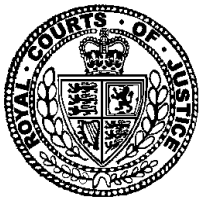

Neutral Citation Number: [2023] EWHC 1131 (Admin)

Case No: CO/37/2023; CO/3332/2022; CO/2440/2021; CO/65/2020

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 May 2023

Before :

Sir Ross Cranston sitting as a High Court judge

- -

Between:

The King **(on the application of NELSON RICHARDSON)**	**Claimant**
- and -	
LONDON BOROUGH OF LAMBETH	**Defendants**
-and-	
SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES	

- -
- -

MATTHEW HENDERSON (instructed by Browne Jacobson) for Lambeth LBC
EMMA DRING (instructed by **GLD**) for the **Secretary of State**

Hearing date: 10 May 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.30 am on 12 May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

SIR ROSS CRANSTON:

Introduction

1. These proceedings were listed pursuant to an Order of the judge in charge of the Planning Court, Holgate J, on 11 January 2023 so that the court could deal with a number of applications the Claimant had made against the London Borough of Lambeth ("the Council") and the Secretary of State for Levelling Up, Housing and Communities ("the Secretary of State").

2. The Claimant made an application to set aside Holgate J's Order, but that application was dismissed by Lang J on 10 February 2023.

3. Since Holgate J's order, the Claimant has made additional applications. In addition to these applications, the Council and the Secretary of State have also made applications for Extended Civil Restraint Orders ("ECRO") against the Claimant. It is convenient to consider all these and other outstanding matters in these proceedings.

4. The Council and the Secretary of State have been variously defendants and interested parties to the applications the Claimant has brought. For convenience they are both listed as defendants in these proceedings.

The hearing

5. Following Holgate J's Order, the Court contacted the parties in early February 2023 to arrange a mutually agreed date for the hearing between March and May 2023. The Claimant failed to engage with the listing process. The hearing was listed for 10 May 2023. The Claimant was informed about this in late March and again in an email dated 17 April 2023, when he was informed that if he was seeking to have the hearing vacated or adjourned, he would need to make an application by way of an Application Notice.

6. On 24 April 2023 the Claimant applied by way of an Application Notice for an adjournment. The same day he filed what is described in the judgment as Application (iv), in which he seeks to set aside Orders in earlier judicial reviews on the basis that they were obtained by fraud.

7. The matter was to be listed before me and on 2 May 2023 I refused an adjournment. The matters had been outstanding for some time. The claimant lacked legal representation, but it appeared unlikely he would obtain it. He had been aware of the hearing date for some time.

8. The hearing was listed the begin at 10am. The Court had informed the Claimant about this and the courtroom in which the hearing would take place the previous afternoon. At 7.01am on 10 May 2023 the Claimant had sent the Court an Application Notice to the court "to adjourn, due to error of the Court."

9. The basis of the application was that I had retired from the Court and Holgate J's Order was that matters were to be dealt with by a High Court judge, not a Deputy High Court judge. That, of course, misunderstands the position. High Court judges appointed to sit in retirement under section 9 of the Senior Courts Act 1981 sit as High Court judges and not as Deputies.

10. In this Application Notice of 7.01am of 10 May 2023, the Claimant indicated that, notwithstanding his objections, he would attend the hearing. At 9.16am he sent an email to the Court which read in part that "it appears I am caught behind some kind of blockage in the Blackwall Tunnel and so may not be able to appear anyway - have not moved for 45 mins!" (I should explain that the Claimant now lives in south-east London, which explains the reference to the Blackwell Tunnel.)

11. The hearing began at 10am, but I adjourned matters until 10.30am and then until 11.00am awaiting the Claimant's arrival. After hearing submissions from Mr Henderson and Ms Dring I decided to proceed in the Claimant's absence. CPR23.11 enables the Court to do this.

12. In *Fox v Graham Group Ltd*, The Times, August 2001, Neuberger J said that caution should be exercised in proceeding in the absence of a litigant in person, especially where the litigant in person is seeking to adjourn for the first time, unless the court is satisfied that it ought to grant the relief the other party seeks.

