs of appealing is one. That reflects the approach taken in *Whithead* in relation to the issue of the time bar.

Summary of the Respondent's submissions

63. The onus of proving the claim lies on the Appellant and must be supported by cogent evidence which has been properly articulated when the claim is made (see para.16 of *Chadwick*). The Appellant is not entitled to add heads of claim to those articulated in the April 2016 claim.
64. The heart of the Appellant's compensation claim is that the ACV listing caused a fall in market and the loss of a prospective sale to the Purchaser. This is not correct.
65. At the time the SJAH was being marketed, it was a community facility which had protection under the local and national planning regime, regardless of whether or not it was included on the LACV. Mr Heelas accepted that the SJAH would have been viewed as a community facility and if nominated, it was almost certain to be listed and hence it was

important that the nomination be disclosed to any purchaser. Inclusion on the LACV operated as recognition of its status as a community facility; it did not cause it to become one.

66. There was considerable local resistance to the closure of the SJAH as a community facility which is an important factor and would carry through to the consideration of any planning application in relation to the building. Despite this, the SJAH was marketed as a development opportunity with no reference to the nomination; the fact of nomination was only disclosed to the Purchaser for the first time on 27 May 2015. This rendered the bid defective. The fact that the nomination was ultimately disclosed, shows that the Appellant accepted that there was an obligation on it to make the disclosure to the Purchaser.
67. A price which is only to be paid for a community facility if a listing authority refuses to enter the property on the authority's LACV does not represent the market value of the community facility, because it is seeking to ignore that it is actually a community facility which already qualifies for listing and to disregard local opposition.
68. The sale price at auction of £80,000 which bears out the valuations obtained by the Friends, reflects the actual market value of the SJAH as a community facility rather than a value arrived at on an artificial basis. The Purchaser's bid was a bid for something that did not and could not exist: a community facility which the listing authority had refused to list. The Appellant was in consequence seeking to recover compensation on a false basis i.e. the SJAH should be valued as if it were not a community facility. The Friend's offer of £80,000 was rejected by the Appellant because Mr Heelas was of the view that the market value was in the region of £150,00-160,000 representing a 10% uplift on the Purchaser's bid to reflect a rising market. Had the £80,000 offer been accepted, the auction costs would have been avoided. The sale costs were incurred as a result of the decision by the Appellant to seek a higher price.

69. It is a general principle with regard to compensation for the compulsory acquisition of land that the person being compensated is not entitled to receive more than fair compensation. To permit the owner of an asset qualifying as an ACV to obtain a windfall in this manner is not the payment of fair compensation. It is allowing the owner to obtain a payment determined by a value which exceeds the market value of the asset. It does not accord with the underlying objectives of the 2011 Act. It would have the effect of withdrawing resources from the local community by reference to an artificially high price. This is particularly the case when the price by reference to which the compensation is to be determined has been obtained without disclosure of the community nominations.
70. The Purchaser's offer was made without knowledge of the community nominations which were not disclosed and which, had they been, would have stopped him from making an offer. He was advised by his solicitor that he should obtain counsel's advice as he had no knowledge of the operation of the ACV regime. He had incurred over £11,000 by way of costs and decided to cut his losses. In these circumstances, there is no certainty that the Purchaser would have proceeded even if the SJAH had not been included on the LACV. It is a matter on which he would have needed to take advice.
71. The position of the Purchaser is not really known. The evidential onus is on the Appellant and therefore it is to be expected that it would produce evidence from him. The Respondent never intended to call him as a witness, but it has sought information from him which shows that he was angered by the non-disclosure of the nomination. Going on what the Purchaser has provided by way of evidence, the 1 July 2015 e-mail shows that he would not have made a bid had he known of the nomination and also he had no clear understanding of the planning policy implications of the SJAH being a community facility.. Mr Heelas could not recall precisely the substance of his contact with the Purchaser at this point and the conveyancing file has not been disclosed. However, his evidence was to

the effect that they had spoken and his understanding was that the nomination would be successful and the bid was not going anywhere.

72. In any event, the bid by the Purchaser was made only because the Appellant failed to make a material disclosure and it cannot rely on the bid for the purposes of the compensation claim. As a matter of statutory construction, a person should not benefit from that person's own wrong (see *Bennion on Statutory Interpretation 7th edition section 26.6* illustrated by *R v Exeter City Council exp Glidden* [1985] 1 All ER 493 and *F C Shepherd v Jerrom* [1987] QB 301). The law should serve the public interest and be fair and reasonable.
73. Further and in any event, compensation is only payable under Regulation 14 in respect of loss or expenses caused by complying with the procedure imposed by the ACV regime at a time when the asset is listed and not loss or expense caused by entry on the LACV. It is not the Respondent's case that a diminution of value claim can never lie, but it must fall within the scope of Regulation 14(3)(a).
74. Judge Lane's words in *Chadwick* accord with section 99(1) of the 2011 Act which authorises regulations making provision "*for the payment of compensation in connection with the operation of this Chapter*".
75. The Government's guidance on the point is not unambiguous. Support for the Council's position is gained from the ACV Policy Statement (pages 5 & 11) and the Impact Assessment (paras.65, 66, 75 and 81).
76. In the context of the ACV regime, the following factors are material:
 - Entry on the LACV operates as recognition that the premises are already a community facility satisfying the criteria set out in section 88 of the 2011 Act rather than converting the premises into a community facility;
 - Inclusion on the list does not mean that a community interest group can compel the owner to sell to it or even negotiate with it. It creates no option or pre-emption in favour of the group;

