Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Case Reference: RPT/0068/02/19.

In the Matter of; 87, Connaught Road, Roath, Cardiff.

In the matter of an application for permission for leave to appeal to the Upper Tribunal.

Applicant/Appellant: Mr Assan Khan

Respondent: Cardiff County Council

Tribunal: Legal Chair- Richard Payne
Expert surveyor member- John Singleton
Lay member- Bill Brereton

DECISION

The application for permission to appeal is refused.

Reasons.

1. By a decision dated 8th December 2020, the tribunal struck out the Applicant's appeal against the conditions of the HMO licence granted to the Applicant by the Respondent in relation to the property at 87, Connaught Road, Roath, Cardiff. By an application signed by the Appellant dated 20th December 2020, and received by the tribunal by e mail on 29th December 2020, the Applicant/Appellant seeks permission to appeal against the tribunal's decision. The Applicant's document was headed "Grounds for Permission to Appeal for Judicial Review", but is a document seeking leave for permission to appeal to the Upper Tribunal. For the purposes of consistency, Mr Khan will be referred to as the Applicant throughout.

2. The tribunal's decision is attached at Appendix One, and the Applicant's application for permission to appeal is attached at Appendix 2.

3. Permission to appeal will be granted if it appears to the tribunal that there are reasonable grounds for concluding that the Residential Property Tribunal ("RPT") may have been wrong for one of the following reasons as set out in the Lands Chamber of the Upper Tribunal Practice Direction 2010 (paragraph 4.2);
    a. That the decision shows that the RPT wrongly interpreted or wrongly applied the relevant law.

b. That the decision shows that the RPT wrongly applied or misinterpreted or disregarded a relevant principle of valuation or other professional practice.
c. That the RPT took account of irrelevant considerations, or failed to take account of relevant considerations or evidence, or there was a substantial procedural defect or
d. The point or points at issue is or are of potentially wide implication.

4. Unless the application for permission specifies otherwise, the application will be treated as an application for an appeal by way of review.

Grounds for appeal.

5. The document headed "Grounds for Permission to Appeal for Judicial Review" runs to 38 pages and 177 numbered paragraphs. The Appellant asserts that "*The court is required under the Judicial Review proceedings to review its amended decision received on 10th of December 2020 one principles like the that [sic] of the Administrative Court."* The Applicant then sets out a number of grounds which he says apply. The Applicant's opening statement is incorrect. This is not an application for permission to appeal for judicial review, but an application for permission to appeal. Paragraph 3 above sets out the approach that this tribunal must take to the application.

6. Paragraphs 4-28 on pages 2-6 of the application for permission to appeal are a subjective description of the background and directions process. There is no ground for appeal within these paragraphs. The Applicant does however repeat matters that were the subject of oral evidence and consideration in the case of numbers 3, 73 and 93 Claude Road ("the Claude Road cases"), the written decision of which was attached as Appendix Three to the decision in this case of 87 Connaught Road that is now subject to this request for permission to appeal. For example, at paragraph 23 of the permission application, the Applicant asserts that the local authority has been the root cause of vexatious behaviour by refusing to disclose and/or misleading the Applicant into believing that it was going to disclose information by no later than 26 June 2019.

7. For information, this is what has been described as the disclosure point in the Claude Road cases and the first instance decision in this case. This is a point that has previously been raised by the Applicant in appeals to the Upper Tribunal in earlier cases. For example, the Applicant sought permission to appeal to the Upper Tribunal in the cases of 94 and 99 Mackintosh Place, Cardiff. The Upper Tribunal refused permission in that case HA/48/2019 and Judge Elizabeth Cooke said at paragraph 3 of her decision dated 3 January 2020 "*the applicant complains about the respondent's failure to disclose information. It is clear from the RPT's refusal of permission to appeal that this is a matter on which the RPT had made a ruling before the final hearing, and that permission to appeal that ruling has been refused. The applicant does not say what are the 2,571 documents that he says could have unravelled the position regarding historic building consent. The RPT took the view, at its paragraph 40, that it is highly unlikely that there is any relevant undisclosed material. The applicant apparently hopes to find material that will undermine the respondent's case, but it is for him to show compliance with building regulations."*

8. Further, in the earlier case of HA/42/2019 relating to 10 Connaught Road and 43 Pen y Wain Road, Cardiff, the Upper Tribunal, Judge Elizabeth Cooke refused permission to appeal in a decision dated 22 October 2019. At paragraph 7 of that decision, Judge Cooke

said "*the ground relating to disclosure is without foundation; the idea that a further 2,571 documents should be disclosed is absurd."*

9. The above two cases related to decisions of the RPT after final hearings. The current application for permission to appeal relates to an appeal against the decision to strike out the Applicant's original application to this tribunal.

10. The Applicant then at paragraphs 29-36 reproduces CPR rule 22.1 (which is not of application in this tribunal) and then reproduces various of the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016 ("the Regulations"). Because of the way in which the application for permission to appeal is presented, it is not a straightforward task to discern the proposed grounds of appeal. However, the tribunal deals with the grounds for appeal and the paragraphs of the permission application sequentially below.

Ground One- Illegality- page 11 of the application.

11. Within this ground the Applicant makes a number of points, including that the tribunal should have issued further directions, and that the Applicant was expecting further disclosure of information, and that the tribunal's decision was wrong in its determination that documents were not posted. The tribunal's decision in this Connaught Road case was that the Applicant had not complied with directions and was behaving vexatiously. The points that the applicant makes at paragraphs 38 – 42 did not amount to grounds of appeal that the tribunal has erred in law and repeats arguments that he has previously made and that have been found against him.

12. In paragraphs 43 – 45 the Applicant alleges that the Respondent has provided material without a statement of truth and that the tribunal have continued to accept this even though it amounts to unfairness. Again, it is worth repeating for the Applicant's benefit, that it is the failures of the Applicant to comply with directions orders, and the Applicants vexatious behaviour that has led to the case being struck out. These points do not disclose arguable grounds for appeal against the decision to strike out the application.

13. In paragraphs 47 – 58 the Applicant persists in raising the disclosure point and seeking to make arguments about the licence conditions. None of these points are relevant to the tribunal's findings upon his failure to comply with directions, and none of these paragraphs contain an arguable ground for appeal. For example, at paragraph 58 the Applicant submits "*that the Local authority has acted vexatiously and are the root cause of any difficulties with the appellant statements by causing irreparable harm by leading him on the mistaken belief that the information was forthcoming."* This is a typical example of the sort of point made by the Applicant. He raises an allegation against the Respondent which has nothing to do with his own conduct and the reasons the case was struck out, and contains grossly exaggerated remarks of no relevance to the application for permission to appeal. The tribunal did not consider the licence conditions and evidence related to the same but was considering the Applicant's failure to comply with directions and his vexatious behaviour.

14. At paragraphs 59 – 61 the Applicant asserts that statements he had submitted were substantial evidence setting out his case and they do not support the view that his applications are vexatious. At paragraphs 62 -70 he again repeats general points and asserts that he had posted statements in accordance with directions. These are matters

upon which the tribunal heard oral evidence in the associated Claude Road cases upon the same points and came to a factual conclusion. The Applicant seems entirely unwilling or unable to accept findings made against him. He simply asserts that the tribunal were wrong without disclosing any arguable grounds for doing so. The Applicant continues to make allegations that the Respondent's documents were not verified by a statement of truth; these allegations are irrelevant to the consideration of the Applicant's own conduct.

15. In paragraphs 71 – 84 the Applicant in essence reproduces the disclosure points and again criticises the statements submitted on behalf of the Respondent. No discernible ground for permission to appeal are contained within these paragraphs.

16. At paragraphs 85 – 92 the Applicant criticises the tribunal for applying various of its own Regulations. At paragraph 87 the Applicant asserts that he has been complying with tribunal orders and awaiting disclosure from the Respondent. The tribunal has found consistently to the contrary. The Applicant, over a number of years and a number of different cases, has been informed (including by the Upper Tribunal) that his disclosure point, and the way in which he has used it is vexatious. There are no grounds of appeal within these paragraphs.

17. At paragraphs 94 – 96 the Applicant complains against the adverse findings made against him in the Claude Road case and says that he should have been given advance notice so that he could call relevant evidence to challenge them. This is a nonsensical point given that it was the Applicant's own contradictory and unreliable oral evidence, as described in the Claude Road decision, upon which the tribunal's findings were made. Paragraphs 77 – 78 of the Claude Road decision detail the reasons for the assessment of the Applicant's credibility. The tribunal could not possibly have known in advance, for example, that the Applicant would give the evidence that he did about 68 Paget Street and that he would contradict himself within the course of that hearing. There is nothing in the current application for permission to appeal which constitutes an arguable ground of appeal in relation to the findings on the Applicant's credibility.

18. Paragraphs 97 – 102 alleged that the Respondent "*has infringed Article 14 of the Human Rights Act 1998 where a public authority treats a person less favourably than others in a similar situation."* Again, the Applicant is seeking to raise as a ground of appeal an extraneous matter which relates to his allegations against the Respondent and formed no part of the considerations upon which the decision to strike out the application was made. There is no arguable ground of appeal in these paragraphs.

19. In paragraphs 103 – 112 the Applicant yet again repeats his points about the Respondent's statements although at paragraph 105 he records that this was something that he raised during the Claude Road hearings (and which therefore has already been dealt with). This is a repetition of his previous points and does not address the findings made against him and there are no grounds of appeal disclosed.

20. In paragraphs 113 – 129, the Applicant addresses matters in relation to the directions order of 8 March 2019 in the Claude Road proceedings. He again criticises the Respondent's conduct of the action and refuses to accept the tribunal's factual findings in relation to his previous failure to serve statements upon the Respondent. In this Connaught Road case, the tribunal set out at paragraph 21 of its decision of 8 December 2020 that the Applicant had failed to serve statements upon the Respondent that he

should have done on 16 April and 30 May 2019 as set out in the Claude Road decision. Further, the Applicant had repeatedly made applications in this case that have already been decided against him. In paragraphs 113 – 129 of the permission to appeal application, other than disputing the tribunal's findings, the Applicant simply rehearses arguments that he has already provided and that have been determined. There are no grounds of appeal within these paragraphs that have any prospect of success.

