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David Matthias QC - Judicial Review

Recent important judicial review cases include:

- **R. (on the application of Hemming and Others) v Westminster City Council and HM Treasury and 7 other interveners [2017] UKSC 50** in which David persuaded the Supreme Court to overturn decisions of the lower courts regarding the legality of fees for licensed sex establishments in the light of Directive 2006/123/EC of the European Parliament on services in the internal market.
- **R. (on the application of Alexander Muir) v Wandsworth Borough Council [2017] EWHC 1947 (Admin)** in which David succeeded in establishing that a purported disposal by the Council of land forming part of Wandsworth Common was unlawful and would be in breach of the statutory trust under which the Council held the land.
- **R. (on the application of Hemming and Others) v Westminster City Council [2016] WLR(D) 608** in which David appeared before the European Court of Justice on a reference for a preliminary ruling following the first hearing of the case before the Supreme Court ([2015] UKSC 25).
- **R. (on the application of Hemming and Others) v Westminster City Council and HM Treasury and 7 other interveners [2015] UKSC 25** in which David acted on behalf of Westminster on its successful appeal against the decisions of the High Court and the Court of Appeal ([2013] EWCA Civ 59).
- In **R. (on the application of Bednash) v Westminster City Council [2014] EWHC 2160 (Admin)** David appeared before the Divisional Court (Moses LJ and Silber J) with regard to the statutory interpretation of provisions in the Licensing Act 2003 concerning time limits for the transfer of premises licences.
- **Dudley Muslim Association v Dudley MBC [2014] EWCA Civ 911** in which David secured permission for a second appeal from Sir Stephen Sedley in this high profile case concerning the availability of public law remedies (abuse of power and legitimate expectation) in defence of a claim for possession of land (the site of a proposed new mosque) by a local authority.
- **R. (on the application of Bean Leisure Trading A Ltd) v Leeds City Council [2014] EWHC 878 (Admin)** - a significant case concerning the effect of a change in a local authority's policy on a sex establishment in which it was held that it was open to a licensing authority to refuse to renew a licence even where there was no change in the character of the relevant locality, because of a change in policy.

- **R. (on the application of D&D Bar Services Ltd) v Romford Magistrates Court [2014] EWHC 344 (Admin)** - David appeared on behalf of the successful Interested Party (London Borough of Redbridge) in this major decision on the question of whether minor errors and irregularities on a notice or advertisement for a licensing review should make any subsequent review application void.
- **Dudley Muslim Association v Dudley MBC [2014] EWHC 296 (Ch)** - David acted for the Dudley Muslim Association in this high profile case concerning the deployment by the Association of public law remedies (abuse of power and legitimate expectation) in defence of a claim for possession of land (the site of a proposed new mosque) by the local authority.
- **R. (on the application of Merlot 73 Ltd) v City of Westminster Magistrates' Court [2013] EWHC 3416 (Admin)** in which David succeeded in defending the decision of a district judge in a case raising important issues concerning the requirement for proportionality pursuant to the HRA in administrative and judicial decision making.
- **R (on the application of Estates & Agency Holdings Ltd) v Westminster Magistrates' Court [2012] EWHC 4637 (Admin)** ? a significant decision on the question of whether magistrates' courts' decisions are properly challenged by way of Case Stated or by way of Judicial Review, and regarding the power to order amendments to a stated case.
- In **R (on the application of A3D2) v Westminster City Council [2011] EWHC 1045** David again succeeded in this important case concerning cumulative impact policies and the significance of surrendered premises licences.
- **R (on the application of Albert Court Residents' Association) v Westminster City Council [2011] EWCA Civ 430** - a major appeal involving three parties concerning the doctrine of legitimate expectation in relation to the conduct of licensing authorities in the performance of their statutory powers and obligations, in which David appeared successfully for Westminster.
- **R (on the application of Hope & Glory PH Ltd) v Metropolitan Stipendiary Magistrate [2011] EWCA Civ 31** in which David succeeded in securing a definitive ruling from the Court of Appeal on the conduct of licensing appeals and the role of the Magistrates' Court in such appeals ? now regarded as the most important and often cited case on the operation of such statutory appeals.

David is an established leading practitioner in this field with a high profile public law practice, regularly advising and acting in relation to judicial review and other public law proceedings at the highest levels.

He recently appeared before the European Court of Justice in Luxembourg in a judicial review case that had been referred there by the Supreme Court, before which he had also appeared - **R. (on the application of Hemming and Others) v Westminster City Council [2016] WLR(D) 608** and **R. (on the application of Hemming and Others) v Westminster City Council and HM Treasury and 7 other interveners [2015] UKSC 25**. Subsequently he appeared again before the Supreme Court which he persuaded to overturn decisions of the lower courts regarding the legality of fees for licensed sex establishments in the light of Directive 2006/123/EC of the European Parliament on services in the internal market - **R. (on the application of Hemming and Others) v Westminster City Council and HM Treasury and 7 other interveners [2017] UKSC 50**.

In R. (on the application of Alexander Muir) v Wandsworth Borough Council [2017] EWHC 1947 (Admin) David succeeded in establishing that a purported disposal by the Council of land forming part of Wandsworth Common was unlawful and would be in breach of

the statutory trust under which the Council held the land. This important decision is the only case in which a local authority purporting to act under its legislative powers has been prevented from disposing of land held as Open Space.

David acted for the Dudley Muslim Association in a high profile case in which the Association sought to employ public law remedies (abuse of power and legitimate expectation) in its defence of a claim for possession of land (the site of a proposed new mosque) by the local authority - **Dudley Muslim Association v Dudley MBC [2014] EWHC 296 (Ch)** - and **Dudley Muslim Association v Dudley MBC [2014] EWCA Civ 911** in which David secured permission for a second appeal from Sir Stephen Sedley.