- The only restriction imposed is on a relevant disposal during the moratorium period. After the expiry of that period, the owner is free to sell to whomsoever the owner wishes on whatever terms; and
 - No restriction is imposed on the use of the ACV so that if fresh planning permission is obtained effect can be given to it and it is possible to obtain planning permission for a listed asset.
77. As to the other heads of claim, the agents and auctioneers costs incurred in 2016 were not attributable to the ACV listing but to the Appellant's intention to sell and are not recoverable.
78. The in-house time is not an expense incurred by the Appellant in relation to the ACV listing as the Appellant will have made the payments regardless, not as part of litigation, until an appeal to the Tribunal was commenced, in an administrative procedure. The internal costs claimed also relate to the subsequent sale whereas the claim is directed at the lost sale and cannot be extended in this way. A number of the costs were also incurred on matters which are both un-particularised and unrelated to the listing of the SJAH e.g. dealings with the Friends and the Dartmoor National Park Authority and general research in relation to the ACV regime. Further, the Appellant has quantified the claim by using the rates of charge applicable to City of London solicitors with over eight years' experience involved in complex financial and commercial work which is not appropriate.
79. Instead of a claim for interest at the rate of 8% initially claimed, the Appellant is now seeking to substitute a rate of RPI +3% being the target rate for such of the Appellant's funds as are invested by Blackrock. This head of claim is dependent on there being a sum or sums on which to charge the rate. However, for the reasons set out in the Respondent's submissions, there is no such sum.
80. Whatever rate is sought by the Appellant, the ACV regime makes no provision for such a claim. Unless and until a sum by way of compensation is determined to be due, the Appellant has no entitlement to

a sum and no claim for interest. The way in which the claim is advanced by the Appellant would effectively defeat the purpose of having a time limit for the making of claims.

81. In any event, the deferral of the receipt of sale proceeds until October 2016 was due to the Appellant's decision to grant a licence to the Friends and to the delay of the sale of the SJAH until it was placed into auction in October 2016 with a view to realising the maximum price for it. This was driven by an unrealistic estimate of the value of the Hall put in the range of £150,000 to £160,000.
82. In its deferred consideration claim, the Appellant is also seeking to introduce a new head for which no evidence was previously provided. Regulation 14(5) requires that the amount of the claim and the supporting evidence is provided with the claim within the time limit in regulation 14(5)(b). Compliance with the statutory requirements is crucial as it enables the authority to investigate a matter regarding which it usually does not have first-hand knowledge and it provides certainty which is important for an authority's budgeting.
83. This head of claim fails to comply with these requirements. This is not a case of supplemental evidence to support an existing claim. The previous claim was for interest but, as there is no justification for such a claim, the Appellant has sought to introduce a new claim based on investment returns. Notwithstanding the admission of such evidence, the claim falls because of the failure to comply with Regulation 14(5).
84. If, contrary to the Respondent's submissions, the head of claim is considered appropriate, then the target rate of RPI +3% is not appropriate. In the Appellant's annual accounts for the years ending 31 December 2015, 2016 and 2017, the Appellant's net assets are given as valued at £105M, £125M and £137M respectively. These assets include free reserves which comprise cash and easily realisable securities. These free reserves are a contingency fund to meet unexpected calls. The directors fix a range for the size of free reserves in each year. The range was £12M

to £20M for each of the years 2015, 2016 and 2017. The cash part of the reserves will not achieve a return equivalent to the quoted securities managed by Blackrock. There is no evidence on this. The annual range fixed for the free reserves in each of the three years combined with the value of the Hall means that any delay in the sale of the Hall would affect and be dealt with by the cash element of the free reserves and not the quoted securities. There are uncertainties regarding the Appellant's new approach which mean it would not be a safe measure to use. When would the monies claimed be received? How would the monies be dealt with bearing in mind the amount and the existence of the free reserves fluctuates with size? What was the Appellant's financial situation around that time? Accordingly, this head of claim should not be awarded as compensation.

85. Further, given that the claim is focussed on the loss of the sale which occurred in June 2015, and the claim was not made until April 2016, it is time barred. The loss extends to include the costs of that aborted sale. Regulation 14(5)(b) imposes a strict time limit which may not be extended and which, on the facts here, expired in January 2016.
86. As to the issue of appeal costs, the Respondent had not understood that this was to form part of the present claim before the Tribunal and whilst such a claim was permissible under Regulation 14(3)(b), it had to go through the correct procedures rather than being tacked on at the end of the present claim. That may be cumbersome but it is how the regime has been formulated. There first has to be a successful appeal.

E. Findings

87. The first issue which falls to be addressed is whether in principle, a loss or expense attributable to the act of inclusion of an asset on the LACV, as opposed to one arising from the operation of the scheme once an asset is listed, is recoverable under Regulation 14.

