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Movida: lessons for local authorities and operators

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Introduction

1. Both local authorities and operators can look to the *Movida* case¹ for guidance on two aspects of licensing in particular. The first is the approach which one might expect from a Magistrates' Court on an appeal relating to a license sought within an area caught by Westminster City Council's licensing statement and policies. This has wider implications, of course, for local authority decision-making and operators' applications across the country. The second aspect is the lawfulness of conditions imposed on licences in general under the Licensing Act 2003.
2. In this paper I focus therefore on the two stages of the *Movida* litigation: first the decision of the District Judge, allowing the nightclub's appeal against non-determination by the authority of a variation application, and granting an extension of licensing hours subject to conditions; second the challenge made to that decision in the Administrative Court. At both stages there are lessons to be learned by those on all sides of the licensing regime.

Background

3. The *Movida* nightclub, located in Argyll Street in W1, may be known to many in this room. It is a sizeable, now international brand which attracts a wealthy and "exclusive" clientele. Celebrities, in particular, attend it. When the Licensing Act 2003 came into force the licence

¹ *R (Lord Mayor and Citizens of Westminster City Council) v Metropolitan Stipendiary Magistrate and Marc Merran* [2008] EWHC 1202 (Admin)

under which the nightclub operated permitted music and dancing to occur between 9:00am to 3:00am on every day of the week. Movida sought a variation to this aspect of the licence that music and dancing continue until 7:00am. Late night refreshment activity was permitted from 11:00pm until 3:30am Monday to Saturday and from 11:00pm until 3:00am on Sundays. An extension was sought for late night refreshment until 7:00am on all days. The sale of alcohol was permitted from 10:00am until 3:00am Monday to Saturday and 12 noon to 3:00am on Sundays; Movida sought an extension until 5:00am on all days.

4. The application for variation by Movida was made pursuant to the transitional provisions in the 2003 Act which allowed the conversion of existing licences into new Premises Licenses². Westminster failed to respond to the application for variation and so, by dint of provisions in the Act, was deemed to have granted the licence in the same terms as the existing licence³ and to have refused the extension⁴. Movida appealed to the Magistrates' Court⁵.

The appeal

5. District Judge Roscoe, hearing the case, was bound by the Act to “stand in the shoes” of the licensing authority in determining the appeal. It followed, therefore, that she was required by section 4 of the Act to carry out her functions “with a view to promoting the licensing objectives” of which the three in issue were (1) the prevention of crime and disorder; (2) public safety; and (3) the prevention of public nuisance⁶. Just as would the licensing authority, she too was obliged to have regard to Westminster’s licensing statement⁷ in making her decision, as well as the Secretary of State’s guidance⁸. Since two “responsible authorities” (the Police and the Environmental Health Department) and one interested party (the Soho Society, a local residents’ association) had lodged objection (“relevant representations” in the terminology of the Act), the appeal fell to be determined in accordance with s.35(3) and (4) of the Act, which provided, in substance, that the conditions on the licence could be altered if,

² See section 34 of the Act and Schedule 8

³ See paragraph 4(4) of Schedule 8 of the 2003 Act

⁴ See paragraph 7(3) of Schedule 8 of the Act

⁵ See section 181 and Schedule 5 of the Act

⁶ No issue arose concerning “the protection of children from harm”

⁷ See section 4(3)(a) of the 2003 Act

⁸ See section 4(3)(b) of the 2003 Act

having regard to the representations made, it was “necessary for the promotion of licensing objectives”.