21. In paragraphs 130 – 137, the Appellant refers to the Respondent's failings and alleges that the tribunal issued defective directions. The appellant for example alleges that the tribunal "*has unfairly punished the appellant for minor infringement at every opportunity but simply ignored its own failing and that of local authority*" (paragraph 135). This is not accepted. At no stage has the Applicant addressed the tribunal's findings that he continued to make vexatious applications upon matters (for example in relation to disclosure and expert evidence) that have been decided against him upon several occasions. The Applicant's criticisms of the Respondent and it's conduct of the litigation do not disclose any grounds for appeal against the tribunal's striking out of the Applicant's case and the tribunal's findings upon the Applicant's failings.

22. At paragraphs 138 – 150 the Applicant further repeats information in relation to his requests for disclosure. These paragraphs disclose no ground for appeal and are irrelevant to the tribunal's findings.

23. At paragraphs 151 – 166, the Applicant alleges that the Respondent has failed to satisfy the evidential burden that the properties are licensable HMO's. The Applicant then refers to an entirely different decision of the RPT in relation to 152 Mackintosh Place, Cardiff, and he argues that the tribunal was in error in certain aspects of its decision in that case. Again, these paragraphs disclose no arguable ground for appeal against the current striking out of the application in relation to 87 Connaught Road.

24. In paragraphs 167 – 174 the Applicant argues (at paragraph 173) that the tribunal was wrong to award costs in regard to the Claude Road cases. That was an entirely different determination in which the Applicant sought permission to appeal from the Upper Tribunal, which was refused. The Upper Tribunal, Judge Elizabeth Cooke, in case number HA/2/2020 dated 24 February 2020 at paragraph 5 said; "*Mr Khan's application for permission to appeal runs to 23 pages. It addresses, in its first 3 pages, the decisions that the RPT did make on 19th of December 2019. The points he makes are challenges to findings of fact about the service of documents, with which the Tribunal will not interfere, and he puts forward unmeritorious allegations about the conduct of an employee of the respondent.* ***He makes no mention of any challenge to the costs order****. The remaining 20 pages are a reproduction, word for word save for a very few short insertions, of his grounds of appeal in relation to 94 and 99 Mackintosh Place, Cardiff, Tribunal reference HA/48/2019. They relate to whether or not the properties were an HMO. The RPT did not address the substantive issue in the current appeal; it did not need to because it struck out Mr Khan's case. Those 20 pages of cut and pasted material are therefore irrelevant. They demonstrate, however, the vexatious nature of Mr Khan's conduct. It is ironic that among his complaints about the respondent are alleged duplication of documents and failure to "signpost" material."* (Our emphasis).

25. Not only therefore does Mr Khan now seek to raise issues that the costs award in the previous Claude Road cases should not have been made, when he failed to advance those arguments previously, but of more importance is the fact that no costs order was

made against him in the current 87, Connaught Road case and there is therefore no costs order to appeal against.

26. At paragraph 175 the Applicant alleges a breach of natural justice by stating that the defendants have failed to allow him to put his case and the defendant failed to give adequate clear reasons for the bad faith determination made. He confuses his terminology and then says there was a duty on the respondents to consider all procedural matters and investigate allegations without misinterpretation of evidence. This tribunal assumes that his reference in this paragraph to defendants and respondents should be a reference to the tribunal itself. The tribunal's reasons for coming to conclusions upon the evidence have been clearly set out in this case and the Claude Road cases. The Applicant's allegations in this paragraph are generalised, unsubstantiated and disclose no grounds of appeal.

27. The final paragraphs 176 – 177 refer to the Applicant wishing to appeal to the Upper Tribunal and High Court but disclose no arguable grounds for appeal.

28. Accordingly, there are no arguable grounds of appeal that have any prospect of success contained within the Appellant's submissions and his application for permission to appeal is refused.

DATED this 6th day of July 2021

Richard Payne

CHAIRMAN

APPENDIX 1

TRIBUNAL DECISION DATED 8TH December 2020

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0068/02/19.

In the Matter of: 87, Connaught Road, Roath, Cardiff.

In the Matter of an Application under Paragraph 31 and 33 of Part 3, Schedule 5 of the Housing Act 2004 regarding conditions of an HMO Licence.

APPLICANT: Mr Assan Khan

RESPONDENT: Cardiff County Council

Tribunal:
Legal Chair: Richard Payne
Surveyor member: John Singleton.
Lay Member: Bill Brereton.

Determined on the papers at The Tribunal Offices, Oak House, Cleppa Park, Newport, NP10 8BD.

DECISION

1. The Applicant's appeal against the conditions in the HMO licence granted to him for number 87 Connaught Road Roath, Cardiff is dismissed under regulations 19 and 41 of the Residential Property Tribunal procedures and Fees (Wales) Regulations 2016.

2. The Applicant and the Respondent are, by no later than 2pm on Monday 21st December 2020, to file by e mail at the tribunal, and serve upon each other by e mail, any further submissions upon the question of whether a costs order should be made against the Applicant.

REASONS FOR DECISION

The Procedural background.

3. By an application form dated 18 February 2019 and received by the tribunal office on 19 February 2019 the Applicant appealed against the conditions of an HMO licence awarded to him by the Respondent on 22 January 2019 in relation to his property at 87 Connaught Road, Roath Cardiff ("the property"). The applicant included seven grounds of appeal in his form as follows;

    1) The property should not be subject to licence
    2) The number of occupants permitted is incorrect
    3) Licence has been poorly drafted, ambiguous and difficult to understand.
    4) There has been no disclose by local authority of information that is necessary for fair trial.

5) Work required unreasonable.
6) The timeframe work unrealistic and short.
7) There has been infringement of Human rights Act.

4. The Applicant did not pay the tribunal application fee in accordance with the regulations and was asked to do so by no later than 5 March 2019. A respondent notice was sent to the Council respondent by letter of 7 March 2019 and the council responded indicating their opposition to the application on 19 March 2019. Directions were given on 27 March 2019 by the tribunal Vice President Trefor Lloyd, which were erroneously headed "Draft Directions Order".

5. Appended to this decision are the following documents;

1) The earlier interlocutory decision in this case dated 15th May 2019 and headed "Directions upon whether the application should be struck out." (Appendix One)
2) The earlier interlocutory decision in this case dated 16th May 2019 and headed "Decision on application dated 7th May 2019." (Appendix Two)
3) A copy of the decision dated 10th of December 2019 in relation to numbers 3, 73 and 93 Claude Road, Roath, Cardiff, ("the Claude Road cases"). (Appendix Three)
4) A copy of the order dated 9th July 2019 in this case. (Appendix Four.)

6. We do not propose to repeat the contents of the documents above which give full information on the background and history of cases between the same parties as well as the current case. The issues that arise in this case largely reflect those in the Claude Road cases which were the subject of a lengthy oral hearing on 3rd July 2019 and a full written decision dated 10th December 2019. As will be noted from the order of 9th July 2019, it was intended originally that this case would be decided at the same time as the Claude Road cases but owing to administrative oversight it was not. It was then intended that the decision for 87, Connaught Road should be determined on the papers and delivered with the Claude Road decisions but unfortunately this was overlooked and did not materialise.

7. The parties had been ordered to provide written representations on the subject of whether the case should be struck out and to indicate by 26th July 2019 if either party required an oral hearing. Rachel Stickler of the Respondent indicated by email of 23rd July 2019 that the Respondent did not require an oral hearing. The Applicant sent the tribunal an email on 17th July 2019 confirming that his application had been served by hand. The Applicant had also provided a statement and application to the tribunal, received and date stamped on 17th July 2019, in accordance with the directions order of 9th July 2019. There was no application in that statement, nor has there been an application from the Applicant in correspondence since, that this matter should be dealt with by an oral hearing.

The law

8. The Residential Property Tribunal Procedures and fees (Wales) Regulations 2016 ("the Regulations") apply. Regulation 19, "Failure to comply with an order to supply information and documents" says as follows;
"Where a party has failed to comply with an order made under regulation 18(1), (2) or (4) the tribunal may-
(a) draw such inferences as it thinks fit: or
(b) make an order dismissing or allowing the whole or part of the application."

Regulation 41 is "Frivolous and vexatious etc applications."

(1) Subject to paragraph (2), where it appears to the tribunal that an application is-

(a) frivolous;
(b) vexatious; or
(c) an abuse of process,
The tribunal may dismiss the application in whole or in part.

(2) Subject to paragraph (6) where it appears to the tribunal that an applicant has failed to comply with a direction issued by the tribunal in connection with the supply or provision, disclosure or inspection of information or documents in connection with attendance at the tribunal, the tribunal may dismiss the application in whole or in part. .....
(5) An application may not be dismissed under paragraph (1) unless- .....
(b)where the applicants makes such a request, the tribunal has heard the applicant and the Respondent or such of them as attend the hearing, on the question of the dismissal of the application.
(6) The tribunal may not dismiss the whole or part of the application under paragraph (2) without first giving the applicant an opportunity to make representations in relation to the proposed dismissal.

9. Paragraph 12 of schedule 13 states;

12(1) a tribunal may determine that a party to proceedings before it is to pay the costs incurred by another party in connection with the proceedings in any circumstances falling within subparagraph (2).

(2) the circumstances are where –
(a) he has failed to comply with an order made by the tribunal;
(b) ..... the tribunal dismisses, or allows, the whole or part of an application or appeal by reason of his failure to comply with a requirement imposed by regulations made by virtue of paragraph 5;
(c) ..... the tribunal dismisses the whole or part of an application or appeal made by him to the tribunal; or,
(d) he has, in the opinion of the tribunal, acted frivolously, vexatiously, abusively, destructively or otherwise unreasonably in connection with the proceedings.
(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph must not exceed –
a. £500.....

Issues and evidence in this case

10. The directions order in this case dated 27th March 2019 required the Applicant to file at the tribunal and serve upon the Respondent, a witness statement containing all relevant information and documentation in support of his appeal by 12 noon on Tuesday 16th April 2019. The Directions order specifically said that "the Applicant is to fully set out his arguments in relation to the 7 separate points that he made at page 5 of his application form." The Applicant sent an e mail to the tribunal on 16th April 2019 at 16:01, which said "Please find attached witness statement and applications to vary directions in relation to 87 Connaught Road. I have sent a copy to the respondents as requested. Yours faithfully Assan Khan." Whilst this statement, dated 15th April 2019, was filed at the tribunal a few hours after the 12-noon deadline, had that been the only issue, then the tribunal is likely to have paid it no heed.

11. The statement and application of 16th April 2019 touch upon the grounds of appeal but did not fully set out the Applicant's arguments in relation to all of them. However, the Applicant did raise issues relating to building regulations and disclosure and sought an

order for an independent joint expert. Please see the decision and directions upon the question of whether the applications should be struck out dated 15 May 2019, at Appendix 1 to this decision which explains why it appeared to the tribunal that the application of 15 April 2019 was frivolous, vexatious or an abuse of the tribunal's process.

