

MINUTES OF A MEETING OF THE LICENSING SUB COMMITTEE B

THURSDAY 13 JULY 2023

THE LIVESTREAM OF THE MEETING CAN BE VIEWED HERE:

[HTTPS://YOUTUBE.COM/LIVE/U0fFC1ZCPSc](https://youtube.com/live/U0fFC1ZCPSc)

- Councillors Present:** Cllr Gilbert Smyth in the Chair
Cllr Zoe Garbett and Cllr Richard Lufkin
- Apologies:** Cllr Yvonne Maxwell and Cllr Susan Fajana-Thomas
- Officers in Attendance:** Amanda Nauth, Licensing Lawyer
Suba Sriramana, Principal Licensing Officer (acting)
Gareth Sykes, Governance Officer
- Also in Attendance:** Item 7. Review of a Premises Licence: Simmons (Formerly The Viaduct), 83 Rivington Street, London, EC2A 3AY
- Applicant
- On behalf of the applicant:
- Leo Charlambides, Barrister
PC Sian Giles, Metropolitan Police Service
PC Leon McCallister, Metropolitan Police Service
- On behalf of the Premises Licence holder:
- Gary Grant, Barrister
Niall McCann, Solicitor, Consultant
David Gair, Shield Associates
Nick Campbell, Founder and Chief Executive Officer, Simmons
- Responsible Authorities
- Channing Riverie, Licensing Authority
- Other persons
- D2 - Gary Groeheim
D3 - Louise Garrett
D4 - Corine Delage
D7 - Jonathan Moberly
D10 - Davy Nougarede
D12 - Andrew Kanter

On behalf of the Eden Gardens Entertainment Ltd
(former operator of the 'The Viaduct')

Marcus Lavell, Barrister

1 Election of Chair

1.1 Cllr Gilbert Smyth was duly elected as the Sub-Committee Chair.

2 Apologies for Absence

2.1 Apologies for absence were received from Cllr Susan Fajana-Thomas and Cllr Yvonne Maxwell.

3 Declarations of Interest - Members to declare as appropriate

3.1 There were no declarations of interest.

4 Minutes of the Previous Meeting

4.1 There were no minutes for consideration and approval at the meeting.

5 Licensing Sub-Committee Hearing Procedure

5.1 The meeting participants noted the hearing procedure for the meeting (hearing procedure type C).

6 Application for a Premises Licence: Abney Chapel, Abney Park, 215 Stoke Newington High Street, London, N16 0LH

6.1 Agenda item 6, Abney Chapel, was withdrawn from the meeting agenda and would be re-scheduled for a future Licensing Sub-Committee meeting.

7 Review of a Premises Licence: Simmons (Formerly The Viaduct), 83 Rivington Street, London, EC2A 3AY

7.1 The Licensing Sub-Committee heard from Hackney Council's Principal Licensing Officer (Acting), the legal representative on behalf of the applicant (the Police), responsible authorities (Licensing), the legal representative for the premises licence holder, other persons (in objection) and the legal representative for the former operator of the premises, the Viaduct. The application was for the review of a premises licence for the Simmons, 83 Rivington Street, London, EC2A 3AY on the basis of the prevention of crime and disorder and public safety. The Licensing Authority had made representations on the grounds of the prevention of public nuisance while the other persons had made representations on the grounds of the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.

7.2 The Sub-Committee noted that the premises Simmons was formerly known as The Viaduct and before that Cargo. The premises licence was reviewed

following the receipt of an application by the Police dated 29 October 2021. The holder of the licence appealed to Magistrates against the decision to revoke the licence made by the Licensing Sub-Committee on 14 December 2021. Following negotiation, which included revised and additional conditions and reduced hours, the appeal was settled and agreed through a Consent Order.