13. On reading the papers it had become clear to me that the Council and the Secretary of State had very strong cases. The Claimant is very experienced in litigation, he knew well in advance about the date of the hearing, and he produced yet another application to adjourn, this time at the last minute with what appears to be an intention to derail the hearing. There was no barrier to conducting the hearing in the Claimant's absence.

14. The hearing began at 11am. The claimant never appeared. I had Mr Henderson and Ms Dring explain matters on which I needed clarification. In fairness to the Claimant, I put to them the separate points about the frauds the Claimant had raised in Application (iv). I then indicated that I would consider matters carefully and would hand down a written judgment on Friday, 12 May 2023, without attendance of the parties.

Applications before the Court

15. This judgment deals with the following applications. In doing so it is necessary to describe the history of the Claimant's applications for permission to apply for judicial review and on other matters.

    i. The Claimant's application to set aside an Order on the ground of bias of Mr James Strachan KC (sitting as a Deputy High Court judge) in judicial review CO/65/2020 ("Judicial Review 1"). This is called Application (i) in the judgment.

    ii. The Claimant's application to set aside an Order of Mr Timothy Straker KC (sitting as a Deputy High Court judge) in judicial review CO/3332/2022 ("Judicial Review 3") on the ground that it is void. This is called Application (ii) in the judgment.

    iii. The Claimant's application for permission to apply for judicial review in CO/37/2023 ("Judicial Review 4"). This is called Application (iii) in the judgment.

iv. The Claimant's application to set aside the Orders in Judicial Reviews 1 and 2 on the basis that they were obtained by fraud. This is called Application (iv) in the judgment.

v. The Secretary of State's application for an ECRO. This is called Application (v) in the judgment.

vi. The Council's application for an ECRO. This is called Application (vi) in the judgment.

Background

16. The background to these applications lies in what was no doubt the Claimant's genuine grievance concerning the building at 182-184 Clapham High Street, Lambeth, London where in May 2014 he had purchased a flat. He sold the flat in 2019.

17. In outline, in 1998 the Council had granted planning permission for the change of use of the ground floor and basement at 182-184 Clapham High Street "from two vacant retail shop units A1 to a single A3 (food & drink) establishment", together with the installation of a new shopfront.

18. Condition 8 to the planning permission provided that the development could not be carried out otherwise than in strict accordance with the plans which had been approved without prior consent. Condition 8 did not prevent future development, nor did it exclude the operation of the Town and Country Planning (General Permitted Development) (England) Order 2015: see *Dunnett Investments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 192, [37], per Hickinbottom LJ.

19. There was a section 106 agreement dated 11 February 1999 which provided that upon the changing of the use of 182-184 Clapham High Street to A3 (Food and drink), use of another property at 172 Clapham High Street should be for A1 (Shop) use only.

20. Under the version of the Town and Country Planning (Use Classes) Order 1987 in force at that time, the premises could also lawfully be used within class A3 as a drinking establishment (a pub or bar). That is what happened. In 2002 planning permission was given to extend operating hours at the property.

21. As a result of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005 the Council's view, having taken legal advice, was that the property was deemed to be authorised to have a new A4 use. The Council's position was contained in the delegated register for the Certificate of Lawful Development.

22. In 2017 the fast-food chain Five Guys JV Ltd acquired the commercial lease of the ground floor and basement at 182-184 Clapham High Street. They applied for prior approval to change the ground floor premises from use A4 to A3. The Council did not respond so consequently prior approval was treated as granted. Five Guys applied for and was granted a new premises licence in April 2017.

23. Five Guys undertook internal works of subdivision to create two separate units, one at ground level and one in the basement. A fire escape door to the street was used as the

entrance door to the basement. Later the Council took the view that these were all works which did not need planning permission.

24. Five Guys began trading from the ground floor unit in June 2017.

25. A certificate of lawful use was granted in 2018 in respect of the use of the basement unit as a drinking establishment in class A4. The Council took legal advice and provided considerable reasoning as recorded in the delegation register. The basement floor of the premises has been used by London Cocktail Club since 2019. A transfer of the premises licence was issued for these purposes in February 2019.