88. There is no binding authority on this point, although the issue was touched upon in *Chadwick v Rossendale Borough Council* CR/2015/0006. However, the claim for compensation advanced in that case did not include a claim in relation to diminution in value of the asset, whether as a result of the act of listing or the operation of the statutory regime once listed. It follows that what was said was obiter and, unsurprisingly given that the issue did not fall for determination in that case, the extent of argument heard on the point appears to have been limited. Judge Lane's conclusion was that:

"...despite the opening words of regulation 14(3), it appears that the legislature did not intend an owner of that property, to recover compensation in respect of the diminution in 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".

89. Ms Barton argues that this conclusion was plainly wrong in the light of the express reservation contained in the opening words of regulation 14(3) in relation to *"other types of claim"*, and is inconsistent with Judge Lane's later decision in *Whitehead v Tunbridge Wells Borough Council* CR/2017/0002. She argues that this indicates that the Judge's view on the scope of Regulation 14(3) had changed.

90. In relation to *Whitehead*, as with the *Chadwick* case, no claim for diminution in value was made. Although the appellant in that case asserted that the prospective purchaser had reduced his offer from £260,000 to £215,000 as a result of the inclusion of the asset on the LACV, none of the heads of claim for compensation advanced before the Tribunal included that alleged loss. However, the appellant did claim for the legal expenses incurred in respect of the failed sale to that purchaser in the sum of £2,494.40. Judge Lane rejected that claim, not on any ground of principle, but because the appellant had failed to satisfy him that there was a causative link between the failed sale and the listing of the

asset [38]. Importantly, the facts of that case show that the prospective purchaser only entered the picture *after* the property was listed.

91. The position is, therefore that in *Chadwick* Judge Lane opined that a claim for diminution of value simply by reason of the status of a listed asset fell outside the scope of Regulation, whilst in *Whitehead*, he was prepared to entertain the principle of a claim for additional legal expense incurred *once the property was listed*. The two cases are it seems to me distinguishable on their facts and whether that distinction properly bears on the availability of compensation under Regulation 14, turns on the proper interpretation of the scope of the regulation which is the issue which arises in this case and was not considered in detail in either of those earlier decisions. For that reason I have not found either helpful in reaching my decision in this case.
92. The scope of Regulation 14 must be considered by reference to the regulation as a whole and in the context of the wider statutory regime for listing of assets of community value. As is clear from Regulation 14(1), it is only the owner or former owner of listed land or previously listed land who is entitled to compensation. The focus is therefore on the effect of the operation of the regime on the rights of the affected landowner, rather than the effect on others, such as potential purchasers who may be affected by the restrictions which listing gives rise to.
93. It is also clear from Regulation 14(2) and the words "*and the land was listed*" that the circumstances in which a claim for compensation may be made are limited to the time when the land *is* listed.
94. I was initially attracted by the Respondent's argument, consistent with the view expressed by Judge Lane in *Chadwick*, that the focus of the compensation regime is exclusively on the effect of the *operation* of the statutory regime once the asset is included on the LACV and not with any effect which the act of inclusion on the list has on value or any uncompleted transactions at the date of listing.

95. This reading is certainly consistent with the “light touch” nature of the restrictions which the regime imposes. The lawful use of an asset included on the list is unaffected by listing, as is the right to seek permission to change that lawful use. There are extensive statutory exclusions and exemptions (see Schedule 1 and 3 of the Regulations) and, if not excluded or exempted, the worst case effect of the restriction imposed is an enforced deferred sale for a maximum period of 6 months.
96. On the Respondent’s approach, whilst the fact of inclusion of an asset on the LACV is capable of being a material planning consideration and therefore has the potential to affect the prospects of obtaining planning permission for alternative uses, its principal function in a planning policy context, as Mr Kiernan explained, is to act as confirmation that a building or land is in community use with a realistic prospect of continuing unless displaced by other uses. It is, the Respondent argues, the underlying sustainable community use which is the value for planning purposes, rather than the listing itself. The listing confirms that policies which protect community facilities will apply to the asset if planning permission is sought to change its use, it does not dictate what weight should be given to the underlying community value in the determination of the planning application.
97. Having regard to this context, the Respondent’s submission that Regulation 14(2) restricts the entitlement to compensation to loss and expense incurred after and not as a result of, the act of inclusion of land or buildings on the LACV is, as I have said, initially attractive.
98. However, I have concluded that this interpretation of Regulation 14 cannot be accepted. The wording of Regulation 14(2) is, in my view, wide enough to include loss or expense which arises as a result of an asset acquiring the status of an ACV, as well as loss or expense arising from compliance with the procedural requirements of the statutory regime. The only two pre-conditions for entitlement to compensation are (a) the loss or expense must arise at a time when the asset is listed and (b) be one which would not be likely to have been incurred but for the listing. I do not see that the

requirement that the loss or expense must arise when the asset is listed excludes any loss of value at the point it is first added to the list.

