

Meeting Licensing/Gambling Hearing

Date 8 June 2020

Present Councillors Hook, Norman and Orrell

1. Chair

Resolved: That Councillor Norman be elected to act as Chair of the hearing.

2. Introductions

The Chair introduced the Sub-Committee, the Legal Advisor and the Democracy Officer, and invited others present to introduce themselves: the Licensing Manager, the Applicant for the Licence Review's Counsel (Gary Grant), the Licence Holder (Zhong Le Chen), the Applicant for the Licence Transfer (Yan Tong Feng), their translator (Yun Wong), their witness (Wenlin Cheng), and their solicitor (Riyaz Shaikh), and the North Yorkshire Police Force Licensing Manager (Sgt Booth).

3. Declarations of Interest

Members were invited to declare at this point in the meeting any disclosable pecuniary interest or other registerable interest they might have in respect of business on the agenda if they had not already done so in advance on the Register of Interests. No interests were declared.

4. Minutes

Resolved: That the minutes of Licensing Hearings held on 4 July 2019, 7 November 2019 and 27 February 2020 be approved.

5. Exclusion of Press and Public

Resolved:

- i) That the Press and Public be excluded from the meeting during the Sub-Committee's deliberations and decision-making at the end of the hearing, on the grounds that the public interest in excluding the public outweighs the public interest in that part of the meeting taking place in public, under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005.
- ii) That the Press and Public be excluded in the event of presentation of information contained in the statements of Inspector Freer in relation to agenda items 6-7, on the grounds that if the press and public were present it was likely that exempt information falling under the provisions of paragraph 7 of Schedule 12A to Section 100A of the Local Government Act 1972 (as revised by The Local Government (Access to Information) (Variation) Order 2006) would be disclosed to them, and that in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

6. **The Determination of an Application by Anthony Dean for the Review of Premises Licence [Section 52(2)] in respect of The Regency, 16 Barbican Road, York, YO10 5AA (CYC/009221); the Determination of an Application by Anthony Dean for the Review of Premises Licence [Section 52(2)] in respect of Regency, 2-4 George Hudson Street, York, YO1 6LP (CYC/053937); and the Determination of an Application by Yan Tong Feng for the Transfer of Premises Licence [Section 44(5)(a)] in respect of Regency, 2-4 George Hudson Street, York YO1 6LP (CYC/053937).**

With the agreement of all the parties, the Sub-Committee decided that it would be expedient to hear the three applications together (Reviews of Premises Licences for The Regency, 16 Barbican Road, York, YO10 5AA (CYC/009221) and Regency, 2 – 4 George Hudson Street, York, YO1 6LP (CYC/053937) and

Application for transfer of premises licence for The Regency, 2-4 George Hudson Street, York, YO1 6LP (CYC/053937) as they would cover some of the same ground.

In considering the application and the representations made, the Sub-Committee concluded that the following licensing objective(s) were relevant to this Hearing:

- 1) The Prevention of Crime and Disorder
- 2) Public Safety

In coming to their decision, the Sub-Committee took into consideration all the evidence and submissions that were presented, and determined their relevance to the issues raised and the above licensing objectives, including:

1. The papers before it.
2. The Head of Public Protection's reports and his comments made at the Hearing. He outlined the reports in respect of the three applications being considered at the Hearing.

In response to questions from Mr Grant (Counsel for the Applicant), the Head of Public Protection clarified that the transfer application related to the premises licence for the George Hudson Street premises. Mr Grant pointed out that on page 346 of the reports pack the legal test for the transfer application in option 4 should state "appropriate" instead of "necessary". The Head of Public Protection thanked Mr Grant for the correction. There were no questions from Mr Shaikh (Solicitor for the Premises Licence Holder and Licence Transfer Applicant), Sgt Booth (North Yorkshire Police) or Members.