6. At the appeal, Westminster sought to emphasise the policies in its licensing statement. It argued that the extended hours sought fell outside of the “Core Hours” when customers were allowed to be on premises⁹, and that it was Westminster’s policy to refuse applications that involved extensions to opening hours outside the Core Hours where the premises in question were located within a Stress Area¹⁰. Since the premises in question were located within the West End Stress Area it followed, so Westminster argued, that the extension sought should not be granted. Westminster’s case was also that, aside from the question of policy, the extensions sought would run counter to the licensing objectives. It argued that the “prevention of crime and disorder” and “public safety” objectives would not be promoted because of the link it alleged between crime and disorder at the Premises and the consumption of alcohol; so, it was said, those objectives would not be promoted by allowing the premises to sell alcohol for additional hours every night. Similarly it argued that the “prevention of public nuisance” objective would not be promoted by allowing the Premises to trade each night until 7:00am the following day, because the attendant activity on the streets outside the premises would make it impossible to cleanse those streets before the normal activities of the following day began.
7. The District Judge heard a good deal of evidence on both sides. She was of the view that the crime and disorder aspect of the case was crucial. At paragraph 31 of her judgment she said this:

“The question is, therefore, would the Licensing Objective in respect of crime and disorder be promoted or undermined by the granting of this Appeal. The premises can already stay open all night, I cannot see how the serving of late night refreshment for longer would do other than promote the Licensing Objectives in this case. I cannot see how, with conditions, the provision of later dancing and music could do other than promote the Licensing Objectives. So far as the sale of alcohol is concerned, it can presently be sold until 3am, I do not think that for this club, extending that to 5am would make much difference if any to the amount of crime and disorder on the premises, or to the stretching of public resources. With the imposition of appropriate conditions I find that the extension of the period allowing the sale of

⁹ See part 2.3 of the Policy. The “Core Hours” are Monday to Thursday: 10:00am to 23:30 pm, Friday and Saturday: 10:00am – midnight, and Sunday: midday – 22:30 pm. The Policy provides that applications for hours within the Core Hours will generally be granted, even where premises are situated within one of the areas of the City designated as a Stress Area, subject to such hours not being contrary to other policy considerations.

¹⁰ See part 2.4 of the Policy

alcohol would in fact promote the Licensing Objectives for this club internally and externally. I have to say that I do not think that this Licensing Objective would be undermined by granting this Appeal, and with conditions imposed would, on the balance of probabilities, promote it”.

8. The imposition of conditions was therefore crucial to the District Judge’s decision to allow Movida’s appeal and grant the extension of hours.
9. The District Judge’s decision raises an issue which is occurring, and will continue to occur time and again on licensing appeals. What is the balance to be struck between restrictive statements of policy and the promotion of the licensing objectives? No doubt Westminster felt aggrieved at the decision because it felt that, if it is correct that the licensing objectives can be promoted through the imposition of conditions, in spite of an extension being contrary to policy, it undermines the purpose of having a policy in the first place. Since this issue was not canvassed in the judicial review which followed, it is worth recording what the District Judge said about it at paragraphs 8 and 9:

“It has always been WCC’s case that as these premises are within the stress area referred to in their policy, the application should only be granted outside Core Hours in “genuinely exceptional circumstances”. [The Appellant] says that regardless of “exceptional circumstances” the application should be granted if the effect of the grant would be to promote the licensing objectives, and that that outweighs any requirement in respect of the Policy ...

At this time it may be that the disagreement is a distinction without a difference. I say that because if the Policy is to be lawful it must promote the Licensing Objectives and therefore its restrictions must be intended to counter some problem relating to the Licensing Objectives. If the application promotes the Licensing Objectives then, presumably, it must be exceptional ...”

10. No doubt difficult judgments will have to be faced by local authorities on this issue. One can naturally see how a local authority will wish to promote its own policies, but the District Judge’s approach supports the view that, if appropriate conditions can be placed on a licence allowing the promotion of licensing objectives, departure from policy may not only be possible but even the proper course to take, depending on the circumstances. Operators will no doubt wish to make this argument. The difficulty arises, in particular, because section 4 of the Act appears to envisage on the one hand, the “licensing objectives” and on the other hand, statements of policy (both statements and Secretary of State guidance), are considerations of equal importance. In accordance with general principles of public law, the relative weight to

be attached to them would appear entirely a matter for the decision-maker. It may be that, in the years to come, the relationship between the objectives and detailed policy will receive judicial scrutiny.