26. Five Guys carried out unauthorised external works including signage and branded awnings to the frontage of the commercial units. The Claimant made an enforcement complaint. Five Guys made a retrospective planning application and appealed against the Council's refusal of that application. The appeal was dismissed by a planning inspector. Ultimately the Council granted planning permission in 2020 for modified external works to regularise the situation.

27. In March 2020 the Council concluded an enforcement investigation into the use of the ground floor unit by Five Guys. It concluded that (i) the lawful uses of 182-184 Clapham High Street were A3 (ground floor) and A4 (basement) and (ii) the use by Five Guys fell squarely within use class A3, with the takeaway element of the business (i.e., within use class A5) being ancillary to its use as a restaurant.

28. In late May 2020 Five Guys made a planning application for the installation of a new shop front. There was community consultation. In August the Council granted permission. By then the claimant had moved but he was informed about the decision.

29. The Claimant was aggrieved by the use of the premises by Five Guys, the lack of enforcement action by the Council, and at having to sell his flat in 2019 at a what he calculates was a considerable discount. He instituted Judicial review 1.

Judicial Review 1, CO/65/2020

30. The Claimant lodged an application for judicial review on 6 January 2020 against the Council challenging its failure to take enforcement action against Five Guys' use of the premises; its failure to keep the Claimant properly informed; and the lawfulness of a number of its licensing decisions in respect of the premises.

31. Permission was refused on the papers by Jay J on 7 May 2020 and then at a renewal hearing held by Mr James Strachan KC on 17 July 2020: [2020] EWHC 2705 (Admin). In the course of his judgement, Mr Strachan said that it seemed to him that the main focus of the Claimant's complaint was about use of the fire escape door for the entrance to the London Cocktail Club. Mr Strachan said that the Council was entitled to take the view that this did not involve external works affecting the appearance of the building. That was a matter of planning judgement for the Council.

32. Mr Strachan's Order was finally sealed on 12 October 2020.

33. The Claimant applied to the Court of Appeal for permission to appeal. Lewison LJ refused permission on 10 May 2021. In his Order, Lewison LJ rejected the argument

that Mr Strachan's decision was tainted by apparent bias because he is in the same Chambers as Mr John Steel KC who, at that time, was instructed by one of the interested parties to the claim, London Cocktail Club Ltd. Lewison LJ cited *Smith v Kaverner Cementation Foundations Ltd* [2006] EWCA Civ 242.

34. The Claimant then made an application to reopen Lewison LJ's Order under CPR52.30, but Singh LJ refused that on 12 November 2021. In his reasons, Singh LJ explained why the Claimant's argument about apparent bias lacked merit: see [25]-[28]. In particular he noted that although Mr Steel's name had appeared on the Acknowledgment of Service from the London Cocktail Club, he had not appeared at the hearing and had not settled any skeleton argument.

35. Meanwhile, the Claimant lodged complaints with the Judicial Conduct Investigations Office on 5 September 2021 against Jay J, Mr Strachan, and Lewison LJ. He alleged "judicial participation in a conspiracy to interfere with the proper administration of justice" (paragraph 6) in order to "shield from discovery, in the first instance, a local conspiracy to commit planning and licensing fraud for pecuniary advantage, and in the wider context, the commission of planning fraud on a national scale" (paragraph 9).

36. The Office replied to the Claimant on 20 September 2021 that the complaints were outside its remit.

Application (i)

37. In November 2022 the Claimant applied for an order - sealed on 23 November 2022 - to set aside Mr Strachan's refusal of permission on the basis of actual bias. On 15 December 2022 the Claimant revised and replaced the original version of his application.

38. The basis of the actual bias application is that Mr Strachan was automatically disqualified because he was a member of 39 Essex Chambers LLP, Mr Steel is also a member of the same LLP (and senior to Mr Strachan), and Five Guys in the UK is owned by Sir Charles Dunstone, who (the Claimant alleges) generates as much as 10 percent of 39 Essex Street's annual profits. The Claimant's case is that Mr Strachan has a direct financial interest because he shares profits with Mr Steele KC. Since (the Claimant alleges) Mr Strachan earns two-fifths of his income from his share of 39 Essex Chambers LLP's annual profits, he obviously had a direct financial interest in the case which could not be regarded as insignificant.