99. This interpretation of the scope of the regulation is consistent with its statutory object which is to mitigate the effect of the imposition of the ACV regime on the rights of landowners. It is also consistent with Regulation 14(3) which identifies an especial potential loss of value claim but “*without prejudice to other types of claim*” which may be made.
100. Where a landowner is able to demonstrate that the value of a relevant property has been diminished by its inclusion on the list, I see no logical reason why a claim for compensation should not lie. It would be a surprising result of the statutory scheme if a loss of value attributable to the operation of the moratorium periods were to be compensatable (such a claim falls squarely within Regulation 14(3)(a)) but a demonstrable loss of value due to the inclusion on the LACV fell entirely outside the scope of the compensation provision.
101. I accept that those who devised the statutory regime did not anticipate that its light touch nature would lead to mere inclusion on the LACV impacting on value to any material extent, as is clear from the wording of the Impact Assessment. However, the anticipated limited effect of a new regime cannot operate to restrict the scope of the wording used in Regulation 14(2). In this context, whilst I have not treated it as an aid to construction, giving Regulation 14(2) this broader scope is consistent with the Explanatory Memorandum which at para.7.36 refers to the support in consultation responses for allowing compensation for loss of value “*especially*” but not, I note, exclusively, for any delay in sale due to the moratorium periods. The Guidance, at paras.10.1 and 10.2, likewise refers to the availability of compensation arising simply as a result of the land being listed.
102. My conclusion is that a claim for compensation can in principle be made in relation to alleged diminution in value or in respect of sales which fall through where it can be demonstrated that this loss would not be likely to

have been incurred but for the listing. It follows that the Appellant's claim for £55,135.13 is one which in principle falls within the scope of Regulation 14(2) subject to the issue of causation.

103. The next issue which falls for consideration is therefore, whether the Appellant has satisfied me on the balance of probabilities that this loss would not have been likely to be incurred had the asset not been listed.
104. The Appellant's position is simply stated. Until 4 June 2015 when the SJAH was listed, the sale to the purchaser had been proceeding smoothly to completion and but for the listing, it would have completed at a sale price of £135,000. As a result of the listing, and following the moratorium period, the SJAH realised just £80,000 at auction, the difference between that sum and the £135,000 being the loss suffered wholly as a result of the listing.
105. The Respondent counters the claim by contending that the offer of £135,000 was made without knowledge of the community nomination which should have been disclosed to the Purchaser by the Appellant earlier than 27 May 2015. If it had been, the evidence shows that the Purchaser would not have been likely to make an offer for the SJAH and certainly not at £135,135.13, a sum which did not reflect either its market value with existing community use protected by planning policy or the existence of the nomination. The Respondent maintained that the reason for the sale not proceeding was the Purchaser being belatedly notified of the nomination and not its actual inclusion on the list.
106. On the issue of causation, the evidence before me is not consistent. Mr Heelas' oral evidence before the Tribunal was that he regarded the nomination as killing the transaction and that reflected his understanding of the Purchaser's position. When shown the e-mail of 2 June 2015 to the Appellant's solicitors from the Purchaser's solicitors, which stated that their client "*does wish to proceed*", he indicated that this did not accord with his

recollection. However, on 5 June 2015, one day after the listing of the SJAH, he wrote the email to his colleagues which stated that:

“This is just to advise you that Teignbridge Council eventually decided that they had to list the property as an asset of community value, and we have therefore had to cancel the sale. We gave the purchaser every opportunity to exchange prior to the listing decision, but he decided to await the outcome because the listing would have applied to any future sales by him, and therefore the blighting effect meant he wasn’t willing to exchange until he was clear that the building wouldn’t be listed”.

107. This was clearly relaying the position of the purchaser as Mr Heelas understood it at the time of the events. The Purchaser was not called to give evidence before the Tribunal, but the Tribunal has the letter dated 1 July 2015 from his solicitors to the Appellant’s solicitors which states that:

“My client has asked me to reiterate that the asset of community value listing application was material and should have been disclosed to him before sealed bids were sought for the St John Ambulance Hall. Had our client known this he would not have proceeded with his interest in the property and would not have incurred costs in the region of £1,900 plus VAT”.

108. This indicates that the fact of nomination would have led to the purchaser not making any offer for the SJAH had it been known at the time sealed bids were sought. However, it is written after the sale had fallen through at a cost to the Purchaser and given the abortive costs, the Purchaser would understandably have been aggrieved at not having had earlier notice of the nomination. The letter does not assist on what he would have done had the SJAH not been included on the LACV on 4 June 2015 given his expenditure up to that point.
109. At the hearing both parties relied on responses provided by the Purchaser to various questions posed by the Council contained in an e-mail of 23 March 2018. The responses state that he was aware of considerable public opposition to the sale of the SJAH but was nevertheless prepared to

go ahead and was proceeding with the purchase *“until he was made aware of the fact that the building was community listed. By that time he had spent £11,000 worth of costs and was advised by Graham Bedford that he should obtain counsel’s advice regarding the repercussions of it being community listed. He was advised that this would incur another couple of thousand pounds in costs. At that point he decided to withdraw from the purchase”*.

110. The responses added that:

“He was not aware of the fact that it was a community listed building until well after the bidding i.e. when he was going ahead with purchase enquiries”.