Westminster's challenge

11. Be that as it may, Westminster's challenge to District Judge Roscoe's decision was not based on her approach to its policy but rather to the lawfulness of eleven of the thirteen conditions which she imposed. I should mention first that a separate, procedural ground of challenge was put forward in the claimant's skeleton argument though not fully pursued in oral argument, namely that the District Judge did not give the Council adequate opportunity to address the details of the conditions before she spelt them out. In truth this was a difficult case to make, not only because the district judge had heard some 11 full days of argument and was plainly well acquainted with all of the issues, but also because case law was against it¹¹. The judge, Mitting J, did not address the substance of the argument in his judgment, but did provide important, procedural guidance of practical interest to all parties involved in licensing appeals where conditions are in issue:

“Whether or not that omission [i.e. not to canvass the position of the parties on each of the conditions she had in mind] on the part of the district judge so vitiates her decision as to permit it to be challenged by judicial review proceedings, it should be stated that where a district judge or Magistrates' Court is considering imposing conditions on the grant or variation of a licence it will almost always be good practice for the conditions under consideration to be outlined for debate by the parties. In that way errors of drafting can be identified, as can improvements, as can, most important, consideration of the underlying propositions behind the conditions themselves. It is unfortunate that that course was not adopted in this case”¹².

12. Mitting J appears to be envisaging the sort of practice that has now grown up as standard at planning inquiries, for instance, where there is a “round table” discussion, without prejudice to

¹¹ *R v London Borough of Hammersmith and Fulham ex p Earls Court Limited* (9/7/93)

¹² See para 9 of the judgment

either side's case, the aim of which is to put forward well-drafted conditions with which, if the appeal is allowed, all parties would be content. The imposition of an appropriate condition with which all parties are satisfied, be it on a planning permission or a licence, can even allow for the resolution of dispute between the parties, saving the time and expense of litigation. There is no reason why operator and authority should not seek to agree them outside of court. Mitting J's words are therefore a helpful practical "lesson" from the *Movida* case.

13. As to the challenge to the substance of the conditions, there were three aspects to Westminster's argument. The first was that some of the conditions were too uncertain or ambiguous for either the licensee, or the licensing authority acting in its enforcement capacity, to know what they meant¹³. The claimant emphasised the fact that breach of condition is a criminal offence. The second related argument was that, in the case of some of the conditions, even if their meaning was clear as a matter of language, they were unworkable and could not be enforced¹⁴. The third was that the conditions, in some instances, forced the licensee to do things which he had no power to do. Westminster advanced one or more of these arguments in respect of eleven of the thirteen conditions which the District Judge imposed. It argued that the defects in the conditions were so fundamental that they could not be remedied by redrafting or applying a "blue pencil" test to delete parts of them. The Council argued further that, since the whole basis of the District Judge's decision was that it was only with the imposition of *all* of the conditions, taken together, that the licensing objectives could be promoted, and that therefore she would not have allowed the appeal without the imposition of *all* of the conditions, the decision to allow the appeal should be quashed and remitted for determination.

14. On the latter point, Mitting J said this:

¹³The Claimant relied in particular on the decision in *R v London Borough of Hammersmith and Fulham ex parte Earls Court Limited* (9/7/93), in which Kennedy LJ criticised a condition which required the licensee to "encourage visitors to travel by public transport, and discourage their use of private cars", in this way: "this is a condition which, if it is valid, and if it is not complied with, renders the applicants guilty of a criminal offence, and in danger of having their licence revoked ... so if the condition is to be regarded as reasonable its wording must be sufficiently precise to enable the applicants to know what their obligations are, and in my judgment it fails that test". The Claimant placed reliance too on the Strasbourg jurisprudence under Article 7 of the European Convention on Human Rights, which demands legal certainty in the context of criminal offences.

