



Francis Taylor Building
Inner Temple
London EC4Y 7BY

Francis Taylor Building

DX: 402 LDE

T: 020 7353 8415 F: 020 7353 7622
E: clerks@ftbchambers.co.uk W: www.ftbchambers.co.uk

David Matthias QC - Licensing

David has firmly established himself as a leading practitioner in the field of licensing law, regularly advising and acting for both the trade and for local authorities and the police, as well as for objectors and trade associations, on major licensing applications and appeals. He has been consistently praised in legal practitioner guides for being *"strong both technically and legally"*, and *"... always prepared to muck in and work hard for the clients..."*. He is consistently ranked as a leading silk and as having *"made a name for himself for being subtly persuasive in court?"*.

He advises some of the largest licensing authorities in the country on the formulation of their statutory licensing policies, with a view to securing desired outcomes whilst minimising the risk of successful challenge to such policies. Most recently he has been advising in relation to a significant re-draft of a major licensing authority's statement of licensing policy in relation to Gambling Premises. He is instructed by the major licensing solicitors and by many of the busiest licensing authorities in the country, as well as acting for companies and individuals who instruct him directly. David has acted in many of the largest appeals heard thus far under the Licensing Act 2003 (concerning nightclubs, pubs, restaurants and off-licence premises), as well as appearing before Licensing Sub-Committees on important applications. He also regularly advises and acts upon applications and appeals under the Gambling Act 2005, and regarding sex establishment licences under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. His practice also includes taxi and private hire licensing, and he is currently acting for the United Trade Action Group (?UTAG?) - a group formed by London taxi drivers - in a claim by way of judicial review against TfL concerning TfL's handling of Uber's application to renew its operator's licence.

Combining his licensing expertise with a high profile public law practice, David has appeared in most of the major High Court challenges brought thus far in respect of decisions made and issues arising under the Licensing Act 2003 - not least the landmark case of **Hope & Glory** in which his arguments succeeded both at first instance and then before the Court of Appeal **[2011] EWCA Civ 31**.

In **Hemming & Others v Westminster City Council [2017] UKSC 50** David appeared in this first and thus far only licensing case to come before the Supreme Court concerning licence fees for sex establishments and the recoverability of the costs of enforcement by licensing

authorities, and in **Hemming & Others v Westminster City Council - Case C-316/15 [2017] PTSR 325** when the case became the first and thus far only UK licensing case to be referred to the European Court of Justice in Luxembourg re compatibility of Westminster's sex establishment licensing scheme with EU Directive 2006/123/EC ("the Services Directive").

David is a contributing author to "*Licensed Premises - Law and Practice*" published by Tottel, and to "*Gambling for Local Authorities, Licensing, Planning and Regeneration*" published by The Institute of Licensing. He is a regular speaker at Paterson's annual Licensing Law Conferences.