- 7.3 There was a brief discussion between the legal representative for the premises licence holder and the legal representative for the former operator of the premises as to who would own the premises if the licence was revoked. The former party claimed that if the Sub-Committee was minded to revoke the licence it would revert back to the former owner while the latter party disputed this and insisted that Simmons was now the owner of the premises.
- 7.4 During the course of the meeting there was a discussion where a number of points were raised including the following:
- In response to a question about the Arch on site, the premises licence holder replied that it would operate as a restaurant, in which the sale of alcohol would not be sold, supplied, or consumed on site unless it was ancillary to a table meal. The founder and Chief Executive Officer (CEO) of Simmons rejected a suggestion about making the sale and consumption of alcohol ancillary to a table meal applicable across the entire premises;
 - Reply to a question about how local residents would contact the premises to address any concerns around noise and disruption, the founder and CEO of Simmons replied that he was keen to build a good relationship with neighbours and that, for example, the Designated Premises Supervisor's (DPS) contact details would be made available. They added that they would not be able to undertake this however, until they were informed of the outcome of the Licensing Sub-Committee;
 - The founder and CEO of Simmons agreed to hold meetings with local residents;
 - Some of the other persons were of the view that the premises had not made an effort to engage with local residents while others welcomed the opportunity to meet the founder and CEO of Simmons;
 - In response to a question from the Sub-Committee Chair, the founder and CEO of Simmons was content to meet two meetings year with local residents;
 - In response to a question about why the Police originally agreed to the transfer in March 2023, the legal representative for the applicant, the Police, replied that there were concerns at the time about the premises but the threshold had not been met for the Police to reject the transfer;
 - The legal representative for the premises licence holder explained that if the application was not revoked the premises would be subject a number of conditions;
 - In response to a question about the Shoreditch Bar Group (SBG) evidence, supplied by Viaduct, specifically its Safer Venue Guide, the legal representative for the former operator explained that in hindsight when the serious incident had occurred in February 2023 more Security Industry Association (SIA) staff should have been on duty at the premises after the previous serious incident had occurred in 2022;
 - Replying to a question from a committee member about the two serious incidents in 2022 and 2023, the Licensing Authority responded that it was up to the Committee members to decide to on how much weight to

give to those two incidents, which had occurred under the previous operator, when making their final decision on the application before them at the meeting;

- In response to a question from the Council's Licensing Lawyer, the legal representative for the applicant explained that the response from the premises licence holder at the time of the breach was in their view was insufficient;
- The legal representative for the former operator of the premises responded that following the second incident at the premises they had engaged with the Police and there had been ongoing talks. However, the Police had then called for a review and the former operator of the premises agreed to a transfer of the licence;
- In response to a question from the Sub-Committee Chair, the legal representative for the applicant replied that when they had applied for a review they had taken into the impact of the breach in relation to the 'character of the area', as set out in the Licensing Act;
- In response to a question from the Sub-Committee Chair, the other persons despite hearing from the premises licence holder remained concerned about anti-social behaviour and noise disturbance in the immediate area;
- The legal representative for the premises licence holder stated that the cumulative impact should not be used by the Sub-Committee to revoke a premises licence.
- Responding to a question about Simmons taking over the premises, the Police made representations that they did not have an issue with Simmons taking over the premises. However, they did take into consideration the history of the premises such as the review that took place in 2021 when the premises operated as a nightclub prior to the revocation of the premises licence;
- The Sub-Committee heard that at the time of the Consent Order, local residents were not considered and were very upset by the appeal being settled in August 2022;
- The Police stated that the serious incident could have been avoided if the former licensee complied with their conditions and felt a transfer is inappropriate in this case while a review is still pending;
- The local residents in their representations spoke about the life changing difficulties including disturbed sleep late at night and the anti-social behaviour they had experienced. The crime rate around the venue had been contributing heavily towards anti-social behaviour;
- The Sub-Committee also heard that on the 11 December 2022 a serious incident took place at the premises and at the end of March 2023, the premises closed down fully;
- In response to a question from the Sub-Committee, local residents replied that the Boundary Estate comprised 800 homes and half of the tenants were council tenants. It was to the east side of the venue. The estate was impacted upon by the Shoreditch night time economy. People visiting the area used the estate for parking;
- The Sub-Committee took into consideration that the extent of these issues is symptomatic of the way in which the premises are managed by the previous licence holder;
- The Sub-Committee members highlighted that when they were making their decision they would take into consideration how the new licence holder was intending to operate the premises.