12. In short, the application dated 15 April 2019 raised issues related to joint experts and disclosure that had been repeatedly raised previously and determined against the Applicant. It is also worth noting that in the Claude Road cases the Applicant had made an application to vary directions and to disclose information dated 26 March 2019. The substance of the statement/application of 15th April 2019 largely reproduced, in cut and paste format, the contents of the Claude Road cases 26th March 2019 application verbatim, (although it did also include some additional wording).

13. On 9th May 2019 the tribunal received another statement and application to vary the directions order in this case, dated 7th May 2019, from the Applicant. This statement/application also raised the disclosure point and asked that the tribunal disregard the evidence of Miss Stickler for the Respondent. This statement contained much identical information that was cut and pasted from the previous statement of 15th April 2019 and from the Claude Road cases applications.

14. This application of the 7th May 2019 was dealt with in a short decision dated 16th May 2019 and found at Appendix Two to this decision. This decision dated 16th May 2019 refused the applications made by Mr Khan to extend time and referred to the existing decision of the previous day, 15th May 2019 which invited submissions on whether this case should be struck out or not.

15. Subsequently, by an e mail dated 21st May 2019, Mr Khan sent to the tribunal (but not to the Respondent) a document in which he said "Dear Sir/Madam, Please find attached applications for 3, 73, 93 Claude Road and 87 Connaught Road regarding resisting strike out. The copy has been posted to the respondents. Thanks again. Assan Khan." The attachment was a document dated 20th of May 2019 headed "1. Witness statement. 2. Application to resist directions for the strike out." The contents of this statement are referred to and fully considered in the decision in relation to the Claude Road cases at Appendix 3. the tribunal found that it had not in fact been posted to the Respondent as the Applicant claimed.

16. It is noted that in relation to this specific case dealing with 87 Connaught Road, that directions upon whether the applications should be struck out were given in the order and decision dated 15th of May 2019, including that Mr Khan was to have made any representations in relation to the proposed dismissal of his applications, in writing, and a copy served upon the Respondent by no later than 4 PM on Thursday 30th of May 2019. The order specifically said "This order will not have been complied with unless Mr Khan ensures that he serves the respondent with a copy of any relevant representations. Email service upon the Respondent is permitted provided the tribunal are copied into this email."

17. As indicated above, by administrative oversight, when the consideration of the striking out of the Claude Road cases was heard on 3rd July 2019, this 87 Connaught Road case was not explicitly heard and discussed with them. Accordingly, the order of 9th of July 2019, at Appendix 4 was made. This allowed the Applicant until 12 noon on 17th July 2019 to file any further evidence and additional representations "upon the question of whether the application and appeal relating to 87, Connaught Road, should be struck out." In response to that order Mr Khan emailed the tribunal at 06:10 on 17th of July 2019 attaching an application. This application was headed "1. Application to resist directions for strike out and cost", and was dated 16th of July 2019. Mr Khan sent a further email to

the tribunal at 11:46 on 17 July 2019 in which he said that "the application was successfully served by hand on the respondents at 11.15 at City Hall Cardiff."

18. The applicant's statement/application of 16th July 2019 therefore was to have addressed the question of whether the application relating to 87 Connaught Road should be struck out. The statement ran to 23 unnumbered pages with a further four pages of exhibits. Only the last four pages of the statement addressed the question of strike out. The first 19 pages dealt with other matter, such as the disclosure and expert witness issues, whether the properties were licensable as HMO's, a discussion of Service Directive 2006/123/EC, Cardiff Council's licence fee charges, allegations about the Respondent's bundle of documents and allegations of breach of human rights. These matters are of no relevance to the strike out application. The Applicant also made allegations about the conduct of the matter by the Respondent and argued that the Respondent has breached the directions order of 7th May 2019. This argument was made in the same terms as the application that was made in the Claude Road cases and was rejected and dealt with in the Claude Road cases decision of 10th December 2019 (Appendix Three) at paragraphs 80-86. There is no reason for us to depart from our conclusions and findings expressed in those paragraphs and in that decision and we do not do so. The same findings and conclusions in relation to the applicant's argument apply to the same points that he makes in this case relating to 87, Connaught Road.

19. In the pages devoted to resisting the strike out application, the applicant talks of his involvement in another case on 30th April and 1st May 2019 before this tribunal. Those matters do not assist him in this case. The Applicant also cites the Mitchell/Denton principles in the same terms that he did in the Claude Road cases and that are dealt with in the Claude Road decision of 10th December 2019 at paragraphs 87-100. Again, there is nothing in the arguments that the applicant makes in this case of 87 Connaught Road, that are distinguishable from the arguments that he made in the Claude Road cases. There are no grounds for this tribunal to come to a different conclusion than that in the Claude Road cases, namely that he has failed to comply with directions and that he is behaving unreasonably.

20. Ms Stickler for the Respondent filed a statement at the tribunal on 23rd July 2019 at 15:58 in accordance with the directions order of 9th July 2019. Ms Stickler refers to the Applicant's broad subject access requests for disclosure, which he has failed to narrow down despite requests, his hostile attitude to Ms Stickler and his repeated expert evidence requests to the tribunal. She points out that he has repeatedly failed to comply with directions orders of the tribunal and has not served statements on the Respondent as ordered. He has not provided statements of reasons and the lack of sound, specific and reasoned arguments in his statements hinders the Respondent's ability to reply and causes it additional work. Ms Stickler referred to earlier comments of the tribunal in the decision relating to 152 and 154 Mackintosh Place in which it was pointed out that Mr Khan has submitted applications for HMO licences for his properties, and, once licensed, seeks to argue that the properties were not HMO's, rather than challenging that matter in the County Court.

The tribunal's findings

21. As set out in paragraphs 17 and 18 above, the tribunal has no grounds to come to a different conclusion in this case to that reached in the Claude Road cases on the issues referred to. Mr Khan has failed to comply with directions in this case- he has failed to serve statements on the Respondent when ordered to do so, for example the statements that should have been served on 16th April, and 30th May 2019 as set out in the Claude Road cases decision. The applicant has repeatedly made applications in this particular

case that have already been decided against him as can be seen from the contents of the appendices to this decision. We repeat below what we said about unreasonable conduct in paragraph 103 of the Claude Road cases.

22. "Has Mr Khan behaved unreasonably? In Halliard Property Company v Belmont Hall Court and Elm Court LRX/130/2007 HHJ Huskinson sitting in the Lands Tribunal considered the provisions of paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 whose words mirror 2(d) above, and the meaning of the words "otherwise unreasonably". He concluded that they should be construed "ejusdem generis [of the same kind] with the words that have gone before. The words are "frivolously, vexatiously, abusively, disruptively or otherwise unreasonably". The word "otherwise" confirms that for the purposes of paragraph 10, behaviour which was frivolous or vexatious or abusive or disruptive would properly be described as unreasonable behaviour". Further HHJ Huskinson went on to consider the words of Lord Bingham MR on the meaning of "unreasonable" in Ridehalgh v Horsfield [1994] 3 All ER 848. That was a case concerning a wasted costs order but Lord Bingham said that "Unreasonable' also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgement, but it is not unreasonable".

23. Much of the Applicant's conduct in this application/appeal is put in identical terms to those advanced by him in the Claude Road cases. He has not complied with directions as set out above, and he has also behaved unreasonably. His appeal against the HMO licence and the way in which he has pursued it is frivolous and vexatious. He has, within this case relating to the licence at 87 Connaught Road, made frivolous and vexatious applications in relation to disclosure and expert evidence. He has provided the same cut and pasted arguments that he has used in other HMO licence appeals and made no attempt to narrow down and focus his arguments.

24. This tribunal panel also had the opportunity to assess and evaluate the Applicant's evidence in the hearing that took place in July 2019, shortly before the Applicant submitted his last application in this case, and the panel's conclusions about his credibility can be found in the Claude Road cases decision at Appendix Three.

CONCLUSION

25. The Applicant's appeal against the HMO licence conditions for 87, Connaught Road is dismissed. The tribunal are minded to make a costs order in light of the tribunal's conclusion that the Applicant has behaved unreasonably, frivolously and vexatiously. Ms Stickler's statement of 23rd July 2019 at paragraph 18 detailed costs incurred to the total that can be ordered of £500. However, the tribunal does not make the order since the Applicant must be given the opportunity to make any representations in relation to the making of a costs order. Therefore, both parties are to make any representations upon costs as set out in the order at the beginning of this decision.

DATED tis 8th day of December 2020

Richard Payne
CHAIRMAN

APPENDIX 2

APPLICANTS REQUEST TO APPEAL TRIBUNAL DECISION

DATED 8TH DECEMBER 2020

IN THE UPPER TRIBUNAL **Claim No /0068/02/19**
(LAND CHAMBER)

BETWEEN

MR ASSAN KHAN

Appellant

-v-

RPT (PROPERTY CHAMBER) **Respondent**

GROUNDS FOR PERMISSION TO APPEAL FOR JUDICIAL REVIEW.

Factual background

1. The appellant is a litigant in person.

2. This is an application for permission to appeal for Judicial Review in respect of the decision of the Residential Property Tribunal (Property Chamber)

3. The court is required under the Judicial Review proceedings to review its amended decision received on 10th December 2020 on principles like the that of the Administrative Court. The includes a review of the decision to determine if its previous decision have been vitiated grounds of ;

   a) legal misdirection and or misunderstood b
)procedural impropriety,

c) unfairness,

d) bias or bad faith,

e) irrationality,

f) decision was plainly untenable or been ignorant of established and relevant fact / illegality.

4. This amended decision of 10 December 2020 refers to matters in the current appeals for Judicial Review relating issues affecting the licencing of houses in multiple occupation according to the Housing Act 2004 for three properties being 3 Claude Road, 73 Claude Road and 93 Claude Road. A decision is still pending in this regard.

5. The appeal relating to the property 87 Connuaght Road, the tribunal struck out the Appellant appeal on 8th December 2020 amended on 10 December 2020 without a hearing. A copy of this decision is enclosed. It is this decision that is subject to permission for appeal that the appellant seeks for determination.

6. The Appellant lodged his application to on 18 February 2019 with RPT.

7. The tribunal issued directions order of the 27 March 2019 headed "DRAFT DIRECTIONS ORDER" which required the applicant and the respondent to submit their witness statements and statement of case VERIFED BY STATEMENT OF TURTH.