Magistrates' Court

Significant licensing appeals in which he has been involved include **Directgain Ltd v Westminster City Council** (heard by District Judge Purdy over 4 days in December 2005, concerning an appeal by a major London nightclub - "Cirque at the Hippodrome" - against a refusal to convert under the Licensing Act 2003), **Coscutters v Oldham Metropolitan Council** (heard by Oldham Justices over 7 days in 2006, in which he acted for the supermarket applicant on its successful appeal against a refusal to grant a premises licence to supply alcohol), **Merran v Westminster City Council** (heard by District Judge Roscoe over 11 days in 2006, concerning an appeal by a large London nightclub - "Movida" - against a refusal of its variation application), **The Commissioner of Police of the Metropolis v William Lule** trading as Pier One Nightspot (heard at Snaresbrook Crown Court in June 2008, concerning the validity of closure orders made by the police against a nightclub), **Muchfun Properties Ltd v Westminster City Council** (heard by District Judge Roscoe over 16 days in 2008, concerning an appeal by an operator against the refusal of a premises licence for a proposed new 1,000 plus capacity nightclub - "Billionaire" - on The Haymarket), and **Hope & Glory PH Ltd v Westminster City Council** (heard by District Judge Snow over 7 days in June 2009, concerning an appeal by an operator against a ban on outside drinking at its pub - "The Endurance"). More recent appeals have included **Coral v London Borough of Tower Hamlets**, an appeal against the refusal of a betting shop licence heard over 3 days in the Thames Magistrates' Court in October 2009, **Sunfield Services Ltd v Westminster City Council**, an appeal against a review decision heard in Westminster Magistrates' Court over 4 days in September 2010, **Maddox Club Ltd v Westminster City Council**, heard over 2 days in August 2010, **Siostra Estates v Westminster City Council**, heard over 4 days in July 2011, and **Mayfair Enterprises v Westminster City Council and Estates and Agency Holdings Limited**, heard over 9 days before District Judge Snow in October and November 2011, and concerning two appeals, the first against a review decision revoking a premises licence, and the second against a decision refusing to transfer the premises licence in question to another company. In **Diamond Cars v Shropshire Council** David appeared for the appellant taxi company in a case concerning cross-border hackney carriage and private hire vehicle licensing, heard over 4 days in the Shrewsbury Magistrates' Court. In December 2012 he acted for the respondent in **Beattie v Westminster City Council**, a street trading appeal involving planning considerations in the Covent Garden Conservation Area; and in January 2013 in **Big Country Ltd v Westminster City Council**, an appeal by the ?The Windmill?, a famous sex encounter venue, against a refusal of its variation application. In February and March 2013 David acted for the respondent in **Merlot 73 Ltd v Westminster City Council** - a licensing appeal by the owners of the Aura nightclub in Mayfair, heard over 8 days by District Judge Fanning, and in March 2013 in **Quintessentially Group v Westminster City Council** - an appeal against the refusal of a premises licence for a building in Portland Place, heard over 4 days by District Judge Henderson. In April 2014 he appeared

for the respondent in **Christopher Amos v Westminster City Council** - an appeal against a review decision by the licensee of a nightclub called Manbar, 79 Charing Cross Rd, heard over 4 days by District Judge Goldspring, and in September 2014 in **Delfont Mackintosh Theatres Ltd v Westminster City Council** - an appeal against a review decision by the transferee of the revoked premises licence for a nightclub called Avalon, heard over 3 days by District Judge Tan Ikram.

Significant recent licensing appeals include:

- **Big Country Ltd v Westminster City Council** ? Appeal by the company owning and running the famous Windmill lap dancing club against the decision by the licensing authority to refuse its application for the renewal of its Sexual Entertainment Venue Licence. The appeal ran for 3 days (8/10/18 ? 10/10/18) with the judgment of the Senior District Judge (Chief Magistrate) dismissing the appeal being delivered on 17/10/18.
- **Devine Restaurants Ltd v Westminster City Council** ? Appeal by the company running the ?Sophisticats? lap dancing club against the licensing authority?s refusal to extend the terminal hours for premises located in the West End Cumulative Impact Area. Heard over 4 days by D.J. Baraitser (27/6/17 ? 30/6/17) with a costs hearing on 14/9/17.
- **Resolution Real Estate Ltd v Westminster City Council** ? Appeal by the company running the nightclub ?Altitude 360? on the 28th and 29th floors of the Millbank Tower against the decision of the licensing authority to revoke its premises licence at a review hearing. Heard over 4 days by the Senior District Judge (Chief Magistrate) between 28/3/17 and 31/3/17.
- **Paper Club London Ltd v Westminster City Council** ? Appeal by the company running the nightclub ?Press? which went into liquidation following the dismissal of its appeal, leaving Westminster to secure its costs of the appeal through obtaining Non Party Costs Orders against the directors of the company ? duly granted by D.J. Goldspring on 13/10/16.

High Court, Court of Appeal, Supreme Court, European Court of Justice

David has appeared in many of the major challenges brought thus far by way of judicial review of decisions made under the Licensing Act 2003, and inter alia has acted for Westminster City Council in the leading cases of **Hope & Glory [2011] EWCA Civ 31 and Hemming [2017] UKSC 50** ? in both of which he secured successful outcomes for the City Council.

For example, 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 the 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 an interesting 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.