111. The Purchaser also stated that the agents had given no information about the fact that the SJAH was a community facility or on the potential this might have for obtaining planning permission and, whilst he had a general understanding of planning, he was not aware of the issues raised by community facilities.

112. None of the questions posed by the Council distinguished between the effect on his proposed purchase of the *nomination* for inclusion on the list as opposed to *actual listing* of the SJAH. Equally, whilst answering “no” to whether he was intending to *“chip the price”* at any stage, the Purchaser was not asked whether knowledge of the nomination might have led him to reduce his offer price. It is also not entirely clear whether, when he refers to *“the listing”*, this extends to the nomination or means the inclusion of the SJAH on the list. His response that he was not aware that the building was listed until he was going ahead with purchase enquiries, would appear to be a reference to the e-mail sent by the Appellant on 27 May 2015 to his solicitors notifying them of the nomination. This is consistent with the e-mail of 2 June 2015 in which the Purchaser’s solicitor requests:

“...details of the application to list the hall as an asset of community value. We also need to obtain details of any response given by your client to the Council”.

113. In this context, there would appear to have been some confusion in the Purchaser's mind over the process of nomination and the actual listing. That is understandable as he clearly had little understanding of the ACV regime and how it operated and was unwilling to incur the costs of legal advice to gain a better understanding.
114. The last piece of relevant evidence in relation to the Purchaser is that, after the expiry of the six month moratorium period, he was invited to make an offer for the SJAH which he did. Mr Heelas gave evidence that this second offer related to the SJAH and a separate garage premises but that, disaggregated, the implied offer for the SJAH was around £65,000.
115. I conclude from this factual context that, although the Purchaser was concerned that the nomination had not been disclosed as early as he believed it should have been, he was not so concerned about the non-disclosure that this would have led him to withdraw from the process which he had been engaged with at some cost since early May 2015. It is clear from the e-mail of 2 June 2015, that he remained willing to proceed with the purchase subject to the provision of further information about the nomination and the Appellant's response to it.
116. Whilst this may not accord with Mr Heelas' present recollection it is consistent with his contemporary e-mail of 5 June 2015. Further, whilst there is some ambiguity in the Purchaser's responses to the Council's questions to him and the weight that I give to them must reflect the fact that they were provided nearly three years after the relevant events, taken as a piece, they do tend to support the conclusion which I have reached that it is more likely than not that it was the inclusion of the SJAH on the LACV which led to the purchase not proceeding.
117. As to whether, in the light of the nomination, the purchase would have proceeded at a price of £135,135.13, the responses to the Council's questions indicate that Mr Ager had no intention to chip at the price and, given he lacked knowledge of the implications of a building being a

community building for planning policy purposes, I see no reason to believe that he would, at this late stage of the transaction, have sought to revise his offer had the SJAH not been listed.

118. In this context, I give little weight to his later offer of £65,000. This was made much later and after listing and also after the Dartmoor National Park Authority had expressed a cautious view on the potential of planning permission being granted for a material change of use of the building. It provides no meaningful indication of what might have happened on 4 June 2015 had the SJAH not been included on the LACV.
119. I therefore find as a fact that, but for the inclusion of the SJAH on the LACV, the purchaser would have been likely to purchase the SJAH at a purchase price of £135,135.13.
120. That then raises the issue of whether the Appellant has demonstrated that its likely loss was the difference between this figure and the £80,000 secured at auction. There is no dispute that the relevant valuation date is 4 June 2015. If there was a loss of value or the loss of a sale, the loss must be assessed at that date. The Appellant argues that the assessment should be undertaken on a no scheme basis i.e. disregarding the statutory ACV listing regime. However, that in my view is not correct. The proper baseline for the purposes of assessment is to assume that the ACV listing regime exists but that it has not been applied to the particular building. Assessed on that basis, the difference between the two values, should fairly reflect the act of listing.
121. The difficulty for the Tribunal is that, whilst it has a variety of values before it, reflecting opinions provided and offers made at different dates, it has no valuation evidence of what the market value of the SJAH would have been on 4 June 2015 in the light of knowledge of its inclusion on the LACV. The price realised at auction on 16 October 2016 is not good evidence of the value of the building on 4 June 2015 given that, as the Appellant's Senior Legal Adviser explained in a letter dated 14 December 2016, by this time:

“The listing as an ACV together with the intense community lobbying by the Friends of St John Ambulance Hall significantly diminished the value of SJA Hall from the value of the Proposed Sale. This was further exacerbated by the advice the Friends of St John Ambulance Hall received from the Dartmoor National Park planning department regarding change of use...Consequently when SJA was able to market the property again after the end of the full moratorium period, there was no more interest from the private sector to purchase the property. SJA had to sell the property at auction on 14 October 2016 for £80,000”.