3. The representations of Mr Grant, who presented the case for the Applicant for the two reviews. He stated that the two reviews related to two different Regency Premises, one at 16 Barbican Road which was a restaurant, takeaway and karaoke bar, with a Licence to open to 4am each day. The second Premises was also called Regency, at 2-4 George Hudson Street and was a Chinese restaurant and supermarket and was open midweek until midnight until 3am on Saturday and Sunday. These reviews engaged

two licensing objectives; the prevention of crime and disorder and public safety. The licensing objective of the protection of children against harm may also be an aspect. He stated that the operators of the restaurants were incorrigible employers of illegal workers, all Chinese nationals. With reference to illegal workers, in April 2017 and on 2 September 2019 for the Barbican Road Premises there had been a total of 4 visits - on one occasion no illegal workers found, but on the three other occasions a total of 10 illegal workers were found on the Premises. Regarding the George Hudson Street premises, over the same period, a total of 3 visits, illegal workers were found on all 3 visits, making a total of 6 illegal workers. He stated that over 2.5 years, there were 7 visits to the two restaurants and on 6 occasions illegal workers found, totalling 16 illegal workers. He stated that this total excludes the 2014 inspection where further illegal workers were found in fairness to Mr Chen as this visit pre-dated the current licence holder.

Mr Grant stated that the employment of illegal workers was taken seriously in the context of licence reviews. He explained that the licensed sector had been found to employ the majority of illegal immigrants in the UK and this usually involved the exploitation of vulnerable people working on unlawfully low rates. In this case, the workers were paid no more than £2-£3 per hour, way under national minimum wage. As vulnerable people who are in the country illegally they could not go to the authorities to complain on their treatment. He stated that another impact of illegal workers was that it undercut other law abiding restaurateurs in York who had to pay the legal, national wage and could not compete with Mr Chen. It also acts as a positive incentive for more illegal immigrants to come to country often using dangerous methods. He stated that there had been additional repeated failures sometimes amounting to criminal failures by the operators of Regency, including persistent breaches of licence conditions and repeated fire safety failures on more than one occasion which was of particular concern as a number of people were sleeping in make shift bedrooms in the premises. Mr Grant stated that there had also been a failure to protect children from being sold knives, and failures to properly have a system at work which ensured that hygiene and

food standards were observed. He stated that this undermined the public safety licensing objective.

Mr Grant also said that the Sub-Committee's decision could have a proper deterrent impact on other irresponsible licensees tempted to flout the law. He stated that the Applicant for the licence transfer, Ms Feng provided no acceptable remedy to the reviews as Ms Feng had been part of the problem, so was unlikely to be part of solution. This was the reason that the Applicant for the reviews had something to say about the transfer, as they were linked because the operator was saying that the premises licence for one of the premises should not be revoked as there was someone it could be transferred to. Mr Grant outlined a number of multi-agency visits to the premises as follows:

16 April 2016

Barbican Road – intelligence that there were fire safety issues which led to a visit by Kevin Caulfield (NYFRS) (statement at page 139). Fire safety advice was given to the operators and was not taken up on subsequent visits.

7 April 2017

George Hudson Street – visit by Glyn Jones (Immigration Service) during which one Chinese national was arrested for illegal working and had entered UK without permission. (Statement at page 97).

21 May 2017

Barbican Road – one Chinese national arrested for illegal working. No permission to work.

8 September 2017

Intelligence led multi agency visit by North Yorkshire Police, Licensing Officers, Immigration Officers, HMRC visit to both restaurants. At Barbican Road there were 6 illegal workers on site, and there was sleeping accommodation with bunk beds on the second floor. Mr Chen wasn't there, arrived later, and had difficulties with English. No-one could operate the CCTV, there was a lack of staff training, and there were no notices asking customers to be respectful to residents. There was also no waste management plan. Advice was given to Licence Holder to put matters right.

On the same date the same officers went to the premises in George Hudson Street where one illegal worker was found working in breach of workers permission to enter UK. On this visit to George Hudson Street, Tina Feng who was now the applicant for transfer was present. She described herself as the manager and said she been there for 2 years which would have covered the time when the illegal worker was found on 7 April 2017, and she managed the premises when on at least two occasions illegal workers were found in the George Hudson Street premises. Ms Feng was unable to use the CCTV and show documentation to show staff training. There were also fire safety issues which had a real impact on public safety as means of escape were locked or shut.

11 September 2017

A fire safety officer visit to the Barbican Road premises after a complaint that 20 people were living in the premises in cramped conditions. Advice was given.