- 7.5 In their closing remarks the premises licence holder explained how they had put a lot of effort into building up their businesses over the years and they had a proven track record of running a professional business. In response to a question from the Sub-Committee Chair, they replied that they would not be able to run the premises at 83 Rivington Street as half a bar and half a restaurant.
- 7.6 In their closing remarks several of the other persons replied that they had nothing further to add. Some other persons recommended that the licence be revoked while, another would welcome fresh discussions between local residents and the premises licence holder.
- 7.7 The legal representative for the applicant for the premises licence holder in their closing remarks emphasised the proven track history of his client; they ran 26 venues in London two of which were in the Shoreditch area. These venues had not received any complaints and his client had successfully worked with the Licensing Authority, Environmental Health and the Police. As previously explained, Simmons owned the premises but if the Sub-Committee were minded to revoke the licence then ownership of the premises would revert back to the previous operator Viaduct. They added that the concerns raised by local residents during the meeting were to do with wider issues relating to the Special Policy Area (SPA). They also highlighted that if the Sub-Committee were minded not to revoke the licence then prior to Simmons opening they would meet with local residents to address their concerns.
- 7.8 In their closing remarks the legal representative for the applicant, the Police, disputed the claims made by the premises licence holder, highlighting that they would only undertake changes if the licence was not revoked. The legal representative for the applicant was of the view that this demonstrated that the premises licence holder was not bearing in mind the concerns of local residents. They also felt that the democratic accountability was being undermined by attempting to get the licence granted through a review rather than the premises licence holder submitting a brand new premises licence application for scrutiny and decision. They recommended that the licence be revoked.

The decision

The Licensing Sub-committee, in considering this decision from the information presented to them within the report and at the hearing today and having regard to the promotion of the licensing objectives:

- the prevention of crime and disorder;
- public safety;
- prevention of public nuisance; and
- the protection of children from harm,

that the premises licence for Simmons (Formerly The Viaduct), 83 Rivington Street, London, EC2A 3AY be revoked.

The Reasons for the decision:

The Licensing Sub-Committee carefully considered the application for a review of the premises licence from the Metropolitan Police Service (“the Police”) and their legal representative supported by the Licensing Authority, and 13 Other Persons (local residents). They also carefully considered the representations from the current licence holder’s representative, the current licence holder, the previous licence holder’s legal representative and the supporting evidence presented by them. The Sub-Committee decided that revocation of the premises licence was an appropriate and necessary course of action, given the repeated failures to comply with the terms and conditions of the premises licence.

The Sub-Committee also considered the other options available to them, as detailed in the report. They were satisfied that none of these would adequately address the likelihood of public nuisance reoccurring. They felt that revocation of the licence was necessary to prevent the licensing objectives being undermined in the future.

The Sub-Committee considered the evidence that led to the review being called by the Police. They also took into consideration all the evidence presented from all the parties including the local residents.

The premises "Simmons" was formerly known as “The Viaduct” and before that "Cargo". The premises licence was reviewed following the receipt of an application by the Police dated 29th October 2021. The licence holder appealed against the decision to revoke the licence made by the Licensing Sub-Committee on the 14th December 2021. Following negotiations, which included revised and additional conditions and reduced hours, the appeal was settled and agreed by a Consent Order dated 9 August 2022. The previous licence holder breached the conditions of the premises licence within seven months of the consent order being granted.

The premises has been in possession of a premises licence since 24th November 2006. The licence was transferred to Simmons Waterloo Limited on 24th March 2023.

The Sub-committee took into consideration that there were 13 Other Persons (local residents) who supported the application due to the impact that the premises had on local residents. The Sub-committee also took into account that the Licensing Authority also made representations in respect of public nuisance and anti-social behaviour.

The Police made representations that they were seeking revocation of the premises licence due to serious concerns about the licensing objectives being undermined following a serious incident in February 2023 at the premises.

On Saturday 11th February 2023 at about 2300 hours an assault took place inside the premises between customers which resulted in a man sustaining serious injuries. The Police were informed of this incident on 13th February.

The Police investigation found on 11th February that only one SIA was on duty to deal with the incident and this was a breach of condition 12 of the premises licence on SIA requirements.

The Police made representations that they were disappointed to have had to apply for another review, and they had no confidence in the previous premises licence holder. It appeared to the Police that the licence had been transferred to Simmons, who were

not fully aware of the implications of the premises, what had occurred or the impact on local residents.