8. The order stated the Applicant is to file at Tribunal a witness statement on 16 April 2019 under paragraph 1 and liberty to submit a further witness statement under paragraph 4 on 7 May 2019 **VERIFIED BY A STATEMENT OF TRUTH**.

9. Further the Respondents to file a STATEMENT OF CASE no later than 30 April 2019. The respondent to file a **STATEMENT OF CASE** and or any witness statement in support **VERIFIED BY A STATEMENT OF TRUTH**, containing all other relevant information, evidence, and documents that the respondents wishes the tribunal to take into account

10. The property 87 Connaught Road was purchased by the applicant on 5th November 2014. The applicant does not have the historic building regulations certificate and requested relevant evidence of its conversion from the local authority regarding this important matter in issue. The use of subject access request was made to obtain this information which was a live matter in these proceedings regarding listenability.

11. The applicant complied by posting witness statement on 15 April 2019 and through email on 16 April 2019. The WITNESS STATEMENT WAS SIGNED AND VERIFED BY STATEMENT OF TRUTH. The applicant witness statement also requested that the respondents has failed to disclose and provide him with disclosure of building regulations and planning information relating to the above property which is subject to this appeal which he requires to make his case.

12. The applicant also stated in statement that the tribunal order appears to be headed "**Draft directions order dated 27 March 2019."** And further instructions be directed on how to proceed with the proposed draft directions order for consideration by tribunal. The applicant statement that he is available for hearing after 20 June 2019 and that the tribunal should list after this date.

13. The tribunal directions order of 27 March 2019 headed "DRAFT DIRECTIONS ORDER" required RESPONDENTS to submit his witness statement by 30 April 20219 verified by STATEMENT OF TRUTH.

14. The Appellant then provided a further statement in compliance with paragraph 4 in the above directions on 7 May 2019 as required by the tribunal order.

15. **The tribunal then issued new directions order dated 15 May 2019 setting out that the Appellants application should be struck out under regulation 19 for failure to comply with the tribunal order. The tribunal order required compliance by the appellant by Thursday 30 May 2019 at 4PM.**

16. The appellant complied by this on 21 May 2019 by emailing the tribunal and posting a copies to the respondent using first class post.

17. The tribunal states that due to administrative oversight most probably as a result of the tribunal's reorganisation and recent move, no hearing notice was sent out and therefore this 87 Connuaght Road case was not linked to the Claude road cases as it should have been.

18. Therefore, it is ordered that on 9 July 2019 ;

a) The Applicant is to file at the tribunal and to serve upon the Respondent by no later than 12 noon on Wednesday 17th July 2019, any additional representations, submissions and evidence (verified with a statement of truth) upon the question of whether the application and appeal relating to 87 Connaught Road, should be struck out. The Applicant is to prove service of such documentation by e mail or first class post and is to personally check with the Respondent that such documentation has been received. It is the responsibility of the applicant to serve documents upon the Respondent not that of the tribunal. Service by e mail is acceptable provided the tribunal are copied in.

b) The Respondent is to file at the tribunal and serve on the Applicant any statement and submissions in response (verified by a statement of truth)on the question of whether the case should be struck out by 12 noon on Wednesday 24th July 2019. Service by e mail is acceptable providing the tribunal is copied in.

19. The appellant submits his witness evidence VERIFIED BY STATEMENT OF TRUTH on 17 July 2019 at 06.10 hours.

20. On 23 July 20219 the respondent has continued to pursue this strategy that it has special status can submit all evidence which the Residential Property Tribunal will consider without VERFIED STATEMENT OF TRUTH.

21. The tribunal then issued amended directions order dated 16 May 2019 setting out that the Appellants further witness statement of 7 May 2019 as required by the original tribunal order of 27 March 2019.

22. The tribunal was wrong to considers the matters set out in that witness statement as irrelevant. It was common knowledge between the parties that Vale of Glamorgan was providing shared regulatory services and responsible for the disclosure of planning and building regulation information in respect of 87 Connuaght Road.

23. The appellant had previously provided the tribunal the application setting out the disclosure for the building regulations and planning. It was the local authority that was the ROOT cause of vexatious behaviour by refusing to disclose and in the alternative misleading the appellant into believing that it was going to disclose this information no later than 26 June 2019.

24. The tribunal order of 27 March 2019 allowed the Appellant liberty to respond which he did so on what information he had at that moment on 7 May 2019. The information regarding building regulations and planning was initially going to be provided by the local authority on 25 April 2019 and then was extended to 26 June 2019. It is the local authority that has caused unnecessary delay to the proceedings as the Appellant was acting in GOOD FAITH expecting to receive the information. At all material times the tribunal was not prepared to assist him with this historic information regarding building regulations and planning. The only option was to complain to the information commissioner.

25. The tribunal persistently ignored its own procedural failings and those of the respondents and continued to press on and pursue unfairness to the appellant without understanding his case.

26. The respondents provided its evidence without compliance with the directions order and without a VERIFED STATEMENT OF TRUTH for its STATEMENT OF CASE and witness statements. This is serious irregularity that prevents the tribunal from considering the evidence provided.

27. Further it causes irreparable harm and prejudice as proceedings for contempt of court against the party cannot be made should those matters later appear dishonest / untruthful / false. The tribunal has errored by accepting and even considering the evidence which amounts to procedural impropriety ground.

28. The tribunal proceedings were rushed at strike out hearing for Claude Road cases and irrelevant matters were considered and addressed. Material issues regarding the ROOT CAUSE and failings of the Local authority to comply with tribunal orders which required determination were simply ignored, disregarded as matters that were irrelevant causing unfairness to the Appellant in these proceedings.

Legal Framework

29. The respondents produced a bundle of documents WHICH WERE NOT VERIFED BY STATEMENT OF TRUTH as required by Tribunal.

30. CPR 22.1 the following documents MUST BE VERIFIED BY STATEMENT OF TRUTH –
a) STATEMENT OF CASE
c) WITNESS STATEMENT

i) APPLICATION NOTICE.

CPR 22.2 Failure to verify a STATEMENT OF CASE

(1) if a party fails to verify his statement of case by STATEMENT OF TRUTH
(a) The statement of case shall remain effective unless struck out; but **(b) the party may not rely on the statement of case as evidence of any matters set out in it.**

31. The incorrect application of The Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016 regarding non-compliance with tribunal orders.

32. The Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016

PARAGRAPH 17, SUPPLY OF DOCUMENTS BY TRIBUNAL

17.—(1) BEFORE DETERMINING AN APPLICATION, THE TRIBUNAL MUST TAKE ALL REASONABLE STEPS TO ENSURE THAT EACH OF THE PARTIES IS SUPPLIED WITH—

(a) a copy of any document relevant to the proceedings (or sufficient extracts from or particulars of the document) which has been received from any other party or from an interested person (other than a document already in that party's possession or one of which that party has previously been supplied with a copy); and

(b) a copy of any document which embodies the results of any relevant enquiries made by or for the tribunal for the purposes of the proceedings.

(2) At a hearing, if a party has not previously received a relevant document or a copy of, or sufficient extracts from or particulars of, a relevant document, then unless—

(a) that person consents to the continuation of the hearing; or

(b) the tribunal considers that that person has a sufficient opportunity to deal with the matters to which the document relates without an adjournment of the hearing,

the tribunal must adjourn the hearing for a period which it considers will give that person sufficient opportunity to deal with those matters.

33. PARAGRAPH 18 SUPPLY OF INFORMATION AND DOCUMENTS BY PARTIES

18.—(1) Subject to paragraph (5), the tribunal may make an order requiring a party to supply to the tribunal any information or document which it is in the power of that party to supply and which is specified, or is of a description specified, in the order.

(2) The tribunal may make an order requiring a party to supply to another party, or to an interested person, copies of any documents supplied or to be supplied to the tribunal under paragraph (1).

(3) A party who is subject to an order made under paragraph (1) or (2) must supply such information, documents or copies by such time as may be specified in, or determined in accordance with, the order.

(4) Subject to paragraph (5) the tribunal may make an order requiring any person to attend an oral hearing to give evidence and produce any documents specified, or of a description specified, in the order which it is in the power of that person to produce.

(5) Paragraphs (1) and (4) do not apply in relation to any document which a person could not be compelled to produce on the trial of an action in a court of law in England and Wales.

(6) A single qualified member of the panel may make an order under paragraph (1), (2) or (4) which is—(a)preliminary to an oral hearing; or

(b)preliminary or incidental to a determination.

34. PARAGRAPH 19 FAILURE TO COMPLY WITH AN ORDER TO SUPPLY INFORMATION AND DOCUMENTS

19. Where a party has failed to comply with an order made under regulation 18(1), (2) or (4) the tribunal may—

(a) draw such inferences as it thinks fit; or

(b) make an order dismissing or allowing the whole or part of the application.

35. PARAGRAPH 39 REQUIREMENTS FOR SUPPLY OF NOTICES AND DOCUMENTS

39.—(1) Any document or notice required or authorised by these Regulations to be supplied to any person, body or authority is deemed to have been duly supplied to that person, body or authority—

(a) if it is sent to the proper address of that person, body or authority by first class post or by special delivery or recorded delivery;

(b) if it is delivered by any other means to the proper address of that person, body or authority;

(c) if with the written consent of the person, body or authority, it is sent to that person, body or authority—

(i) by fax, email or other electronic communication which produces a text received in legible form; or

(ii) by a private document delivery service.

36. PARAGRAPH 41 FRIVOLOUS AND VEXATIOUS ETC. APPLICATIONS

41.—(1) Subject to paragraph (2), where it appears to the tribunal that an application is—

(a)frivolous;

(b)vexatious; or

(c)an abuse of process,

the tribunal may dismiss the application in whole or in part.

(2) Subject to paragraph (6) where it appears to the tribunal that an applicant has failed to comply with a direction issued by the tribunal in connection with the supply or provision, disclosure or inspection of information or documents in connection with attendance at the tribunal, the tribunal may dismiss the application in whole or in part.

(3) Before dismissing an application under paragraph (1) the tribunal must give notice of its intention to do so to the applicant in accordance with paragraph (4).

(4) Any notice under paragraph (3) must state—

(a) that the tribunal is minded to dismiss the application;

(b) the grounds on which it is minded to dismiss the application;

(c) that the applicant is entitled to be heard by the tribunal on the question of whether the application should be dismissed, and

(d) the latest date by which the applicant may request to be heard by the tribunal, being not less than 14 days after the date that the notice was sent.