14 September 2017

An inspection of the George Hudson Street premises found there was no fire detection system in the basement, a door was held open in the basement, and there was no record of staff training. A notice of the deficiencies was served. Mr Grant noted that Ms Feng was the manager at that time.

18 July 2017 – At the George Hudson Street Premises Ms Feng as manager sold a knife to a child. Ms Feng signed a caution admitting the offence on behalf of the company.

16 March 2018

An inspection of the Barbican Road premises was the only occasion no illegal workers found.

14 August 2018

A visit to the Barbican Road premises by Public Protection led to Mr Chen being convicted and fined for three food safety breaches of food safety regulations (Summonses at page 99).

6 September 2019

Both premises were visited. At the Barbican Road premises, there were three illegal workers, rooms were turned into sleeping accommodation on the second floor,

decoration work was taking place and fire exits were blocked. There was a defect with the fire alarm and a fire safety prohibition notice to stop people sleeping on the premises was later served. None of the breaches of licence conditions from previous visits had been remedied – there was no staff training, staff management plans, no registers, no incident registers and no working CCTV. Officers were concerned as they smelt cigarette smoke in toilets and karaoke rooms and the small karaoke rooms were being used for sleeping in and this was confirmed by an Eastern European male who appeared to collect a passport.

6 September 2019

George Hudson Street premises– four illegal workers were found. Miss Feng was present while four workers were working with her. There were further breaches with CCTV, no staff training and no incidents and refusals register. There were no notices asking people to leave quietly. Ms Feng was described by officers as being “very uncooperative with Officers”. In the basement there were suitcases with female clothing stored suggesting that the premises was used to house workers.

9 September 2019

Barbican Road premises– safety audit found that padlocks were fitted to sleeping accommodation and fire exits were blocked. A Prohibition notice was served.

24 October 2019

Barbican Road premises – a visit by licensing officers found that licence breaches were the same as identified during the visit 6 weeks earlier. North Yorkshire Police served a closure notice as a warning. A visit to the premises in George Hudson Street the same day found that the same conditions were being breached and another closure notice was served. There were several males residing on the top floor.

A week later faced with closure of Premises, on 31 October 2019 the Barbican Road conditions breached had been rectified and the George Hudson Street breaches had been rectified save for CCTV still showing the wrong date and time.

4 November 2019

An application was made by Ms Feng as manager to change the DPS for the premises at George Hudson Street to Mr Feng, who gave his address as 2-4 George Hudson Street. He had no legal right to work in UK.

Mr Grant also referred to the evidence of Inspector Freer but would not give any details. He submitted that for all of those reasons the revocation was the only course as there were overwhelming failures in this case by the current licence holder and by Miss Feng, the proposed Licence holder of the George Hudson Street premises. He stated that the law had been summarised at page 298 of Agenda papers. In summarising he noted that chapter 11 guidance (page 324) indicated that that some forms of criminality associated with premises are treated particularly seriously, one was illegal workers, and licensing officers should use review procedures effectively to deter such crime and where the Licensing Authority feels that the crime prevention objective has been undermined, it is expected that revocation of licence in first instance should be considered. He noted the deterrent effect of revocation approved by two High Court decisions in the papers bundle and said that an important public interest is raised if licensees can make money through operating illegally and then transfer the license to someone else, as it undermines the whole licensing system.

4. The representations of Mr Shaikh, the Solicitor for the Premises Licence Holder and Ms Feng then provided a response to the two Reviews and he presented the Application for Transfer of the Premises Licence at the George Hudson Street premises.

Mr Shaikh noted that some of the matters referred to in the representations made by Mr Grant were old matters. He explained that the background history was that there had been breaches of the premises licences which have been brought to Mr Chen's and Ms Feng's attention but from November 2019, as stated by Mr Grant, the notices were complied with and there were no further issues.

Mr Shaikh stated that the documents he provided shortly before the hearing established regarding the proposed revocation of the licences and illegal workers was that no

action was taken against Mr Chen or Ms Feng on those matters.