The Police contended that they felt it was necessary for there to be public scrutiny and it was not proportionate or appropriate for this premises licence just to be transferred to a new operator. They felt the review was necessary to prevent the operation of the premises and for any new operator to undergo the full new application process under section 17 of the Licensing Act 2003.

The Sub-committee heard that at the time the incident took place in February 2023, the premises did not have the correct number of staff on duty, they did not take sufficient care and diligence in ensuring the safety of members of the public and their customers.

The Sub-Committee heard from the Licensing Authority that it was difficult to assess how Simmons will operate the site given the size and history of this premises. The Sub-Committee took into consideration that the Police would need to have a detailed assessment from Simmons to see what they are proposing in terms of operation of the premises.

The Police did not object to Simmons taking over the premises licence. The Police had a good relationship with Simmons at their other premises in Hackney. However, it was felt that this transfer was used to circumvent the issues relating to the review. It is not considered appropriate in the circumstances with the history of these premises to transfer the licence while the premises licence is being reviewed.

The Sub-committee felt these breaches of the licence, and the incident that took place on 11th February were completely unacceptable, and they had concerns that the former licence holder had no control over what occurred at the premises.

The Sub-committee felt the new operator should have gone through a new application process in order to be granted a licence for this premises. The Sub-committee felt it was very important to consult with the local residents and the Responsible Authorities, in accordance with a new application process for any premises licence before obtaining the licence rather than by way of a transfer during a review process. The Sub-committee were concerned that large crowds going to the premises would be considered high risk.

The Sub-Committee were disappointed that the current licence holder did not engage with local residents to overcome and address their concerns about the premises before the transfer took place. The Sub-Committee felt that the current licence holder did not consider how noise nuisance anti-social behaviour affected local residents.

Following the serious incident in February 2023, and the current licence holder, not engaging with local residents, and by not considering any change to the offering at the premises or offer any compromise, it was very difficult for the Sub-committee to understand how the new licence holder would be able to operate the premises responsibly, and to ensure that no further incidents take place in the future.

The Sub-committee felt the current licence holder, Simmons did not seem to be open to operating the premises any differently from the previous licence holder or to their other premises in the borough of Hackney which was to have a large turnover of customers at alcohol led premises.

The Sub-Committee were not satisfied that the current licence holder would make the necessary changes to improve the operation of the premises so that it would not have a negative impact on the area and the local residents that live near to the premises.

The Sub-committee felt that primarily the concern is that this premises does attract antisocial behaviour and it does need to be controlled very tightly. The Sub-Committee noted that the new licence holder has a good track record with their other 2 premises in the borough, which had no incidents.

The Sub-committee felt there was not sufficient investigation and due diligence carried out in advance by Simmons before trying to take over the operation of the premises, and that is one of the reasons that the Sub-committee felt it was not appropriate for Simmons, the new operator to take over the premises by way of a transfer.

The Sub-committee took into consideration that if the premises licence is revoked this would result in the premises being referred back to the former premises licence holder in accordance with the terms of their contract. However, the Sub-committee felt that taking into consideration the seriousness of the situation and the impact on local residents that it was necessary to deal with this premises licence by way of a new application to the Licensing Authority.

The Sub-committee and local residents felt that a brand new licence application for this premises would give them a better opportunity to properly scrutinise such an application.

The Sub-committee when making their decision took into consideration the evidence presented by all the parties. The evidence relating to the recent serious incident in February 2023, together with the breaches of the conditions attached to the premises licence, the Sub-Committee was not satisfied, given the serious issues raised in relation to crime and disorder, public safety and public nuisance and the previous operation of the premises, that the current licence holder, could prevent the licensing objectives being undermined.

Your right to appeal

If you are aggrieved by any term, condition or restriction attached to this decision, you have the right to appeal to Thames Magistrates at Thames Magistrates Court, 58 Bow Road, London E3 4DJ within 21 days from the date you receive the written decision.

8 Temporary Event Notices - Standing Item

8.1 None.

END OF THE MEETING

Duration of the meeting: 7.00pm - 10.33pm

Cllr Gilbert Smyth
Chair of the Licensing Sub-Committee

Contact:

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