(5) An application may not be dismissed under paragraph (1) unless—

(a) the applicant makes no request to the tribunal before the date mentioned in paragraph (4)(c); or

(b) where the applicant makes such a request, the tribunal has heard the applicant and the respondent, or such of them as attend the hearing, on the question of the dismissal of the application.

(6) The tribunal may not dismiss the whole or part of the application under paragraph (2) without first giving the applicant an opportunity to make representations in relation to the proposed dismissal.

(7) If the application, or part of it, is dismissed under paragraph (2), the applicant may apply for the application, or part of it, to be reinstated.

37. <u>PRESUMPTION OF LAW on POSTING DOCUMENTS in the Ordinary Course of post, being DEEMED AS SERVED AND DELIVERED TO THE ADDRESSEE.</u>

a) The presumption in law regarding posting of document states, "that a document is deemed served when it its prepaid, **by sending the document in the post to him at that address which the letter would be delivered in the ordinary course of posting,*" s*7 Interpretation Act 1978.**

b) **In *Walthamstow UDC v Henwood the presumption that a notice has been received is not a presumption of fact but is an ESTABLISHED PRESUMPTION of LAW, whether in fact the notice was RECEIVED OR NOT by the addressee.***

c) ***The prepaying of required stamps and then posting of the letter by first class postage are steps required to rely on the presumption of law regarding posting of letters/ documents which are deemed delivered and served irrespective if the letter is later NEVER received by the addressee.***

Grounds of appeal

A. Illegality

Tribunals defective DRAFT directions order of 27 March 2019

38. The tribunal issued DRAFT directions on 27 March 2019 which has resulted in confusion and should have allowed the claimant further time to provide evidence and further statement. The tribunal has not accepted its own procedural errors and consequently unfairly ignored those error which has resulted in hardship on the claimant.

39. The tribunal has misdirected its own decision in that it has contributed to any confusion. In effect a new draft order should have been issued to allow the Claimant to deal with any matters of defect as required instead of adopting and unfair approach against the appellant.

40. The appellant prepared the witness statement of 15 April 2019 on the information that he had available at that time. He was expecting further disclosure of information regarding Building Regulations and Planning from the Local authority. The above information was verified by statement of truth as required by the tribunal order. The appellant confirmed that a copy was sent by post to the Local Authority.

41. It is the Tribunals decision that its flawed on this part by determining that given that the document did not arrive on Ms Sticklers desk. The letter must not have been posted by Mr Khan which amounts to error of established fact. The tribunal was misconceived on the presumption of law that a document is deemed served and received when it is posted during delivery to an addressee even when it is not received by the recipient. The presumption of non-delivery is established law and the tribunal were wrong and misconceived in accepting Ms Stickler statement that it must be correct as the letter did not arrive.

42. Further Ms Stickler made these same allegations in other proceedings where the court determined that the missing documents had in fact been received.

43. The LOCAL AUTHORITY was required to file STATEMENT OF CASE and or any witness statement in support **VERIFED BY A STATEMENT OF TRUTH**, containing all other relevant information, evidence that the respondents wishes the tribunal to take into account by 30 April 2019.

44. The local authority throughout the proceedings has continued to present STATEMENT OF CASE AND APPLICATIONS without a **VERIFED STATEMENT OF TRUTH.** The tribunal has continued to accept this even though it amounts to procedural irregularity and causes unfairness. It is more the case that this culture is being adopted by the local authority to provide protection for contempt of court proceedings should any of the matters stated in the **STATEMENT OF CASE AND OR APPLICATION BE UNTRUTHFUL/ DISHONEST/ FALSE in the proceedings.**

45. At the hearing of 3 Claude road this failure to provide a STATEMENT OF CASE VERFIED BY STATEMENT OF TRUTH WAS RAISED BY MR KHAN BUT THE TRUBUNAL STATED THAT IT AMOUNTS TO VEXIOUS BEHAVIOUR. The tribunal were misconceived of established fact and this amounts to procedural impropriety and all the evidence presented by the local authority would be deemed inadmissible as set out in part CPR 22.2. The tribunal are wrong in law to disregard the seriousness of this fact and the decision is therefore irrational.

46. Further by allowing the Local Authority to use the evidence in the statement of case in these proceedings that was not VERFIED BY STATEMENT OF TRUTH that was prepared on 30 April 2019 has caused prejudice to the Appellant in these proceedings as this evidence was deemed inadmissible. It was clearly stated on the tribunal order and is contrary to CPR part 22.2.

47. In compliance with the above order, the Appellant then provided a further witness statement on 7 May 2019. He set out that building regulation is material issue in this case that requires determination by joint expert given that Ms Stickler for the Local Authority is not qualified building surveyor and or chartered surveyor.

48. Further, in this witness statement the appellant has stated this building regulation information disclosure, which was required to be complied with by local authority on 25 April 2019. However, the local authority is now applying its powers to extend disclosure and its anticipated to be made available on 26 June 2019. An indication that the Local authority was on going to provide this further information for the appellant which became a legitimate expectation when it confirmed that it required a further three months to do so.

49. Mr Khan also provides further details how the respondents have limited the number of respondents incorrectly given that the property is adequate to provide additional occupants without causing overcrowding.

50. Further the local authority has stated that only three persons are permitted in first floor flat when it is adequate for persons. Furthermore, the second-floor flat is adequate to provide three persons from two households rather than only two persons permitted from one household by respondents. The appellant required the number of occupants and household requirement to be flexible on the licence conditions to allow and enable the flats to be rented to more than one household. This would ensure that when there is reduce demand for two bedroom flats the landlord has the flexibility so he can let it out two students rather than one household. The landlord was waiting for the disclosure of information to support his submissions further with the historic occupation of the building which he was replying on the Local Authority to provide.

51. The statement states the licence is poorly drafted provided no justification for reaching the desired outcomes. At times it is ambiguous and difficult to follow and understand. The licence conditions referred to fire alarm being installed when in fact they were an operative fire alarm that was working during the inspection of the licence and continued to.

52. The details of the works are difficult to determine from the document as the schedule contradicts what is required. The works requested are not reasonably required and no justification or relevant evidence has been provided on its requirement. For example, the trucking is likely to collapse. The licence refers to securing the trunking from premature collapse in the event of fire without any evidence on its reasonableness or how this has been determined by the Local authority.

53. Further, the electrical contractor has deemed the electric installation satisfactory for five years. This includes the trunking, whilst it is Ms Stickler unfounded onionin without the appropriate evidence and electrical qualifications that there is serious risk of collapse and requires unnecessary work. This further supports my case that the licence is badly drafted as the licence has been cut and pasted from other properties which Ms Stickler has visited without the necessary evidence to support its finding to the said property.

54. The works required to the property are onerous, inappropriate, and not reasonably required to the property. They are disproportionate and the respondent has failed to provide acceptable evidence and justification for the required works. The respondents appear to provide irrelevant provisions and make it applicable to my property. Instead, generic information and guidelines have been thrown without any relevance to the size and low risk of my property.

55. The statement also referred to the fact that the time frame in which the works requested are unreasonable, unrealistic, and short. The tribunal will require to determine the time scale in relation to works after the relevant determination has been made. *The appellant disagrees with the local authority assessment. The local authority has provided a list of works in what looks like a laid out and confusing schedule of document which appear onerous, not reasonable required and at best unrealistic to achieve in the time scale.*

56. The appellant continued to provide the witness evidence that he had available to the best of his knowledge as of 7 May 2019 and continued to comply with the tribunal directions of 27 March 2019.

57. In Summary the appellant had set out his case as best he could give that he was inadvertently being misled by the Local Authority that it was in the process of releasing the relevant historic building regulations and planning evidence in its possession and control that would determine if the property is required to be licence.

58. The appellants submit that the Local authority has acted vexatiously and are the root cause of any difficulties with the appellants statements by causing irreparable harm by leading him on the mistaken belief that the information was forthcoming. There became a legitimate expectation which has caused injustice by not later providing.

Tribunals defective directions order of 15 May 2019 in respect of 87 Connaught Road & Tribunals Direction of earlier case 3 Claude Road.

59. The tribunal required the appellant to comply with the above directions order by 30 May 2019 regarding to 87 Connuaght Road setting out the relevant submissions resisting strike out.

60. The appellant had already submitted his further statement on 7 May 2019 which set out the building regulations and planning documents he required in relation to determination of whether the properties meet those building regulations.

61. The tribunal approach has led to procedural unfairness in that it had received the 15 April 2019 and further statement on 7 May 2019 regarding the issues in the case. The tribunal unfairly segregated both statement as independent decisions when in fact by doing so it has caused prejudicial effect and unfairness on the appellant. Taken as a combined whole, the statement is substantial evidence that sets out the appellant's case in both documents and does not support the view his applications are vexatious.

62. Further the local authority was required to comply with the directions order of 27 March 2019 by 30 April 2019. There statement of case was not verified by statement of truth. The tribunal continued to ignore those serious procedural impropriety causing further prejudicial harm to the appellant's case.

63. The tribunal have also errored on established and relevant fact by stating in the amended decision of 10 December 2020 that the tribunal found that the appellant had not in fact been posted to the Respondents as the Applicant claimed in paragraph 15 of its decision of 8 December 2020. As stated previously, there is presumption in law that a document is deemed served when it is addressed, prepaid and posted in a letter in the ordinary course of posting. This involves merely posting a document in the post according to the leading authority Walhamstow UDC.v. Henwood and R V Westminsiter Unions Assessment Committee, ex p Woodwards in this area of deemed service of letters in ordinary course of posting.

64. The tribunal had errored on law by being misconceived of established and relevant fact of this presumption of law that a document is deemed serviced in accordance with the above, irrespective of the fact the document did not arrive on Ms Stickler's desk. In a previous case, documents were sent to the Local authority, but Ms Stickler alleged they had not been received but the magistrate's court were able to determine the misleading statements that were made in this regard by Ms Stickler. This approach is more of cloaking technique that is used by the local authority undermining the appellant's case .

65. Further, the Local authority has adopted a policy of ignoring a STATEMENT OF CASE TO BE VERFIED BY STATEMENT OF TRUTH. As result, no proceedings for contempt of court can be pursued through this safeguard causing further prejudice to the appellant .

66. Furthermore, the Appellant submitted his statement within 10 days prior to the deadline in the case of 87 Connuaght road and the Local authority did not contact Mr Khan to request a further copy.

67. Further it was the local authority administration that is at fault as it did not comply with its direction order of 31 May 2019 in respect of another case being 3 Claude Road. The appellant had also complied with that order before the deadline.