39. This application for judicial review – Judicial Review 1 – was finally disposed of when Singh LJ dismissed the application to reopen Lewison LJ's order on 12 November 2021. It is far too late to have a matter which has been finally determined in the Court of Appeal reopened in this Court and at this stage. The circumstances in this case are nowhere near those governing the operation of CPR 3.1(7): see *Terry v BCS Corporate Acceptances Ltd* [2018] EWCA Civ 2422, [75], per Hamblen LJ, giving the judgment of the Court.

40. In any event, the Claimant has produced no evidence to substantiate the allegations he makes about the financial link between Mr Strachan and Five Guys via membership of 39 Essex Chambers LLP or indeed to support his allegations recorded in the last paragraph but one. Mr Steel's limited involvement for London Cocktail Club has been

mentioned earlier. Five Guys were represented by counsel from a different set of chambers from 39 Essex Street in Judicial Review 1. As to 39 Essex Street LLP that is a governance and holding entity and it has no effect on the members of the chambers acting as independent, self-employed barristers. There is no profit sharing. There is simply no direct pecuniary interest to disqualify Mr Strachan.

41. This application is accordingly dismissed and certified as totally without merit.

Judicial Review 2, CO/2440/2021

42. The Claimant lodged this application for judicial review against the Council alleging (1) that it was failing to investigate or enforce against an unauthorised change of use of the premises; (2) that it had fraudulently manufactured a transfer of the premises' licence to Five Guys; and (3) that the decision to grant the 2020 permission in relation to the shopfront was unlawful.

43. Permission was refused on the papers by HHJ Walden-Smith on 15 November 2021. She regarded claim 1 as an abuse of process in attacking a decision already made in Judicial Review 1 and certified it as totally without merit. She also certified claims 2 and 3 as totally without merit.

44. In the same Order HHJ Walden-Smith made ancillary orders on various matters. The Claimant's applications to strike out the submissions of the other parties were dismissed as being totally without merit (paras 7-9 of the Order).

45. In her Orders the judge also made rulings as to costs. The claimant lodged an objection to these. Lang J rejected these in an Order dated 9 June 2022.

46. The Claimant sought to appeal HHJ Walden-Smith' Order to the Court of Appeal.

47. Coulson LJ refused permission to appeal and certified the application as totally without merit on 20 June 2022.

48. Coulson LJ also refused permission to appeal Lang J's Order regarding costs and certified it as totally without merit on 30 September 2022.

Judicial Review 3, CO/3332/2022

49. The Claimant lodged an application for judicial review on 2 September 2022 alleging that the Secretary of State had acted unlawfully by refusing the Claimant's request to revoke the 1998 permission pursuant to section 100 of the Town and Country Planning Act 1990 ("the 1990 Act").

50. This followed from a letter from the Secretary of State dated 22 July 2022, in reply to a letter from the Claimant's MP, where the Secretary of State stated that the relevant provisions of the 1990 Act only applied when the planning permission had not been implemented and the development had not been completed.

51. The Claimant advanced various grounds: ground 1A, legitimate expectations; ground 1B, error in law; ground 1C, fettering of discretion (the Secretary of State had fettered his discretion by failing to consider exercising his "step in" power under section 104 of the 1990 Act); ground 1D, relevant considerations; ground 1E, abdication of

responsibility; and ground 1F, equitable justice. There were then a number of human rights grounds, including Article 8 and Article 1, Protocol 1("A1P1").