122. This shows that the Appellant believed that a number of factors over and above the listing had, by October 2016, combined to reduce its value below the £135,000 purchase price. The difference between this figure and the £80,000 realised at auction is not therefore likely to represent the effect of inclusion of the SJAH on the LACV as at 4 June 2015 and only that inclusion.
123. In an attempt to fill the evidential vacuum, the Appellant invited me to conclude that the £80,000 secured at auction was of a piece with the sum offered by the marketing recommendations obtained by it in 25 February 2015 (£90,000-£100,000), the £80,000 which Sawdye & Harris advised the Friends of the SJAH the hall was worth on 14 July 2015, the £85,000-£90,000 which the Ashburton Ambulance Hall Trust were advised was its value in October 2015 by Luscombe Maye and the £80,000 offered on behalf of the Friends of the SJAH on 25 April 2016. Reference was also made to the value stated on the Land Registry title of some £125,000 as at 28 May 2014 and an offer received outside the sealed bid process on 29 May 2015 of £170,000.
124. As to these various pieces of evidence, Mr Heelas explained in his evidence, title was registered in 2014 as part of wider process of registration of its land and buildings and for the purposes of a fee, a value had to be stated. The £124,000 figure was not based on a formal valuation and does not reflect its market value as a listed asset on the valuation date. I can therefore give that figure no weight. Equally, the late bid of £170,000 from an unidentified source which was not proceeded

with, provides little assistance with the market value of the SJAH as a listed asset at the valuation date, save that it does indicate that there were others in the market, beyond the Purchaser, who took a relaxed approach to the potential effect of the status of the SJAH as a community building, on any development potential it might have.

125. That leaves the various other figures. The February 2015 marketing recommendations were not a formal valuation and were provided for marketing purposes only. The same applies to the Sawdye & Harris letter of 14 July 2015. I give them little weight. The Luscombe Maye valuation was a formal valuation as at 29 October 2015, but is caveated by the statement that time constraints had not permitted them to consult the planning authority to discuss alternative uses and, due to this uncertainty and the fact that vacant possession would be delayed until the end of the lease recently granted to the Friends of the SJAH, their assessment of value was £85-90,000. There is no means of assessing what their assessed value might have been had they been able to seek the views of the Dartmoor National Park Authority in October 2015 and without the constraint of the lease or whether inclusion on the LACV would have affected their opinion on value.
126. This leaves the April 2016 offer made by the Friends of the SJAH, but that again, provides a valuation which takes into account factors which post date the listing, in this case the views of the planning officer of the Dartmoor National Park Authority on the constraints on the development potential of the SJAH beyond just its community value and the planning policies which bear on that potential. Whilst it is consistent with their original offer, that is no doubt because it assumes that any effect on value flowed from the planning policy implications of the SJAH's community use, rather than the listing. If anything, therefore, the evidence of value supports the Respondent's case that the change in status of the SJAH to an ACV had no material effect on value.
127. Taking the evidence as a whole, I am not satisfied that assessed as at 4 June 2015, the Appellant has shown that it is more likely than not, that the

result of the inclusion of the SJAH on the LACV was that it suffered a loss of £55,135.13. Whilst I have accepted that, but for listing it would have obtained the £135,135.13 purchase price on or about 4 June 2015, in the absence of a formal before and after valuation on the valuation date i.e. 4 June 2015 allowing for the information then available to a willing purchaser and only that information, I am not satisfied that it is more likely than not that the effect of listing would have been to reduce the value which might have been obtained on that date to £80,000.

128. In the absence of much more cogent valuation evidence, it seems to me inherently implausible to argue, as the Appellant effectively does, that the effect of listing (which is principally to impose a restriction on the ability to dispose of property for up to six months) could in itself, have such a dramatic effect on the market value of the SJAH particularly as it relied on a rising market in rejecting the Friends' offer of £80,000 believing, on Mr Heelas' evidence, that after listing, the SJAH still had a guide value in the range of £150,000-160,000.
129. In reality, the Appellant's principal head of claim requires me to accept that the difference between two values which *both* claim to evidence the market value of the *unlisted* SJAH at the valuation date, is the loss which they incurred. That is to compare apples and pears and provides no proper basis for concluding that a loss in value was incurred. There is simply no sound evidential basis before me on which I can ascertain the loss, if any, which the change in status of the SJAH might have given rise to on 4 June 2015.
130. The onus is squarely on the Appellant to prove its loss and I conclude under this head that it has not established its head of claim and the claim for £55,135.13 must fail.
131. I turn to the next head of claimed loss, that of the loss to the Appellant from being kept out of the proceeds of sale during the moratorium period. The Appellant in its claim and prior to the hearing advanced a claim for interest on its claimed losses using a rate of 8% per annum based on the

interest payable for late commercial payments i.e. 'statutory interest'. However, during the hearing the Appellant advanced an alternative calculation of its loss based on the opportunity cost of the delayed sales receipt. The evidence of Mr Heelas was that the Appellant has a policy of seeking return on its invested returns of RPI + 3% over a full market cycle which would equate to 6.118%. Where a capital receipt has been budgeted for, but is not received, the Appellant needs to remedy the deficit by drawing on reserves and foregoing that rate of return. Actual returns on reserves have been higher than this and therefore, the rate is a conservative one for the purposes of assessing the loss to the Appellant of being unable to realise the capital receipt during the moratorium period.