68. All the documents were posted to the local authority and it was fully aware that information in respect of 3 Claude road for compliance by the appellant had been done. The administration had errored as Ms Stickler was on holiday and the work was not allocated elsewhere to another member of staff to deal with those matters.

69. It was more the case that the local authority case handler had come back from her holiday during 6 May 2019 to 28 May 2018 and then discovered and realised that the deadline had expired. The email that was sent is clearly very confusing given it has different properties being 10 Connuaght Road and 43 Pen Y wain road as subject matters. No care was taken to assist the receiver in understanding the matter and what was required for which property.

70. The appellant relies on established presumption of law regarding delivery of documents when a letter is posted in the ordinary course of delivery. The tribunal has further misconceived and determined that Mr Khan had not posted the letter to the respondents in paragraph 15 of the tribunal decision of 10 December 2020.

Tribunals directions order of 9 July 2019

71. The appellant submitted his Witness statement and the evidence he wishes to reply on as required by the tribunal order of 17 July 2019 at 06 10 hours.

72. The local authority has filed their statement of case by email to the parties and tribunal on 23 July 2019 at 15.58 according to paragraph 20 of the tribunal decision of 10 December 2020.

73. **The tribunal has once again unfairly stated that "Ms Stickler for the respondents filed a statement at the tribunal on 23 July 2019 in accordance with the directions order of 9 July 2019 in paragraph 20, page 6 of the**

amended decision of 8 December 2020. It is apparent that the tribunal are being irrational treating the appellant unfairly in these proceedings when it is so obvious that the statement provided by Ms Stickler is not VERIFIED BY A STATEMENT OF TRUTH as required by the order. No mention is made of this significant and prejudicial unfairness this has on these proceedings. Instead, the tribunal have continued to ignore and allow the Local authority special status.

74. Further it is the appellant case that in paragraph 7 of the statement of case emailed on 23 July 2019 Ms Stickler states "The information Governance Department has made a decision to refuse to provide the information based on the volume of work and the amount of time it will take to PREPARE THE REQUEST information. I understand they ACTED LAWFULLY UNDER GDPR. Where requests from a data subject are manifestly unfounded or excessive, the **controller may refuse to act on the request**. Paragraph 9, states "I would argue that this is a further demonstration of the Appellants vexatious nature."

75. It was the appellants case that local authority has gathered the information and it is irrational that they are now refusing to disclose. This is stated in my emails of 26 June 2019 at 11.54.

76. Further the words in the GDPR guidance state "the controller may refuse to act on the request." The word "may" is a verb that indicates permissive language not compulsion. It cannot be used to construe precluding in any form of service to act which is what Ms Stickler misunderstood and informed the tribunal.

77. Further the Information Commissioner agreed with my own interpretation that the Local authority has acted unlawfully by failing to disclose the relevant documents which it has CLEARLY CONFIRMED HAD IN ITS POSSESSTION but refused to disclose as it was using the exemption of "May" as compulsion to refuse disclosure incorrectly.

78. The statement states in paragraph 9 that the request for information supports the vexatious nature.

79. Unfortunately given that Ms Stickler did not VERIFY THE STATEMENT OF CASE BY STATEMENT OF TRUTH the applicant is unable to bring proceedings for any dishonest, false, untruth content in the statement of 23 July 2019.

80. The tribunal are also at fault for permitting Ms Stickler to present evidence and a statement of case in legal proceedings which has not been VERFIED BY STATEMENT OF TRUTH without the appropriate sanctions.

81. Further in paragraph 20, page 6 of the tribunal decision of 8 December the Tribunal has consider the evidence provided in the statement of case dated 23 July 2019. CPR 22.2 provides that a party may not rely on the statement of case of any matters set out in it. The fact that the tribunal has permitted this amount to procedural impropriety which has caused prejudicial effect in the proceedings.

82. The tribunal have errored by determining that the appellants behaviour amounts to vexatious rather than local authority, by considering inadmissible evidence that was not verified by a statement of truth causing prejudicial unfairness on the proceedings.

83. The tribunal states that due to administrative oversight most probably as a result of the tribunal's reorganisation and recent move, no hearing notice was sent out and therefore this 87 Connuaght Road case was not linked to the Claude road cases as it should have been. Throughout these proceedings the Tribunal has errored in its proceedings. The decision was delay by almost 18 months without any scope for understanding why further submission in regard to the matter were not permitted.

84. The Local authority on 20 December 2020 decided not to pursue costs because it became aware that its statement of case was not verified by statement of truth as required by the tribunal order 9 July 2019.

The tribunal were misconceived in using regulation 17, 18, 19, 39, 41 in determining vexatious applications in its findings

85. The appellant provided a statement on 15 April 2019 and further statement on 7 May 2019 setting out what the issues are in these proceedings. Details of matters of further disclosure he is waiting from the respondents to assist him with historic building regulations and planning which is material live issue in the proceedings.

86. It was appellants statements of 30 April 2019 and 23 July 2019 that were defective as they did not have a VERFIED STATEMENT OF TRUTH making the evidence inadmissible. Further in the alterative, if the statements of the appellants were inadequate, the tribunal or the respondents also failed to request further and better particulars from the appellant regarding his statements. The appellant provided his statement based on what he had available at that time and was inadvertently informed by the respondents that the information will arrive before 25 April 2019. This was later extended to 25 June 2019 and deemed unlawfully. I have attached the relevant correspondence confirming this from the information commissioners finding against the local authority.

87. The approach adopted by tribunal for STRIKE OUT is draconian given that the appellant has complied with the tribunal orders and his behaviour does not amount to vexatious on his part. He has been complying with the tribunal ORDERS and waiting for his disclosure reply from the respondents regarding historic planning and building regulations which was a material issue regarding licensing of the said property.

88. Regulation 19 states that failure to comply with an order to supply information and documents made under regulation 18(1), (2) and (4) the tribunal may make an order dismissing the application. Regulation 18(1) states that a tribunal may make an order requiring a party to supply to the tribunal any information which is in the power of that party to supply and which is specified or is of a description specified in the order.

89. **In fact, there has never been a specific order made by the tribunal regarding the supply of information and documents by parties.** Therefore, the tribunal are further misconceived and acted beyond their powers and jurisdiction by issuing strike out proceedings under regulation 19. **The limbs of paragraph 18 have not been satisfied**.

90. The appellant has not failed to comply with order under regulation 18(1)-(2)-(4) as such order has not been made. **Regulation 18 requires a specific disclosure request which sets out the required documents that a party must supply and be produced which has not happened.** Further, the evidence regarding building regulations and planning was held by the Local authority and not in Mr Khan's possession. There was nothing further he could add to the proceedings as he was waiting for relevant disclosure from the local authority to provide this evidence.

91. The tribunal have eroded by relying on these provisions when in fact they only apply to circumstances where there has been an infringement of specific disclosure order previously made**.** It is for this reasons that the Judicial review proceedings will succeed at a substantive hearing.

92. Further according to regulations 39 the requirement for supply of notices and documents is deemed duly served and supplied provided it is sent to the proper address by first class post. The tribunal errored by stating that the appellant failed to do so in its flawed decision in paragraph 15 of the decision dated 8 December 2020.

93. Further, the tribunal considered and provided weight to several irrelevant matters which resulted in confusion and meant material issues could not be address at the hearing in Claude road case.

94. Appellant contends the tribunal also erred in law by substituting its own view for the respondents. Fairness demands that parties are given a full opportunity to be heard on any issue in a case which is relevant consideration in the case. The tribunal made adverse findings that relate to the appellants credit and honesty including a finding of bad faith and being vexatious in the Claude road case.

95. The Tribunal also failed to put these matters before the appellant in advance so that he can call relevant evidence to challenge them. These failing amount to procedural irregularity having deprived the appellant notice and a right to put his case on the matter adequately to ensure natural justice. It made an adverse finding of bad faith /vexatious against the appellant, without putting in advance clear terms that his conduct was to be relevant in the dispute and allow the appellant sufficient opportunity to address those concerns in evidence.

96. Therefore, by depriving the appellant to call relevant evidence rebutting the findings of bad faith which ultimately the tribunal made. Had these allegations been raised at early stage, the appellant could have dealt with them by providing the relevant evidence and avoiding the serious consequences which flowed from its flawed finding.

Article 14 Breaches of Discrimination:

97. There is evidence that the Respondent has infringed Article 14 of the Human Rights Act 1998 where a public authority treats a person less favourably than others in similar situation.

98. The local authority has continued to treat individuals from ethnic minorities less favourably than others. On several occasions I have called public sector housing department to clarify queries but during my conversation I am treated with disrespect, in a rude like manner, arrogance as well as aggressive tone towards me and fail to assist me with my enquiry.

99. I have attached a copy of the letter hereto providing evidence how Mr Lee Reynolds manager of the Licensing team treated me regarding a simply query regarding my licensing applications. Had I not recorded the conversation earlier my claim would have been dismissed. Mr Lee Reynolds works alongside Ms Stickler in the HMO authorisation scheme.

100. In Magistrates Court, Ms Stickler brought 42 unnecessary charges which were deemed unlawful and 38 were thrown out by the magistrate's court. The magistrates were extremely critical of Ms Stickler unlawful approach that I did not deliver documents when in fact the licensing team had acknowledge safe receipt. There was clear evidence of breakdown of communication within the council. Further the magistrates were critical of the respondent failing to disclose relevant evidence relating to the proceedings. The claim for £3,045 of prosecution costs was also dismissed and only restricted to £400. A copy of the email is attached.

101. It is unfair that a large organisation like Cardiff Council can continue this prejudice and discriminatory practice against ethnic minorities. It is the respondents that have behaved in vexatious way and simply masking their obstructive behaviour by withholding relevant documents to undermine my case. The Information commissioner confirmed that the Local authority refusing to disclose the documents was unlawful. A copy is attached.

102. The tribunal is wrong by stating that I could have discuss these issues when I received the draft licence conditions. There is only a short 14 day's window which includes the service of documents and I am afraid I received the licences after the review window had lapsed. The tribunal has errored in fact and law by stating that I failed to review the licence conditions given that the window of review is short and already closed. Further the local authority has not considered my previous concerns adequately in other matters and pressed on with issued licences prior to the consultation period expiring.

Summary of issues

103. The documents provide by the Appellant was VERIFIED BY STATEMENT OF TRUTH and complied with the tribunal orders. The First statement was provided on 15 April 2019 and the second statement 7 May 2019. The appellant did not have further evidence as the respondents requested an extension to release the information regarding building regulations and planning on 25 April 2019 but later extended this to 25 June 2019. The statement was

sufficient as the information regarding planning and building regulations had not been disclosed at that time from the respondents. Surely such behaviour cannot be deemed as vexatious.