¹⁴ The Claimant's skeleton argument referred in particular to the case of *R v Secretary of State for the Environment ex p Watney Mann (Midlands) Ltd* (1976) JPL 368, in which the Divisional Court was concerned with an order from the magistrates' court that a public house abate the noise nuisance being complained about "and that the level of noise in the premises should not exceed 70 decibels". Quashing the order, Watkins J said that the order, not having specified the provision where the decibel reading was to be taken, was uncertain and therefore void.

“The thrust of [the District Judge’s] decision was that with the imposition of the conditions that she proposed, the licensing objectives would be promoted. She did not in terms identify, nor can her decision be read so as to identify, that any one condition, or any group of conditions, would be relied on principally to promote licensing objectives. They were an interlocking set. Some of them are clearly more important than others ... But it would be a mistake in my judgment to read the district judge’s decision so that the striking down or alteration of any one condition would result in the undermining of her reasoning ...

In those circumstances, a careful textual analysis of each condition, calculated to result in a conclusion that at a minimum it could be better worded and at a maximum it is not capable of enforcement, would not give fair effect to her decision. On the contrary, it seems to me that to give fair effect to her decision and to uphold the proper concerns of Westminster and the need for conditions to be certain so that the licensee knows what he must and must not do, the conditions should be scrutinised with care and, where necessary, redrafted, but not struck down”¹⁵.

15. As to the law on the legality of conditions claimed to be unlawful for uncertainty, Mitting J held that the yardstick to be applied was that set out in the judgment of Scott Baker LJ in *Crawley Borough Council v Attenborough*¹⁶:

“The terms of a licence and its conditions may of course be the subject of enforcement. Breach carries criminal sanction. Everyone must know where they stand from the terms of the document. It must be apparent from reading the document what the licence and its conditions mean”.

16. The approach of the judge, in applying the test was not, however, what might be described as “legalistic”. It was pragmatic. It was clear from the way that the oral hearing unfolded that, having read the District Judge’s decision as a whole, and being doubtful that this was not an appropriate case for quashing that decision, Mitting J was keen to explore whether or not each of the conditions the subject of criticism could be redrafted to the satisfaction of the licensing authority. Most of the judicial review hearing took the form of a debate between the judge and counsel for the licensing authority as to whether or not sufficient clarity of meaning could be achieved through this exercise.

17. Time does not permit an analysis of all eleven of the conditions which were challenged. I highlight six which give the best flavour of the arguments raised on both sides, and the judge’s

¹⁵ See paras 17-18 of the judgment

¹⁶ [2006] EWHC 1278 (Admin), at para [7]

approach. Together these examples provide an important indication for local authorities and operators as to whether or not conditions dealing with particular licensing concerns are likely to be lawful.

The impugned conditions

(a) “No drinks promotions save for the provision of free soft drinks in certain circumstances”

18. The claimant argued that the phrase “drinks promotions” was unclear. It said that one man’s “drinks promotions” may be another man’s routine adjustment of drinks’ prices to take account of current trends in the market. Movidia argued that the meaning of the phrase was clear on the face of the condition: that a drinks promotion was where certain drinks are offered at substantially reduced prices to those prevailing in ordinary business. It said it embraces such practices as “Happy Hours”, “2 for the price of 1”, and so on. Mitting J thought that the phrase was “insufficiently precise”, but was easily capable of being reworded by words such as the following: “no promotional sales of alcohol at a price lower than that at which the same or similar alcoholic drinks are sold on the premises”¹⁷. The judge was of the view that, reworded in that way, the condition would be certain and capable of ready enforcement.