Significant recent cases in the higher courts include:

- **R (UTAG & LTDA) v Transport for London & Mayor of London [2021] EWHC 72 (Admin) and [2021] EWHC 73 (Admin)**
Two conjoined claims for judicial review brought by two trade bodies representing the 'Black Cab' industry (the United Trade Action Group and the Licensed Taxi Drivers' Association) to challenge the Mayor of London's Streetspace Plan and associated Guidance, and a Traffic Management Order prohibiting the use of motorised vehicles, including Black Cabs on Bishopsgate in the City of London. Lang J. ordered the quashing of the Plan, the associated Guidance and the Traffic Management Order
- **R. (on the application of We Love Hackney Ltd) v London Borough of Hackney [2019] EWHC 1007 (Admin)** in which David appeared for the local authority on its successful application for security for costs against an applicant seeking to challenge the authority's Licensing Policy for alleged breaches of the Public Sector Equality Duty under the Equality Act 2010, and successfully opposed the applicant's cross application for a Cost Capping Order.
- **Wyldecrest Parks v London Borough of Havering [2018] UKUT 0354 (LC)** David acted for the local authority on its successful appeal to the Upper Tribunal (Lands Chamber) in a case raising important points of law regarding the licensing of caravan sites under the Caravan Sites and Control of Development Act 1960 and the Mobile Homes (Site Licensing) (England) Regulations 2014.
- **LPHCA Ltd (t/a Licensed Private Car Hire Association) v Transport for London (TfL) [2018] EWHC 1274 (Admin)** Challenge by the LPHCA to TfL's decision to make changes to the fee structure for private hire operator licensing in Greater London under the Private Hire Vehicles (London) (Operators' Licences) (Amendment) (No.2) Regulations 2017, on the basis of an unlawful consultation exercise and an allegation that the new fee structure would involve the unlawful cross subsidisation of other licensees by private hire operators.
- **Hemming & Others v Westminster City Council [2017] UKSC 50** David appeared in this first and thus far only licensing case to come before the Supreme Court concerning Licence fees; Sex establishments; Recoverability of costs of enforcement by licensing authorities; EU Directive 2006/123/EC ('the Services Directive'); Provision of Services Regulations 2009 (SI 2009/2999); Schedule 3 Local Govt. (Misc. Provisions) Act 1982.
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- **Hemming & Others v Westminster City Council [2015] UKSC 25** Licence fees; Sex establishments; Recoverability of costs of enforcement by licensing authorities; EU Directive 2006/123/EC (?the Services Directive?); Provision of Services Regulations 2009 (SI 2009/2999); Schedule 3 Local Govt. (Misc. Provisions) Act 1982.
- **R. (on the application of Bednash) v Westminster City Council [2014] EWHC 2160 (Admin)** - in which 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.
- **R. (on the application of Bean Leisure Trading A Ltd) v Leeds City Council [2014] EWHC 878 (Admin)** - a case concerning lap dancing club (Wildcats) in which Stuart-Smith J. held that it was open to a licensing authority to refuse to renew a sex entertainment licence even where there was no change in the character of the relevant locality, because of a change in policy imposing new limits on number of permitted SEVs.
- **R. (on the application of D&D Bar Services Ltd) v Romford Magistrates Court [2014] EWHC 344 (Admin)** - in which David appeared on behalf of the successful Interested Party (London Borough of Redbridge) before Judge Blackett Ord 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.
- **R. (on the application of Merlot 73 Ltd) v City of Westminster Magistrates' Court [2013] EWHC 3416 (Admin)** - in which David succeeded before Blair J. in defending the decision of the district judge in a case concerning a prominent West End nightclub (Aura) which raised important issues concerning proportionality in the imposition of licence conditions by licensing committees and the role of judges on appeals in that regard.

David's expertise in both company law and licensing law came to the fore in **Beauchamp Pizza Company v Coventry City Council [2010] EWHC 926 (Ch)**, the first case to address the apparent tension between section 1028 of the Companies Act 2006 and section 27 of the Licensing Act 2003.

David's personal website can be viewed [here](#).