104. The matters set out in the respondent's documents were issued without BEING VERIFED BY STATEMENT OF TRUTH but were relied upon by the respondents in the proceedings. However, CPR 22.2 state a party may not rely on the statement of case, witness evidence as evidence of any matters set out in it.

105. This was raised by the appellant during the Claud Road hearing, but the tribunal was unimpressed by the applicant's issue about procedural failing by the respondents. This reliance on evidence has caused prejudicial effect on the part of the appellant and without sanctioning and considering the defects amounts to unfairness.

106. The incorrect evidence of Ms Stickler on 23 July 2019 allege that the non-disclosure was lawfully even when in fact it was determined as unlawful by the information commissioner.

107. The fact that Ms Sticklers statement of 30 April 2019 and 23 July 2019 have not been VERFIED BY STATEMENT OF TRUTH which is contrary to the tribunal orders however providers her safeguards from any contempt of court proceedings in these matters where the statements were untruthful, dishonest, false or misleading in part.

108. In summary, these failings to VERIFY A STATEMENT OF TRUTH and non-compliance amounts to a FATAL FLAW. The Local Authority defective statement of case consists of a procedural impropriety that allows a strong ground for any Judicial Review proceedings given the matters have been relied on in the proceedings by the respondents.

109. The respondent in these proceedings, simply produced a bundle of photocopied information and documents **without leading the Tribunal or the Appellant (who happens to be a litigant in person),** to the relevant passages in the evidence on the papers submitted before the substantive hearing at the Claude road hearing. The same recycled and cut and paste

photocopy bundle was used again on 30 April 2019 in the 87 Connuaght Road hearing.

110. This approach adopted by respondents is not only unjust and prejudice, but also fails its principal purpose to narrow down the issues before the substantive hearing. It is the respondent's documents without a verified statement of truth and compliance with the tribunal orders that are seriously been defective and require the appropriate sanction to avoid irreparable harm to the appellant. The appellant is at lost how the tribunal could conclude in their recent decision in paragraph 20 that the local authority complied with the tribunal order.

111. The respondents had made submissions in matters and none of these points had been pleaded earlier. The appellant was not put-on notice of the various allegations that were to be made and throwing allegations around in closing submissions is not sound and amounts to unfairness and bias. By not allowing the appellant to answer and prepare his case against any of the allegations, this failure amounts to procedural irregularity and ultimately this had caused prejudice to the appellant.

112. The claimant provided a statement dated 26 March 2019 for Claude road case setting out his position in compliance with the RPT tribunal order of 8 March 2019. The statement stated at paragraph 12 that a hearing can be listed after 20 June 2019. It is clearly wrong for the tribunal to conclude this was not provided. Mr Khan did provide the dates to avoid and it is wrong for the tribunal to conclude otherwise. There appears to be significant weight attached to this by the tribunal and in doing so has further errored.

Tribunals Directions order of 8 March 2019 with regard to Claude Road proceedings

113. The tribunal order dated 8 March 2019 also required compliance by the appellant on Tuesday 12 noon on 2nd April 2019 a witness statement and dates to avoid. The RPT decision of 10 December 2019 is further flawed in that paragraph 6 confirms that the email copy of statement posted and dated 26 March 2019 was received at 13.28 hours on 1st April 2019 before the expiry of the deadline.

114. Further, the RPT decision of 10 December 2019 states at paragraph 12, "the original directions order had asked for dates of availability for the hearing window to be given by 12 noon on 2nd April 2019. The respondents did provide dates of availability, albeit by email sent a 15.40 on the 2nd April 2019, the Applicant did not".

115. The tribunal has errored on fact given that the appellant provided the tribunal in his statement dated 26 March 2019 that he will be "unavailable until 20 June 2019 given that he is undergoing a training course and assessments for his examinations. Please consider and list hearing after this date."

116. How can this be non-compliance ? The tribunal has not provided reasons for this and simply misconceived the evidence and circumvented facts to support its unlawful flawed decisions**.**

117. The tribunal has acknowledged in paragraph 12 of their decision that the respondents have provided dates to availability by email at 15.40 which is LATE and Out of Time. The tribunal has further failed to consider and investigate the reasons for lateness. This supports the fact the tribunal has once again given the respondents a public body special status allowing them to disregard tribunal orders contrary to the supreme court decision in HMRC V BPP Holdings PLC [2017] UKSC 55.

118. IN HMRC V BPP (2017) UKSC the supreme court stated that local authorities are to be regarded as a bastion of good standard and should comply with all tribunal directions and not have a lower compliance to orders. The supreme court refused to give relief for sanction to HMRC and stated this should not happen as another officer could have been delegated the outstanding work to ensure strict compliance with tribunal orders.

119. In fact, why has the tribunal failed to consider this order of 8 March 2019 was not breached by the respondents, and no mention or further consideration is given. The tribunal has errored on fact by alleging that the appellant has breached the order when in fact it is clear this is not the case. <u>It is the respondents who have breached the order and no consideration is given for any sanction or relief of sanction in its finding.</u>

120. The respondents also failed to comply with the tribunal directions order of 12 NOON on 31 May 2019 which required them to file evidence supporting the case for striking out the claimant's case.

121. Ms Stickler for the respondent's states that she came back from holiday and then realised that Mr Khan statement of 21 May 2019 had not arrived with her and requested a copy from the tribunal 28 May 2019. Her statement was required by 31 May 2019 at 12 NOON.

122. Regulation 39 states that any document is deemed as being supplied to any person or authority provided it is posted by first class post. There is no requirement for the appellant to ensure that the document arrived duly in the local authorities' safe hands. In fact, the respondent's legal team could have chase up the alleged missing documents earlier on 21 May 2019. The tribunal were wrong to insist that the appellant was required to ensure that the document must be duly received by the respondents. This decision is flawed further as there is a presumption of law that states that a letter is deemed delivered in the ordinary course of posting when it is prepaid and posted to the recipient. It is deemed delivered irrespective if it does not arrive or is in another department within the local authority.

123. Ms Stickler took it upon herself to ignore compliance with the tribunal orders regarding making written representation against Mr Khan by 12 NOON 31 MAY 2019. The council did not file the information on time and the tribunal were wrong to allow the evidence to be accepted without going through the necessary procedural steps for relief for sanction. There was no formal application made by the respondents for relief from sanction and it has errored by accepting the respondents claim that the information may have not be sent by Mr Khan to cause the non-compliance.

124. It was more so that Ms Stickler was busy and was required to deal with more important matters at her work rather than ensure strict compliance of the tribunal order of 12 noon 31 May 2019.

125. The tribunal regulations at paragraph 39 provide that any document to be supplied to any person is deemed to have been duly supplied if it is sent by first class post. The claimant has confirmed by email that the representations were sent by post to the respondents and the conclusions drawn by the tribunal are irrational and unlawfully.

126. Further under tribunal regulations paragraph 17 provides that a tribunal must take all reasonable steps to ensure each of the parties are supplied with a copy of any document relevant to the proceedings.

127. The decision is further irrational as the tribunal was not provided by the respondents with written evidence that demonstrated that the council has never experience issues with loss of letters as well as the fact the required document could have been provided by the tribunal. It was more the case, that the respondent was busy dealing with other matters.

128. In previous incident, the claimant provided respondents with documents on 30 December 2016 by registered post. Ms Stickler denied ever receiving them and the Magistrates court and were extremely critical of her evidence given that the respondents other department had already confirmed receipt of those missing documents. A copy of this is hereto attached.

129. The tribunal had errored by accepting that Mr Khan did not send the letter when he clearly had. It was the respondents who inadvertently denied receipt and confirmed this has not happened previously without appropriate evidence. The tribunal has failed to apply its own procedural rules and acted unlawfully in doing so.

Matters relating to respondents' failings :

130. The tribunal proceedings were rushed, and irrelevant matters were considered and addressed rather than material live issues regarding the claim

131. The Tribunal has continued to issue defective tribunal directions to the parties throughout these proceedings in respect of 87 Connuaght Road and Claude road cases. Further when it had discovered the error it has simply adopted to replace new directions which have appeared to contradict and confuse matters even more rather than rectify the issue.

132. A fairer approach to avoid unfairness would be to issue new directions in a single document.

133. At all material times the tribunal continued to justify these procedural defects and issues down to the relocation of its offices. That said there has been a catalogue of procedural errors that have caused unfairness to the Appellant Case.

134. The respondent has failed to allow the appellant any scope for its own procedural errors but continued in allow the local authority to submit evidence and statement of case without a verified statement of truth. Making the approach untenable and unfair.

135. It has unfairly punished the appellant for minor infringement at every opportunity but simply ignored its own failing and that of local authority.

136. It has chosen an approach when the amended directions have caused more confusion to the appellant when in fact a new order would achieve a fair and equitable outcome and overcome procedural impropriety and unfairness.

137. In summary the tribunal ignored its own these procedural failings and those of the local authority. The local authority continued to provide its evidence without compliance with the directions order and without a verified statement of truth for its witness statements on several occasions without necessary sanction that was required of the respondents. The respondents in doing so behaved irrationally and unfairly on the appellant.

. **Matters relating to building regulations disclosure of documents :**

138. Further, the appellant was advised that his request for information which was to be made available by the respondents on 25th April 2019. However, the local authority then made an application for extension regarding disclosure of this information to the APPELLANT and was informed that information to be anticipated to be made available on 26th June 2019. A copy of the email is hereto attached.

139. For the avoidance of doubt the Vale of Glamorgan is dealing with the request in relation to housing matters under its shared regulatory services. The claimant was initially advised that the information would be available in 30 days, but this was later extended to 90 days by the respondents. The material requested would have assisted the claimant in dealing with historic planning and building regulations issues that arose from this case. The respondent was wrong in refusing the applications and deeming the external request as vexatious given that it was a material issue in the case. The local authority had documents in their possession which they confirmed would be release resulting in a legitimate expectation.

140. The information was required to test the local authority's evidence and determination in this matter. The tribunal was wrong in failing to direct disclosure in accordance with the overriding objective of dealing with cases fairly and justly under tribunal rules.

141. Further the appellant has obtained a document from Mr Andrew Lovesay dated 27th April 2015 hereto attached, being a building control administrator, which states the works to the flats may be carried out before 1989/1990. Mr Stickler for the respondents has failed to follow up this search of enquiry in that it would simply undermine the respondent's case. A copy of this is attached.