(b) “No food or drinks to be consumed outside the premises”

19. The claimant argued that this condition did not enable the licensing authority to know with a reasonable degree of certainty what the licensee had to do to comply, and also that it purported to oblige the licensee to do something that was beyond its powers. In its skeleton argument Westminster asked rhetorically: how is the licensee supposed to be able to control

¹⁷ See para 24 of the judgment

the conduct of persons not in his employment outside the premises? Movida argued that the only sensible interpretation of the condition is that it prohibited food or drink to be taken from the premises and consumed in the immediate vicinity, and that it would be quite extraordinary if the district judge intended to condition the licence so as, for example, to require the licensee to prevent passers-by from eating take-aways purchased elsewhere. The judge accepted Movida's arguments, suggesting, "for the avoidance of doubt", a "modest addition" to the condition so that it read: "no food or drinks supplied on the premises are to be consumed in the vicinity of the premises".

(c) "No new entries (other than staff) after 2.15 am.

(I am not excepting bona fide guests. At this stage it would appear to me that the condition would thereby be unenforceable. If, in the future this becomes imperative to the Appellant he can always apply to vary this condition.)"

20. The District Judge had qualified this condition herself by the words in brackets. The claimant submitted that the words were so imprecise that one could not discern their meaning. It asked rhetorically: are "new entries" persons who have never been to the premises before, or persons who have not been to the premises earlier that day or the previous day, and can an existing member of the premises be regarded as a "new entry"? What is the position, asked Westminster, of a person who enters the door of the Premises at 9:00pm only to pay his entry charge, then leaves immediately to return at 3:00am after a night spent partying elsewhere – is he then a "new entry"? Westminster also questioned the use of the expression "bona fide guests": was this intended to refer to guests of the management of the premises and/or guests of existing members of the premises and/ or guests of people visiting the premises who are not existing members? The Council further suggested that, quite apart from the issue of meaning, it would be impossible for licensing officers and police officers to tell whether people being admitted to the premises after 2:15am were new entries without asking such people, and then only if given a truthful answer.

21. Movida presented a robust answer to all of these queries. So far as the nightclub was concerned, the meaning was again clear: a 'new entry' plainly referred to a customer who had not already entered the premises that day. It argued that "bona fide guest" was a term so widely used in licensing that it had been incorporated into statute: (section 12(2)(b) of the Gaming Act 1968). And it pointed out that, as long ago as 1975 Lord Widgery CJ said that, in

the context of the words “bona fide guest member of a club”, bona fide meant not sham¹⁸. Mitting J had little truck with the complaint about “bona fide guests” but did suggest an amendment to the phrase “no new entries”, so that the reworded condition read as follows: “no person may enter the club after 2:15am, other than the staff, who has not already entered the premises that night prior to 2:15am”. Equally he seemed unconcerned by the alleged enforcement difficulties. Since he does not mention the issue in his judgment, he appears to have accepted Movida’s argument that the condition was easy to enforce by giving customers coloured “wrist-bands” when they left the premises temporarily (for example, to smoke) to demonstrate that they had already entered, and were therefore able to re-enter after 2:15am.

(d) “All customers, or staff, waiting for a cab or other lift, to be encouraged to wait within the premises”.

22. Westminster argued that this condition did not enable the operator to know what it had to do to comply. It asked: would the erection of signage asking customers to please wait within the premises constitute compliance, or must the customers be spoken to as they are about to depart, or must they be provided with some incentive to wait inside until their car has arrived? Movida accepted that the word “encouraged” involved a value-judgment, which, in the event of a prosecution for breach of condition the tribunal of fact might have to make, but that does not render the condition unclear or uncertain. It argued that analogous value-judgments had to be made when enforcing commonplace licence conditions that use phrases such as “best endeavours”, “take all reasonable steps” etc. Mitting J agreed. In fact, he found this condition one of the clearest of all those imposed by District Judge Roscoe. He therefore accepted, by implication, that Movida’s argument about “value-judgments” was sound.

(e) “During the winding down period the tempo of the music played and its volume to be reduced substantially to the extent that for the last half hour it is possible throughout the premises to have a spoken conversation with another at normal speech level”.