132. The Respondent has argued that this head of claim should not be entertained as it was made first time during the hearing. It also argues that the deferral of the receipt of the sale proceeds until October 2016 was due to the Appellant's decision to grant a licence to the Friends and its decision to delay the sale of the Property until it was placed in auction in October 2016 rather than the effect of the moratorium period.
133. Whilst Regulation 14(5) requires that claims for compensation are particularised and I accept that proper particularisation is an important safeguard, I do not read Regulation 14(5) as restricting an appellant for all time to the specific heads of compensation and sums claimed in the original claim. Rather, it sets out the requirements to be met before a claim is entertained and it cannot, in my view, sensibly be read as prohibiting any subsequent amendment or re-formulation. It would, for example, be a surprising result if a claim had to be rejected simply because it contained an obvious and correctable calculation error when originally made.
134. I prefer the approach adopted by the Tribunal in *Whitehead* (see paragraph 16), that the Tribunal is not restricted to considering the evidence placed before the Respondent but that, in the light of the requirements of Regulation 14(5), 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 not hitherto featured in the process.

135. I am satisfied that the Respondent has had a fair opportunity to respond to the way in which the Appellant now puts its case and that I can consider this revised head without prejudice to it.
136. As to the substance of this head, I see no reason in principle why investment income foregone should not be a compensatable loss under Regulation 14, provided that it is shown to be wholly caused by the operation of the moratorium periods. It also seems to me that there could potentially be an overlap with a diminution in value claim and any double counting would need to be avoided but here, as I have rejected the diminution in value head, no issue of possible double counting arises.
137. As to the calculation of the loss, I do not consider that use of a statutory rate of interest can be used to calculate it. The Appellant is entitled to compensation for *their* loss. That can only properly be assessed by reference to any effect on its budget and the remedial action taken to address that. Recourse to the statutory rate of interest does not reflect the Appellant's actual loss and is inappropriate.
138. I see no reason to question the 6.118% figure as the appropriate foregone rate or return, if I am satisfied that this loss was wholly caused by the delay caused by the moratorium period and the loss was in fact incurred i.e. SJA had to withdraw on reserves achieving at least this rate of interest.
139. In terms of causation, I am satisfied that but for the moratorium period, the SJAH would have been disposed of much earlier than October 2016. However, in my view the only delay in the receipt of sale proceeds which can be said to have been *wholly caused* by the moratorium periods is the 6 week or six month delay arising from the interim and full moratorium periods respectively. All that is prohibited during the respective moratorium periods is the actual disposal of an interest in the listed asset. Marketing, negotiation and agreement of terms can all be carried on within

the moratorium period and I see no reason on the basis of the evidence before me why a sale contemporaneous with the expiry of the moratorium period could not have been achieved. I note that the licence entered into with the Friends was terminable on one week's notice and would not have been a material constraint to an earlier disposal.

140. On the evidence before me, the delay to October 2016 was principally attributable to the Appellant's belief that it could secure a price at or above the £135,000 offered by the Purchaser in 2015. For that reason, it rejected the Friends' offer made on 24 April 2016 which, had it been accepted, would more likely than not have resulted in a sale before October 2016 and without the costs of sale incurred in the auction process. I am therefore not satisfied that it is more likely than not that the effect of the moratorium period was to delay receipt of the £80,000 beyond the moratorium period.
141. As to the consequence of the delay occasioned by the moratorium period, I am not satisfied on the evidence before me that the loss claimed was in fact incurred by the Appellant. As the Respondent has pointed out, there is no evidence that, in the relevant financial year, the effect of the delayed receipt of £80,000 led the Appellant to draw down from investment funds yielding 6.118% or more. Given the extent of the charity's free reserves it is at least as likely that it did not need to use that funding stream to compensate for the limited effect which the delayed receipt of £80,000 would have had.
142. I am therefore not satisfied that it is more likely than not that the delayed receipt of the £80,000 led to SJA incurring a loss on its investment returns as a result of having to use its reserves to cover the loss of this capital receipt from its budget. This head of claim fails.
143. The next head of loss claimed relates to the second set of sales costs, namely the cost of searches (£776.96), agents fees (£6,126) and legal expenses of £1,500. Initially SJA claimed in April 2016 for the agents and legal costs relating to the sale of the SJAH to the Purchaser. However,

the Respondent argued that a claim in respect of these abortive costs was time barred and, at the hearing, the Appellant's focus was on the recovery of the costs incurred in relation to the second sale, which post-dated its original claim for compensation. I will deal with the Respondent's contention in relation to the time bar claim below.