52. In the course of his Statement of Facts and Grounds, the Claimant made the following allegations of fraud:

> [15] "In [Judicial Review 1]…the Council was able to resist the application, obtaining orders, by fraud, dismissing claims otherwise bound to succeed. In [Judicial Review 2], it successfully applied to have a claim struck out, on the fraudulent basis that it had been heard and decided on appeal in Judicial Review 1…
>
> [44] However, the Council was somehow able to subsequently resist [Judicial Review 1] on the basis of claims made (not decisions reached) 'in the exercise of its planning judgement' later that year (i.e. 2020), that neither (a) the subdivision nor (b) the change of use to A5 constituted development.
>
> [45] Notwithstanding that both of those decisions were— (1) Patently untrue, as evidenced by official papers of public record; and (2) Fraudulent, in that they were deliberately wrongly made for the purposes of resisting the claim…
>
> [53] On the basis of the Court of Appeal's confirmation that permission to amend had been refused, there are only two possible explanations for this outcome, either— (1) The orders were obtained by fraud; or (2) Bias or other impropriety.
>
> [54] In addition, as almost £20,000 in costs were imposed on the Claimant as a consequence of this fraud or impropriety…
>
> Ground 1F—Equitable Justice
>
> [74] The principles of equitable justice do not allow a statute to be used as a cloak for fraud. The Council has unlawfully withdrawn a benefit hitherto conveyed by planning conditions imposed in order to convey a conflicting benefit upon the developer and is attempting to evade the liability to compensate those affected by relying on an unintended gap in the protection that Parliament clearly intended to afford."

53. Permission was refused on the papers by Mr Timothy Straker KC and certified as totally without merit. The Order was made on 18 October 2022 and was issued for service on 24 October 2022.

54. The Claimant served an unsealed Appellant's Notice dated 31 October 2022, but he informed the Court of Appeal that he did not intend to pursue an appeal. Since no Appellant's Notice has been filed, there is no valid appeal.

55. The Claimant objected on 8 November 2022 to the costs order contained in Mr Straker's Order of 24 October 2022. Although headed as his objection to costs it is in fact an objection to the substance of the Order. That is not for this court.

56. As far as Mr Straker's order for costs is concerned, it is perfectly orthodox: the Claimant having been refused permission to apply for judicial review must pay the costs of the Acknowledgements of Service. There are no objections as to quantum and consequently Mr Straker's Order as far as costs are concerned stands.

Application (ii)

57. There is an application dated 8 December 2022 and sealed on 15 December 2022 for a declaration that Mr Straker's refusal of permission in Judicial Review 3 is void because of a breach of the Civil Procedure Rules (CPR) and a postdating of his application for a stay. He also sought disclosure and reasons from the Court about why the matter had been expedited. The Claimant explained further his Application Notice in an email to the Court of 15 December 2022.

58. What had happened was that on 24 October 2022 the Claimant had made an application (issued that day) for a stay of proceedings in Judicial Review 3 pending a determination by the European Court of Human Rights, for an order to set aside the Order of HHJ Walden-Smith, and to disclose documents.

59. In an email to the Claimant dated 25 October 2022, the Administrative Court Office explained to the Claimant that Mr Straker had already made an Order in the case, albeit that there had been a delay in serving it. Consequently, the Claimant's Application Notice should not have been issued and the Administrative Court Office had voided it.

60. In the 25 October 2022 email, the Claimant was advised that if he was dissatisfied with Mr Straker's Order he should appeal to the Court of Appeal. The Court of Appeal has confirmed that he has not done so.

61. These are not the very rare circumstances contemplated in *Terry v BCS Corporate Acceptances Ltd* [2018] EWCA Civ 2422, [75] for exercising the jurisdiction under CPR3.1(7) to revoke a previous order. Like Application (i) this application has not been made promptly. As to the Claimant's point that the Order was made after his application for a stay, the simple explanation is that Mr Starker had made the Order but there was an administrative delay in serving it. That is why the Administrative Court Office voided the stay application. There was no post-dating.

62. As with Application (i) this application is refused as totally without merit.

Judicial Review 4, CO/37/2023, Application (iii)

63. The Claimant lodged an application for judicial review against the Secretary of State dated 20 December 2022 and issued on 5 January 2023.

64. The decision challenged was that of the Secretary of State not to consider a request for the Minister of State for Housing and Planning to exercise her discretionary power to make an order under section 104 of the 1990 Act.

65. The background in brief is that the Claimant's MP wrote further on his behalf. In particular, he wrote on 15 August 2022 and again requested that the Secretary of State make an order under section 97 of the 1990 Act. It seems that the Claimant complained to the MP that the Minister had referred to section 97, not section 104.