Mr Shaikh submitted that revocation of the licences was not necessary or proportionate. Mr Shaikh accepted that there have been past demeanours. Addressing the concern raised by Mr Grant regarding the selling of knives Ms Feng had accepted a caution on behalf of the company and she did not herself sell the knife. He added that the matters raised by the multi-agency visits were not minor matters but when running a restaurant his clients could not be there 24 hours a day, 7 days a week and running a restaurant means delegation of responsibility. He said that they had undertaken all due diligence checks as best they could for illegal workers and did not knowingly employ any illegal workers. There had been no prosecution for immigration offences at either restaurant. Mr Shaikh stated that sleeping upstairs or on the premises had never been permitted, but given the nature of business, some employees took a 15 minute nap due to length of hours.

Mr Shaikh stated there had been no further breaches. It was a family run business and all parties are interconnected. He appreciated that Ms Feng had undertaken the training required for a personal licence and understood the responsibilities she had to comply with. The prosecution for food hygiene standards was against Mrs Chen and the company operators, not Mr Chen.

As to Mr Grant's suggestion that one of individuals employed was not entitled to work, Mr Shaikh stated that the individual was employed, had a restricted a visa, 5 year permit to work. This had expired and a further application was made to extend the visa.

Mr Chen gave evidence to the Sub Committee through his interpreter; He had not been convicted or interviewed for immigration offences. He said he had undertaken a programme of training to ensure compliance with the requirements of the licence. Both restaurants were a family business and he had been involved in them for 3 years. Illegal workers did not sleep at the premises. He had never employed illegal workers to his knowledge. To ensure workers were not illegal he checked passports and their work visas and also checked with the Home Office. As to

how Mr Chen would convince the panel that he would ensure above and beyond that no illegal workers will be on his premises, Mr Chen confirmed that he would operate according to the requirements of the licence and will take all steps to ensure that all were legal. As to Mr Grant's assertion that it was too little too late and he tended to do things when it was the final straw, Mr Chen confirmed that in future he will do his best to comply and do everything he can to make improvements. Mr Chen stated that he was not aware that a knife had been sold to a child and that in future he would ensure that ID was produced to prove that the purchaser was over age of 25. He said that for the last 24 months the food hygiene rating at both premises was 3 stars but they were doing their best.

Ms Feng (Applicant for the License Transfer for the premises in George Hudson Street) gave evidence through her interpreter. In relation to the caution, Ms Feng explained that an 18 year old staff member on their probation period was working in the shop and unknown to her sold a knife to a child. Ms Feng admitted responsibility and has since trained staff to check the age was over 24 years old. There had not been any other issues since the section 19 closure notice had been complied with. She confirmed that she had not been interviewed regarding immigration offences against illegal workers and had not knowingly been in control of illegal workers or allowed them to stay on the premises. She checked their passports, work permits and if in doubt would check with the Home Office. Additional checks in place involve keeping a copy of the ID. She confirmed she understood the importance of having working CCTV on the premises. Apart from the caution, she had no convictions recorded against her for any other matters. She confirmed she understood that she was part of the family business if the transfer of the licence was revoked, many of her staff would lose their jobs and she would to lose her income. She is a single parent with two children to support. This was her livelihood and she could not lose it.

She explained that to ensure that the licensing objectives were not undermined, they are going to replace all CCTV systems to ones which are easy to operate. They would put posters up in the restaurants to remind customers to leave quietly and warnings for age and alcohol consumption and

purchase. They would comply with the fire regulations and update all the fire systems.

As to it being too little too late, Ms Feng said that was not correct and that when they received suggestions they always took action to make improvements. This was done bit by bit.

In response to question from Mr Grant as to why when Mr Chen has given evidence that he carried out checks on all workers over a number of years he still managed to employ 16 illegal workers on 6 occasions, Mr Chen replied that normally workers arrived on Saturdays and Sundays, he would try and contact them then, but then he found it hard to get through and a lot of workers were newcomers, he confirmed that he was aware that he had a legal obligation to keep a copy of the documents and that he did have copies but there were not as many as 16 illegal workers.

Mr Grant asked Miss Feng whether she could you explain why on 25 October 2019 the DPS proposed was also an illegal worker and the name was Zen Cheng Feng which had same home address as Miss Feng. Ms Feng replied that he was her younger brother and this was a family business. She confirmed that she was not related to Mr Chen the licence holder and they were just friends.