¹⁸ *Mackley v Ladup Ltd* (1975) JP 121

23. The claimant's compliant in respect of this condition was again that neither licensee nor licensing authority could know with a reasonable degree of certainty what the licensee had to do to comply. It relied on the fact that the tempo (i.e. the speed at which the music is played as measured by a metronome) and volume (as measured in decibels) of the music to be played prior to the start of the winding down period was not stipulated, and that the amount of reduction required and when it was required was not defined save by reference to the phrase "reduced substantially" and by reference to spoken conversation during the last half hour of the period. Movida argued that the words used were of the same nature as those which have been commonplace in licences for some time; that the condition clearly meant that the tempo and volume must be reduced from the level at which they were being played prior to the wind-down period, to a level at which one can hold a spoken conversation at normal speech level.
24. This condition appears to have caused Mitting J slight difficulty. He described the provision of a "winding down period" as "somewhat vague"¹⁹, and noted that it would be possible to provide for precise limits by reference to decibel levels measured at particular places in the club or, should a lighting condition be attached, by reference to light measurements taken at particular points by a light meter, but went on to say that that way not necessarily the best way of stipulating elements of a winding down period. Westminster's argument on this condition was probably undermined by the fact that winding down periods were expressly recommended in Westminster's own non-statutory guidance²⁰. The judge concluded:

"[The winding down period] is clearly a useful concept, which, if conscientiously applied, is likely to result in a lessening of the excitement of those attending the club and in the moderation of their voices on leaving. Accordingly, although it is impossible to provide in precise terms for winding down provisions so that enforcement may be difficult, it is nonetheless desirable that a winding down provision should be included [...] the condition ...is not so ambiguous as to be worthless or incapable ultimately of enforcement in the case of flagrant breaches"²¹.

(f) For the period between 2.30 and 3.45 am and the period an hour before the premises closes until at least half an hour after, 2 members of security wearing high visibility jackets to provide a presence in Argyll Street and Little Argyll Street.

¹⁹ See paragraph 32 of the judgment

²⁰ See paragraph 2.3.6 of the non-statutory guidance

²¹ Paragraph 33 of the judgment

25. This was the condition which, by his own account, caused Mitting J the most difficulty. The claimant's argument had been that it was unclear whether or not the 2 members of security would have to "police" Argyll Street and Little Argyll Street, intervening when they witnessed anti-social behaviour, despite the fact that neither they nor the licensee had any authority or qualification to police the streets. Mitting J stated in his judgment that that he was "simply not equipped, sitting in the Administrative Court, to determine the debate canvassed in the witness statements and in the argument me as to whether or not the stationing of doormen in high visibility jackets outside the club at the hours stipulated is or is not likely to encourage public order rather than to create difficulties for the police".

The outcome

26. Mitting J concluded his judgment as follows:

"Applying the tests which I have indicated, this is not a case in which the decision of the district judge should be quashed with the consequence that the hours for licensable activities would revert to their previous levels, but one in which by reason of the shortcomings in the wording of the conditions which I have identified, and the need for further consideration of two of them, winding down and the presence outside the club of highly visible doormen, should be remitted to the district judge for her to determine finally what conditions should attach to the modified licence. In short, her conclusion that the licensing objectives would be promoted by conditions very similar to those which she imposed is unassailable but the conditions themselves require to be re-examined.

Accordingly, the outcome of this judicial review is that the conditions upon which the licence modification was granted should be remitted for reconsideration to the district judge"²².

27. Mitting J's pragmatic approach to Westminster's challenge had the effect that the impugned conditions remained in force unless and until the District Judge, on hearing further submissions from the parties and with the benefit of the High Court's guidance on the rewording of a number of the conditions, changed them. The merits of the appeal could not be reargued.

²² Paras 37-8 of the judgment

28. Was it the right result? It is probably right to say that a number of Westminster's arguments were ambitious. Nonetheless the criticism which the judge made of the lack of precision in a number of conditions provides the most important lesson for both local authorities and operators to take from the case: to draft conditions with care. To make an obvious point: not only is the careful drafting of conditions more likely to protect against challenge in the courts, it is also in the interests of both parties in terms of enforcement. The last thing an operator wants is to be unsure about how to comply with a condition (and, therefore, for instance, whether or not to spend resources on meeting its supposed requirements), and the last thing a local authority wants is to be unsure whether or not to bring proceedings for breach of condition, or about the prospects of a prosecution succeeding.