144. In the light of the Respondent's response to this head of claim, the Appellant's wish to focus on the costs of the second sale is understandable. However, there are, in my view, two problems with the Appellant's case. Firstly, its principal claim relates to the loss of the sale to the Purchaser in June 2015. In my view, the abortive costs of that sale are the Appellant's relevant "loss" for the purposes of Regulation 14(2). Whilst those costs were incurred prior to the date of listing, it is the listing which gives rise to their being written off and, therefore to their effective loss upon listing. The original claim made in April 2016 claimed legal costs of £3,630 (revised in November 2017 to £3,019.20) and surveyor's marketing costs of £318.
145. The costs now claimed by the Appellant relate to the marketing and sale of the SJAH from June 2016 *after* the offer from the Friends had been rejected. They arise from the rejection of that offer by the Appellant rather than from any effect of the operation of the ACV regime and therefore, they are not recoverable by way of compensation. However, I conclude that, subject to the time bar, the Appellant is entitled to the costs of the aborted sale to the Purchaser in the sum of £3337.2.
146. I turn to the claim for internal costs in the sum of £2,107.20. I am satisfied that management time was likely to have been spent due to the fact that the SJAH acquired listed status.
147. Subject to the time bar relied upon by the Respondent, the costs of liaising with external solicitors over the costs of the aborted disposal, on researching the ACV regime and case law, drafting the licence for the community group to provide for the effective maintenance of the building during the moratorium period and time spent corresponding with the Land

Registry in relation to the Restriction are recoverable because they are an expense which would not have been incurred but for the listing. Whilst it is correct that the salaries of the relevant individuals would still have had to have been borne by the Appellant, the time spent by those employees which could have been otherwise deployed does, in my view, properly fall within regulation 14(2) when regard is had to the underlying objective of the Regulations.

148. The Appellant's claim under this head also includes time spent perusing unspecified documents, at an internal strategy meeting and a meeting with various Senior Management. I have seen no evidence as to the substance of documents perused or of the matters discussed at the meetings and therefore, I cannot be satisfied that the time spent gives rise to a recoverable loss for the purposes of regulation 14(2).
149. I conclude on the evidence before me that the Appellant has shown that two and three quarter hours at an hourly rate of £409 was time spent due to the operation of the ACV regime. That would equate to a sum of £1124.75, which, subject to the time bar, is the sum I find it would be entitled to under Regulation 14. Whilst the Respondent challenged the hourly rate and argued that the rate should reflect the location of the property in Devon as opposed to Central London rates, where, as here, the owner of the property is a national charity with a centralised legal function and that function is based in London, I see no merit in the argument that the hourly rate should be based on the rate which would apply to Devon. I accept that property transactions may be more complex in a densely developed city such as London, but greater complexity bears more on the time spent than the hourly rate.
150. Turning next to the grant of the short term licence to the Friends of Ashburton Community Hall. Mr Heelas explained the reasoning behind the grant of the licence which was, principally, to transfer the burden of maintaining the building to the Friends during the moratorium period. This claim under this head falls squarely within Regulation 14(3)(a) and, subject

to the time bar, SJA would be entitled to £580.80 as compensation for this expense.

151. Subject to the time bar, the total of the compensation which I have found the Appellant to be entitled to under the various heads is therefore £5042.75.
152. The Appellant claims interest at its calculated rate of 6.118% on the totality of this loss save the sum attributable to the delayed consideration (£5,352.25). However, the Tribunal has no power to make an award interest on any loss or expense it finds to have been incurred and therefore no award can be made. Further, regulation 14(5)(b) of the Regulations requires that a claim for compensation 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. I agree with the Respondent that, if interest is payable in respect of expense or loss, this time limit would be rendered meaningless.
153. The final issue I need to consider is the Respondent's contention that the Appellant's claim for compensation is time barred. Given that the claim was made on 13 April 2016 and the last loss/expense which I have found to be compensatable was, according to the Appellant's Schedule of losses, incurred no later than 5 February 2016, to the extent that the claim falls within the scope of Regulation 14 it was made within the 13 week period and is not time barred (I note that the schedule refers to the 15 minutes of management time having been spent on 21 June 2016 but this must be an error given that the sale fell through in June 2015).
154. For all these reasons I find that the compensation now payable to the Appellant by the Respondent is in the sum of £5042.75 and the appeal is allowed to that extent.
155. That leaves the issue of the costs of this appeal in relation to which the Appellant has submitted two cost schedules. Whilst I understand the

Appellant's argument that it is administratively convenient and likely to be more cost effective for the Tribunal which has heard the claim for compensation in relation to loss and expense incurred when the land was listed also to deal with any claim for compensation under regulation 14(3)(b), I agree with the Respondent that it is not open to the Tribunal simply to dispense with the requirements of Regulation 14(5). That requires the claim to have been submitted in the first instance to the relevant local authority with supporting evidence.

156. That is an important safeguard, as it allows the local authority to interrogate the claim and its supporting evidence in the first instance, thus ensuring that, if any appeal is then required, it can be properly focussed. I do not consider it is open to the Tribunal consistent with the Regulations to graft on a claim under Regulation 14(3)(b) to an existing claim for compensation. Whilst Judge Lane in the *Whitehead* decision held that Regulation 14 was to be construed as allowing a single claim for compensation in respect of multiple heads of claim which had to be made within 13 weeks of the last incurred loss or expense, the grafting on of an entirely new head of claim which could not have been advanced at the date that the claim itself was submitted to the Council, is not within the scope of what is permitted.
157. Whilst the Tribunal on an appeal is not limited to considering only the evidence which was before the determining local authority, there is a world of difference between receiving new evidence and entertaining a claim of a type which has yet to be considered at all by the local authority.

16 November 2018

Judge Simon Bird QC