In response to questions from Sgt Booth, Mr Chen explained that Zen Cheng Feng told him that he was in the process of applying for an extension of his visa and he believed he was legal which was why he applied for the DPS transfer to him. He said he did carry out Home Office checks and his visa was pending. As to whether the Home Office confirmed he had a right to work in the UK, Mr Chen replied that he saw his previous visa and a letter confirming that he had applied for a visa.

As to why repeatedly he had failed to engage with the Licensing Authority and Police following request for him to contact them on 24 October 2019 and 31 October 2019 and two letters from Licensing Authority on 13 November 2019 and 28 November 2019 regarding the issues raised, Mr Chen replied that he asked his manager to do this.

Members of the Sub-Committee then asked questions as to whether there would be written evidence of checks being made with the Home Office. Mr Shaikh responded that it was his understanding that it was a direct dial line which was used. Mr Shaikh said he had emailed the Home Office for confirmation regarding Zheng Feng Chen, it was not in the submitted evidence but he did receive an email. He noted that replies from Home Office were usually on the telephone. He confirmed that the principal position was not to revoke the licences but the imposition of additional conditions would be the lesser of two evils.

Mr Shaikh also noted that all employees were entitled to 15 minute break every hour and because staff were working long hours in kitchens, took naps for 15 minutes. A shelter was to be put outside and naps were to take place outside due to fire risks.

5. Representation from Sgt Booth, North Yorkshire Police. She outlined the North Yorkshire Police representations in relation to the two premises licence review applications and to the application to transfer the premises licence.

She stated that North Yorkshire Police believed that the crime and disorder objective was seriously undermined, as mentioned by Mr Grant. The Guidance states some criminal activity should be treated particularly seriously, including using premises to employ a person who cannot work in UK. She stated that the statements from Helen Sefton and Nigel Woodhead and PC Bolland and PC Hollis was a joint partnership approach to deal with the issues at the premises. In 2017 a number of persons were removed from Barbican Road and George Hudson Street premises who had no right to work, and there was also failure to comply with safety and fire safety issues there was a persistent failure by Mr Chen to address concerns regarding staff. Following the visit on 8 September there was no responsibility taken by Mr Chen. She noted that as a minimum they expected Mr Chen to engage with the Licensing Authority and North Yorkshire Police to work on a stepped approach to ensure the safeguarding of staff and customers attending the premises. She stated that there was no suggestion by the premises licence holder or anyone at the premises of any HR management system to store records for staff, and no copies of documents retained

for staff to make available to agencies on request. Although Mr Chen said he had conducted checks on Home office website to ensure all staff were legally employed, there had been no evidence submitted as to how he conducted those immigration checks or if they even have been conducted. She added that there were no new staff details to suggest they had undertaken training to meet any of four licensing objectives. She stated that the failing to take action after first visit resulted in further information being received and further operation on 6 September 2019 when again Immigration staff removed officers, as detailed in Glyn Jones' statement.

Sgt Booth stated that on 4 November 2019 North Yorkshire Police received an application for a new DPS at George Hudson Street and carried out checks and found the person had no right to work in UK. Mr Chen signed the application as premises licence holder but failed to take responsibility and carry out due diligence checks. Mr Chen did not engage with the Licensing Authority or North Yorkshire Police to discuss concerns following their visit to the premises. At the time of the transfer request Mr Chen was the DPS for George Hudson Street and it was expected that the DPS is the person with day to day responsibility and should be available and should contact North Yorkshire Police or the Licensing Authority if requested. No formal communications have taken place with North Yorkshire Police or the Licensing Authority and Mr Chen failed to respond to visits, phone calls or letters.

Regarding the premises transfer licence application, North Yorkshire Police have objected on grounds that granting the application would prejudice and undermine the crime and disorder licensing objective. The transfer was merely a smokescreen to say that Mr Chen was not involved in the business running. However, Members have heard that it was a family run business. Ms Feng had also been at the Premises when illegal persons found and removed and she was closely associated as she had same address as DPS who had no right to work in UK and has been involved when there has been a breach of licence conditions. Sgt Booth noted that PC Hollis attended the premises on 24 October 2019 asked about premises licence holder and Ms Feng said she said not heard of him, and didn't know who he was. Sgt Booth asked whether this was the evidence of

a credible person. She reminded Members of Inspector Freer's statement.