66. In an email on 9 November 2022 the MP pointed out to the Claimant that in the correspondence the Claimant had consistently requested that he frame correspondence with the Secretary of State in terms of section 97. The MP offered to write again to the Secretary of State, this time referring to section 104.

67. Coincidentally, however, the Minister of State for Housing and Planning replied on 9 November 2022 to the MP's letter of 15 August 2022. She stated that the claimant had indicated that he would be challenging the Secretary of State's response through the courts and, in those circumstances, it would not be appropriate to comment further. Later that day the MP wrote to the Claimant that it would be futile to request the Minister to exercise powers under section 104 given her response received that day about the Claimant's legal proceedings.

68. The Claimant advances four grounds in Judicial Review 4: (i) that the Minister's decision was irrational since legal proceedings in Judicial Review 3 had been dismissed; and (ii)-(iv) her decision violated his rights under Article 8, A1P1, and Article 6 ECHR.

69. In my view these grounds are unarguable and totally without merit. First, the Claimant's grounds misstate the position: the Secretary of State had never been asked to make a decision under section 104. Secondly, the Claimant had raised the failure to act under section 104 as one of the grounds, (1C) in Judicial Review 3, and it had been rejected as totally without merit. There had been no material change in circumstances. The Claimant cannot relitigate the same ground again.

70. In any event the grounds are bound to fail. First, the details in the MP's letters, as retailed by the Claimant, were hardly a basis for the Secretary to State to act.

71. Secondly, to exercise the section 104 power the statute requires that the Secretary of State (i) consult the Council (which would be liable to pay any compensation arising); (ii) decide that it was expedient to make an order; and (iii) serve notice on the Council and the owner and occupier of the land (and any other person who would be affected) giving them an opportunity to be heard on the matter. It was unlikely that the Secretary of State would be inclined to take these steps in the circumstances of this case.

72. Thirdly, there was also the background known to the Secretary of State - that an enforcement investigation in 2020 had concluded that there had been no breach of planning control and that the use of the premises by Five Guys was lawful in class A3. He also knew that the Claimant's previous judicial reviews had failed.

73. It is simply not arguable that it was irrational for Secretary of State's to refuse to exercise his discretion under section 104 given what was in the MP's letters, these statutory provisions, and this background.

74. As to the human rights grounds, these are not particularised. In any event the Article 8 and A1P1 grounds were dismissed in Judicial Review 3 and this is another attempt to

relitigate matters. As regards Article 6, I accept the Secretary of State's submission, that the Minister's letter to the MP does not involve the "determination of civil rights and obligations" so that Article 6 is not engaged.

Application (iv)

75. The Claimant in an Application Notice dated 24 April 2023 seeks to set aside all orders in Judicial Reviews 1, 2 and 3. However, the Statement of Case refers only to the Orders of Mr Strachan and HHJ Walden-Smith as the basis for the applications to set aside.

76. The application fails for three reasons. First, the Claimant raised aspects of the alleged frauds in Judicial Review 3, as quoted earlier in the judgment. These were dismissed as totally without merit. This is not a new issue and involves the re-litigation of previous allegations.

77. In any event, the application has not been made promptly. Mr Strahan's Order was issued in July 2020, and HHJ Walden-Smith's in November 2021. This application to set aside that was not filed until 2 May 2023 and only sealed on 9 May 2023. I accept the Council's submission that the delay has caused it prejudice since it has taken steps in reliance on that order, for example, the costs incurred in making of the application for the ECRO.

78. Moreover, this application alleging fraud should have been made by a fresh action or on appeal, not by an Application Notice. That is made clear in *Terry v BCS Corporate Acceptances Limited*, referred to earlier, at [25]-[[34], [40]. Moreover, allegations of fraud must be pleaded with clarity and particularity: *Sofer v Swissindependent Trustees SA* [2020] EWCA Civ 699, [23]-[24]), per Arnold LJ. That is not the case here. Although the focus in on Mr Strahan's and HHJ Walden-Smith's Orders, there are allegations of conspiracy and fraud involving "the Defendants". The defendants listed are the Council, the Secretary of State, Five Guys JV Ltd and the London Cocktail Club Ltd. Indeed, there is a significant part of the Application given over to what is alleged to be fraud committed by Five Guys, which cannot be a defendant in public law proceedings.