Other points of interest

29. In light of the judge's decision not to quash the conditions, and to resolve the dispute by remitting the conditions for further consideration, it was not necessary for him to consider a number of more general public law arguments raised by Movida which, it suggested, ought to lead either to a refusal to grant permission for judicial review or to a refusal to grant the relief sought by Westminster. On a different day, and with a different judge, however, these arguments may have held sway and, in a paper discussing lessons learned, they are worth mentioning.

30. One of Movida's arguments was that proceedings had not been brought "promptly" within the meaning of CPR r.54.5 or without "undue delay", as provided for by s.31(6) of the Supreme Court Act 1981. It argued that, by the time that the club finally came to know of the claimant's challenge, just before the end of the three month outer limit provided for in the procedural rules, the licensee had: (i) spent substantial sums of money re-branding the club and advertising the extended opening hours; (ii) employed new staff and negotiated new contracts with existing staff in order to service the additional hours; (iii) opened the premises to the public under the new brand, attracting a new client-base; and (iv) established a reputation as an expensive and somewhat exclusive club with significantly later opening hours than elsewhere in London. There was relatively limited evidence to suggest that these matters were directly referable to the extension of operating hours per se, as opposed to simply being part of a successful business expansion. Perhaps it is for this reason that the argument did not succeed. Nonetheless, the use of the argument by the operator is a timely reminder to any challenger of a decision granting a licence that, if the holder of the licence can demonstrate significant reliance on the decision prior to being made aware that a challenge is being made, permission or relief may be refused on that basis.

31. A second argument of Movida’s worthy of mention was that Westminster, prior to issuing judicial review proceedings, had failed to exhaust alternative remedies²³. This is a potentially powerful argument of which challengers ought to be aware. Movida argued that, among other avenues of redress, Westminster should have sought a ‘review’ of the licence under section 51 of the Act. As soon as the licence had effect, it argued, either Westminster’s own enforcement officers or the police could have instigated a review at any time, whether of its own accord, as a “responsible authority”²⁴, or having been prompted to do so by Westminster itself (which was under a duty to work in partnership with it)²⁵. Movida also argued that Westminster could have made an application for variation of the licence under s. 34 of the Act, following discussion between the parties (which could have included enforcement officers, the police, and any other concerned person or body) as to an acceptable wording of the conditions. Movida suggested that such an approach would have accorded with the “light touch bureaucracy” envisaged and intended by the new legislation. It may be that, in different circumstances, a judge would be persuaded that one or other of these avenues constitutes an “alternative remedy” within the meaning given to that phrase by case law, and would refuse permission or relief on a judicial review challenge on that basis.

Conclusion

32. It is the pragmatic approach adopted by Mitting J in the *Movida* case, suggesting specific improvements to the wording of a number of the challenged conditions, that makes it an important one for local authorities and operators to consider. It certainly demonstrates that care should be taken to ensure precision in the drafting of conditions. But, perhaps above all, the case illustrates the importance of canvassing proposed conditions before or during the proceedings which may ultimately decide their imposition. Had such a course been adopted before District Judge Roscoe, it seems doubtful that judicial review proceedings challenging her decision would have been brought at all.

²³ In *R (Bancoult) v Secretary of State for the Foreign and Commonwealth Office* ²³ Laws LJ referred to the “...familiar rule of discretion, namely that judicial review is a legal recourse of the last resort; and [a claimant] must exhaust any proper alternative remedy open to him before the judicial review court will consider his case”.

²⁴ See s.13(4)(a) and (c) of the Licensing Act 2003

²⁵ See the statutory guidance issued by the Secretary of State under s.182 of the Licensing Act 2003, paras 2.7 – 2.10.