He appeared before the House of Lords in a major case concerning the scope of Article 8 of the ECHR in the context of possession proceedings against residential occupiers, **Harrow London Borough Council v Tarik Qazi (2004) 1 AC 983**; and in **R (on the application of Bibi) v London Borough of Newham [2002] 1 WLR 237** in which the Court of Appeal gave a landmark ruling on the significance of detrimental reliance for a claim based upon legitimate expectation. David subsequently acted for all three defendants before the Court of Appeal in the important case of **Roma Desnousse v (1) Newham London Borough Council (2) Paddington Churches Housing Association (3) Veni Properties Ltd (2006) QB 831**, concerning the applicability of the Protection From Eviction Act 1977 to the actions of local housing authorities under Part VII of the Housing Act 1996.

In **R (on the application of S) v (1) London Borough of Lewisham (2) London Borough of Lambeth (3) London Borough of Hackney & (4) Secretary of State for the Home Department [2008] EWHC 1290 (Admin)** David appeared for Lewisham in this important case concerning the determination of responsibilities as between local authorities for the provision of services under the National Assistance Act 1948. David acted for the Respondent local authority successfully resisting allegations of unlawfulness, misfeasance in public office and contempt of court in relation to its law enforcement functions in **R (on the application of Benjamin Banks) v Tower Hamlets LBC [2009] EWHC 242 (Admin)** and recently acted for Wiltshire in a dispute concerning the obtaining of liability orders in respect of underground cabling which involved important issues of non domestic rating and European competition law - **Vtesse Networks v North West Wiltshire [2009] EWHC 3283 (Admin)**.

David has also appeared in most of the major challenges brought thus far by way of judicial review of licensing decisions, and acted for Westminster in the leading licensing authority of **Hope & Glory [2011] EWCA Civ 31** and in the first (and only) UK licensing case to be heard before the European Court of Justice and the Supreme Court - **Hemming and Others v Westminster City Council [2016] WLR(D) 608** and **[2015] UKSC 25** and **[2017] UKSC 50**.

He appeared as leading counsel for three major trade associations (BBPA, ALMR and BII) in their successful challenges to the policies of three licensing authorities (**BBPA & Others v Canterbury City Council [2005] EWHC 1318 (Admin)**; **[2006] BLGR 596**), and in June 2006 he acted for Mitchells and Butler in its successful defence of a favourable licensing decision by Birmingham Magistrates - **R (on the application of Blackwood) v Birmingham Magistrates, Birmingham City Council & Mitchells & Butler Retail Leisure Ltd [2006] EWHC 1800 (Admin)** - a case involving an analysis of the interface and tension between the licensing and planning regulatory regimes. In May 2008 he acted for Westminster City Council in its challenge regarding the legality of conditions imposed by the magistrate when granting a premises licence following a contested appeal - **R (on the application of Westminster City Council) v Metropolitan Stipendiary Magistrate & Marc Merran [2008] EWHC 1202 (Admin)**

, and in July 2009 he acted for the council as Interested Party in its successful opposition to the judicial review of the magistrate's decision in **Hope & Glory PH Ltd v Metropolitan Stipendiary Magistrate [2009] EWHC 1996 (Admin)** - an important case on public nuisance in the context of the Licensing Act 2003, and on the role of the Magistrates' Court in licensing appeals. On appeal David succeeded in upholding the decision of Burton J., and secured a definitive ruling from the Court of Appeal on the conduct of licensing appeals and the role of the Magistrates' Court in such appeals - **Hope & Glory PH Ltd v Metropolitan Stipendiary Magistrate [2011] EWCA Civ 31**. In **R (on the application of Albert Court Residents' Association) v Westminster City Council [2011] EWCA Civ 430** he succeeded in a major appeal involving three parties concerning the doctrine of legitimate expectation in relation to the conduct of licensing authorities in the performance of their statutory powers and obligations. In **R (on the application of A3D2) v Westminster City Council [2011] EWHC 1045** David was again successful before Cranston J. in this important case concerning cumulative impact policies and the significance of surrendered premises licences. In **Estates & Agency Holdings Ltd v Westminster Magistrates' Court [2012] EWHC 4637 (Admin)** he secured a significant decision on the question of whether magistrates' decisions are properly challenged by way of Case Stated or by way of Judicial Review, and regarding the power to order amendments to a stated case.

In **R. (on the application of Merlot 73 Ltd) v City of Westminster Magistrates' Court [2013] EWHC 3416 (Admin)** David succeeded in defending the decision of a district judge in a case raising important issues concerning the requirement for proportionality pursuant to the HRA in administrative and judicial decision making. He appeared on behalf of the successful Interested Party (London Borough of Redbridge) in **R. (on the application of D&D Bar Services Ltd) v Romford Magistrates Court [2014] EWHC 344 (Admin)**, a major decision on the question of whether minor errors and irregularities on a notice or advertisement for a licensing review should render any subsequent review application void. **R. (on the application of Bean Leisure Trading A Ltd) v Leeds City Council [2014] EWHC 878 (Admin)** was a significant case concerning the effect of a change in a local authority's policy on a sex establishment in which it was held that it was open to a licensing authority to refuse to renew a licence even where there was no change in the character of the relevant locality, solely because of a change in policy. In **R. (on the application of Bednash) v Westminster City Council [2014] EWHC 2160 (Admin)** David appeared before the Divisional Court (Moses LJ and Silber J) with regard to the statutory interpretation of provisions in the Licensing Act 2003 concerning time limits for the transfer of premises licences.