79. As regards the allegation of the "defendants" obtaining Mr Strahan's and HHJ Walden-Smith's Orders by fraud, these are advanced as the Council having concealed matters from the Claimant and the Court with conscious and deliberate dishonesty.

80. In the case of Judicial Review 1, it is said: "Had [the Council] disclosed the planning conditions imposed which restricted development to a single unit, the section 106 agreement in respect of the same, and the Certificates es of Rateable Value, the deputy judge could not have concluded that there had been no failure to take enforcement action."

81. But none of these matters were concealed. The planning permission was a public document and the Council's Summary Grounds of Resistance noted its existence. The Council did not refer to the conditions on the 1998 permission since, as noted earlier, the conditions had no relevance to the subdivision. On its face the section 106 agreement did not apply to these premises. The certificates of rateable value showed the fact of subdivision, which is not in dispute, and in any event are public documents, as the Claimant's own evidence demonstrated.

82. As to the challenge to HHJ Walden-Smith's Order, it is said that the Council falsely represented that no allegation of change of use to A5 had been brought to the attention of the Council. "The Council attempted to conceal that it had previously logged an enforcement investigation into [Five Guys'] unauthorised change of the use of the premises in April 2017…in order to provide a false basis upon which to log a new investigation, opened for the improper purpose of first exonerating [Five Guys] and thereby itself."

83. But the Council's skeleton argument for Judicial Review 1 had set out the details of the 2017 complaint and the later enforcement complaint the Claimant logged in December 2019, as well as the steps it took in relation to both. As mentioned earlier, the Council's position was that in its planning judgment the use of the premises was lawful, not unauthorised. That has been decided in the Council's favour previously.

84. In summary, there is no arguable concealment by the Council. The Claimant seeks to relitigate matters already decided against him. Application (iv) is totally without merit.

Applications (v) and (vi)

85. These applications can be dealt with in short order since this is precisely the type of case contemplated by CPR3.11, PD3C and the authorities such as *R (Kumar) v Secretary of State for Constitutional Affairs* [2006] EWCA Civ 990, *Nowak v Nursing and Midwifery Council* [2013] EWHC 1932 (QB), *Sartipy v Tigris Industries Inc* [2019] EWCA Civ 225, and *Salam v Secretary of State for the Home Department* [2022] EWCA Civ 1272.

86. The Claimant has made a significant number of totally without merit applications and has demonstrated persistence in doing so.

    (a) In Judicial Review 2

    (i) the application for permission to apply for judicial review; and the application to strike out the Acknowledgement of Service and Summary Grounds of Resistance of the Council; per HHJ Walden-Smith;

    (ii) the application for permission to appeal HHJ Walden-Smith's Order, per Coulson LJ;

    (iii) the application for permission to appeal Lang J's Order regarding costs, per Coulson LJ.

    (b) In Judicial Review 3, the application for permission to apply for judicial review, per Mr Straker.

    (c) Applications (i)-(iv) in the present proceedings.

87. The Claimant's response to these applications is to reargue the merits and submit that the prerequisites are not met, in the course of which he states that he "cannot explain why neither HHJ Walden-Smith and Coulson LJ would appear to have read the papers." The same is said of Mr Straker.

88. Unless the Claimant is restrained from doing so, he will persist in advancing totally without merit claims, since he will not accept the outcome in Judicial Review 1, despite that being reviewed by two Court of Appeal judges. A limited civil restraint order is not appropriate in this case because the Claimant's litigation ranges over multiple claims and applications. There are now proceedings in the Business and Property Court. Consequently, I agree that an ECRO should be made reflecting the applications of both the Council and the Secretary of State.

Conclusion

89. The Claimant's applications (i)-(iv) are dismissed and certified as totally without merit. The Claimant will be subject to an ECRO. I invite counsel to draft suitable orders for my approval reflecting the conclusions of the judgment.

90. Further, as a matter of principle the Claimant must pay the Secretary of State's and Council's costs in relation to Judicial Review 3 and 4, responding to his other applications, and attendance on 10 May 2023. I invite them each to submit consolidated schedules for approval.