142. The applicant request for disclosure of information is within the tribunals jurisdiction and did so in good faith after receiving the correspondence that the historic information was being compiled by the respondents. The appellant could not be vexatious given that he required historic planning, building regulation, and work done to the building which is a material live issue in the pleaded case which was in the authority's possession.

143. An email was received on 25th June 2019 from the respondents that there are document which are held by the respondents would make the request excessive and the disclosure of information is being refused, even though the work undertaken to collect the information has already been completed. It was a cloaking exercise to avoid disclosure of building regulations and planning information.

144. The appellant has appealed to the Information Commissioner after asking the internal review for refused by Cardiff Council on 26 June 2019. The Information Commissioner Office on 29th August 2019 has concluded that both Cardiff Council and Vale of Glamorgan (shared housing regulatory services) have acted unlawfully by refusing to disclose the information requested on the basis that there are historic documents are burdensome to the local authority and were not deemed excessive.

145. The Information Commissioners Office has further stated that given that the information was being complied by the respondents on 25th March 2019, the application for extension by them for further time on 25th April 2019 was not sufficiently justified or necessary, which later followed by blanket cloaking practice of refusal to release the information on 25th June as being unlawful and against the data protection obligations. Please find attached this evidence hereto attached.

146. The information commissioner on 16 January 2020 has written to the local authority to provide the bundle of documents in its possession within next 7 days. It is the appellant case that the pre-action information request was made requiring historic building regulation information back in 25 March 2019 to save costs and encourage settlement and conclusion of the matter.

147. The respondents have continued to refuse disclosure and have gone to great lengths at not disclosing this information, using a cloaking practice. The tribunal has failed to issue the necessary directions regarding disclosure of information which has unfairly and unjustly prejudice the appellant case.

148. Therefore, the pre-action disclosure request made by the appellant on 25 March 2019 was to save costs and settlement. The tribunal was wrong to allow the payment of costs £1,500 when the appellant went out of his way to obtain pre-action disclosure to save costs. It goes without say, that the only reason for non-disclosure of information/documents which are in respondent's possession, is the **continued practice of cloaking to disguise a train of enquiry** that may lead to undermine respondent's case and assist the applicant's case. **A copy of this is hereto attached in this bundle.**

149. It is the respondents who have been the root cause of vexatious behaviour by refusing to disclose the information and to inadvertently misleading the appellant in believing that the documents would be disclosed, resulting in applications for more time. It was highly wrong for the tribunal to award costs when they have done nothing to assist reducing costs and resolving the issues in dispute.

150. Further, it wrong for the tribunal to state that the claimant's behavior amounts to vexatious when respondent's refusal and unwillingness to disclose has been the root cause of this issue. It is the claimant case that prompt disclosure would have lead to train of enquiry early on in the proceedings saving cost and encouraging settlement and the tribunal failed to link this and reached an irrational decision.

Matters relating to Licensing applications by the Appellant :

151. The tribunal has further errored by considering Ms Stickler evidence regarding licensing application that have been made by Mr Khan and is now arguing that the properties are not licensable. The evidence was inadmissible and doing so has caused unfairness to the appellant in the proceedings.

152. ***The respondents have failed to satisfy the evidential burden that the properties are licensable HMO. Instead that have taken the dissuasive point that as no completion certificates exist the properties MUST BE LICENSABLE and wrong in their approach***.

153. The tribunal has erred in law by accepting Ms Sticklers evidence. It is wrong in order to determine whether the property (s) does meet the building regulations reasonable standard regarding to safety, health, at the time of conversion, by relying on Ms Stickler evidence which is affected by actual apparent bias and lack of specialist skills and knowledge.

154. **The appellant is right to challenge** Cardiff council evidence regarding allegations that the historic building work does not comply with the relevant building standards prevailing at the time and it would be simply wrong to conclude that this amounts to vexatious behaviour on his part is manifestly wrong in law.

155. The appellant has highlight the fact that the evidential burden by the local authority has not been satisfied given that they themselves have failed to appoint a qualified building inspector. The only evidence that has been submitted so far by the respondents falls well short of this and fails to even reconcile how the building work at each of the properties contravene the relevant part of the regulations.

156. It is appellant case that the properties are not HMO because the historic building work would be compliant with the relevant prevailing regulations at the time of conversion. It is respondents approach that is flawed by insisting on completion certificates and failing to disclosure 2,571 historic documents in their possession that can assist the appellants case.

157. The appellant having taken appropriate action to licence the property after the respondents threatened enforcement action through the fear of compulsion and distress of having to face a prosecution for infringement of committing an offence under section 72 of the Housing Act and the criminal repercussions that follow is deemed as wrong by the tribunal.

158. In the previous hearing at Paragraph 29 in respect of 152 Mackintosh Place the respondents asserts that the tribunal has no jurisdiction to determine that the premises are not HMO given that the appellant has exercise his right to submit valid licences.

159. Paragraph 52 in respect of previous decision made by the RPT tribunal in respect of 152 Mackintosh place states that the correct approach regarding whether a property is licensable is to "make no application and to defend any criminal enforcement proceedings if they are brought."

160. It is the appellant case that the tribunal has errored for failing to consider relevant authorities, In particular, the High court decision between Peter Gaskin V Richmond Upon Thames & Wimbledon Magistrates' court [2018] WLR 555 provides clear guidance regarding unlicensed HMO and the applicability to **Service Directive 2006/123/EC and the provision of services regulations 2009/2999**.

161. On 19 June 2015 the local council commenced prosecution against the claimant for having control of or managing HMO without a licence contrary to section 72 of the Housing Act 2004. The claimant argued that the first defendant (Richmond Borough Council) had acted unlawfully by requesting an upfront fee before the licence application was processed as well as to require him to provide names of all occupiers of that property. The council acted unlawfully by not processing his application and they were the root cause of the problem.

162. The high court held that the magistrates court were unable to stay prosecution proceedings regarding the defence to licence HMO when an offence under section 72(1) to licence is committed. Further, the statutory defence under section 72(4)(b) that an application for licence had been duly made could no longer be available should a HMO required to be licensed is not licensed, even when the local authority was the root cause of not processing Mr Gaskin valid application when he refuse to pay the unlawful upfront fee for processing his application and refusal to disclosure the occupiers.

163. The tribunal are wrong in paragraph 52 of the decision by stating that the simple approach would be to make no application and defend any criminal enforcement proceedings. As highlighted in the Gaskin case, the high court refused to stay criminal proceedings and went on to clarify that "**protective application" could have be made**

164. It is Mr Khan case that the reason for making these "**protective applications"** was merely to safeguard against the threat of any criminal proceedings under section 72 of the Housing Act 2004 for failing to licence an HMO which is so required to be licence. The statutory defence under section 72(4)(b) is clear that the landlord does not have the option to make retrospective applications to avoid existing criminal proceedings and therefore they must guard against this approach through use of "protective applications."

165. In summary, the approach taken by the appellant is correct in line with the recent High Court authority Gaskin, and the tribunal are wrong to state that the appellant could have SAT ON THE FENCE and waited until criminal enforcement action had commenced and challenged accordingly. The statutory defence under section 72(4)(b) would no longer be available.

166. Further, it is the respondent that has behaved vexatious by threatening to issue criminal proceedings against the appellant for failing to submit a licence for a Section 257 HMO property. It is for this reason the appellant had to safeguard himself and make the necessary premature, protective applications which are subject to these appeal proceedings.

Costs Submissions

167. Although the matter regarding 87 Connaught Road Costs have already been determined on 22 December 2020. The tribunal has stated that there should be no costs.

168. The local authority made submissions on 18 December 2020 that there should be no costs order to support the appellants case after it accepted its own statement of case dated 23 July 2019 requesting costs of £500 was flawed as it was not verified by statement of case.

169. In the alterative, the tribunal was also wrong in determining the single hearing allowed the tribunal to award costs in excess of £500. There was one hearing which dealt with all matters and the award of £1,500 was unlawful.

170. The appellant was required to pay an upfront fee of £550 for the processing the application. According to article 13(2) any charges which the applicant may incur from their application shall be reasonable, proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of those procedures. **It is the Service Directive 2009 (SI2009 No 2999) regulation 18 that incorporates the two-stage fee requirement that charges must be proportionate to the cost of the procedures and formalities.**

171. It is the appellant case that the licence fee covers the entire procedure for process, authorisation and conclusion of the formalities of the licence conditions. This to include all cost incurred including disputes regarding the licence.

172. Cardiff council did not provide a detailed two stage fee requirement, and therefore the fee paid must cover the costs of entire authorisation procedure. This fee of £550 would cover the cost of agreeing the licence terms, conditions which would cover any appeal cost incurred. Further the licensing cost of issue include the full process of licensing which includes the costs of any such appeals.

173. For the reasons stated above the tribunal was wrong in awarding costs in regard to the Claude road cases although they are subject to appeal for judicial

review.

174. In summary there has been a failure to conduct a fair investigation and apply fair procedure regarding the evidence that was submitted the local authority in these proceedings. The tribunal was wrong in not considering this as this amount to natural injustice to the appellant causing prejudicial effect and unfairness . The tribunal had breached the requirement of fairness and natural justice where it reached a perverse conclusion by finding that the appellant had acted in bad faith without notice to rebut the allegations and more importantly on flawed interpretation of evidence and procedure rules for the above reasons.

B. Breach of natural Justice

175. The defendants have failed to allow the claimant to put his version of the case and the defendant had failed to give adequate, clear reasons for the bad faith determination made. There was also a duty on the respondents to consider all procedural matters and fully investigate the allegations without misinterpretation of evidence. The failure to permit the appellant to answer the matters raised also amounts to a breach of natural justice which included superficial consideration of relevant matters.

Availability of alternative Remedy

176. The claimant facts and grounds have been fully laid out which appear to have been overlooked and misunderstood previously by the respondents in Claude Road proceedings. The appellant can only appeal to the Upper Tribunal and High Court for permission to appeal as there are good grounds to challenge his case after it has exhausted the Residential Property Tribunal appeal route. Therefore, considering circumstances and the claimant has no alternative remedy but to seek to permission to apply to the RPT rather than Administrative Court to grant a permission for hearing for this relief.

177. In these circumstances the claimant seeks ultimate relief by quashing the AMENDED decision issued by the respondents on the 10 December 2020 and dated 8 December 2020.

STATEMENT OF TRUTH

I believe the facts stated above in this witness statement/ statement of case/applications are true and to the best of my knowledge. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in this document verified by a statement of truth without an honest belief in its truth.

Dated: 20 December 2020

Mr Assan Khan .....AKHAN.....

The Appellant