She said that Mr Chen had failed to address issues, failed to train staff, not communicated, and failed to implement robust measures to deter criminal activity in the Premises. CCTV not working was also a concern to North Yorkshire Police as CCTV can provide a good deterrent for criminal activity. Sgt Booth submitted that North Yorkshire Police consider that the only choice for the Sub Committee was to revoke both licences and refuse application to transfer to deter further crimes.

In response to questions, Sgt Booth confirmed that during the first visit in 2017 when Mr Chen attended the premises a further staff member had to interpret for him as he was unable to understand what was asked to do of him. That person (who was not Zhong Chen Feng) identified themselves as the manager of the premises.

As to whether there was any evidence to identify who were illegal workers and who were customers, Mr Glyn Jones (Immigration) confirmed that Immigration officers were well trained and versed in who was working and wouldn't ordinarily question customers. Mr Jones stated that some of those who had been removed from the premises were removed from the UK, and others granted bail.

All parties then summarised in the following order: Police, Applicant for Reviews, premises Licence Holder/applicant for transfer.

Sgt Booth stated that North Yorkshire Police were concerned that if revocation was not the outcome, the premises would continue to undermine the licensing objective of crime and disorder. There were grave concerns that the premises licence holder had not attempted to engage, respond or work with the Licensing Authority or North Yorkshire Police to ensure compliance with the licences for George Hudson Street and Barbican Road. She strongly asked the Sub-Committee to consider Inspector Freer's evidence and ask for the revocation of the licences and for and the transfer to be refused.

Mr Grant stated that in terms of number of failed illegal worker inspections and workers, of seven inspections there had been six failures and a total of 16 illegal workers. He stated that the response on behalf of Mr Chen and Ms Feng appeared to be that they did check out illegal workers, but they can't produce evidence to demonstrate that, including no photocopies of passport or visas, which they had a legal obligation to retain. He said the Sub-Committee were being misled by the operators, who didn't check, didn't look at passports or visas as they didn't care if workers were legal or illegal and knew that if they were illegal they could pay them next to nothing, so there was financial gain for them. The other option was that they did carry out checks but for reasons which can't be explained 16 workers were illegal and weren't customers. Glyn Jones confirmed in his statement was clear that they were workers, not customers. Mr Grant stated that if the Sub Committee needed further evidence to decide the factual issues as to whether Mr Chen deliberately employed those workers, they should look at the recent DPS application in October 2019 by Mr Chen, which was Miss Feng's younger brother who had no right to work in the UK. Mr Grant added that Mr Chen's evidence was that he would allow people to work at weekends before carrying out right to work checks. This spoke volumes about their approach. Referring to paragraph 18 of the Abu Hanif case on page 303 of the Agenda pack, Mr Grant said that the question was not whether there had been criminal convictions as prevention of crime and disorder can be retrospective and that the reviews applicant says that prevention and deterrence calls for full revocation of the licences. Lately there were no issues but this was late in the day and the licence should be revoked due to concerns with crime and disorder.

Mr Grant stated that the information on pages 96, 141 and 143 of the Agenda pack all confirmed that the workers were illegal.

Mr Shaikh stated that Mr Chen and Ms Feng had done things wrong and there was a history of rectification notices which had been sorted and all was now in order apart from the CCTV. He added that there had been speculative criminal activities and he had not seen evidence that all 16 persons removed were illegal workers. He added that Mr Chen had not been interviewed by the immigration

authorities and there had been no issues since November 2019. He added that Ms Feng was not responsible for the supply of the knife.

Decision (Review Applications)

Having regard to this review applications and any relevant representations, the Sub-Committee had to determine whether to take any of the steps mentioned under Section 52(4) that it considered necessary for the promotion of the licensing objectives. Taking into consideration the papers, evidence and submissions received and answers to questions, the Sub-Committee deliberated the 5 different options available to them and agreed to reject the following options:

Option 1: To modify the conditions of the licence (i.e. to alter, omit or add any new condition). This option was rejected.

Option 2: To exclude a licensable activity from the scope of the licence. This option was rejected.

Option 3: To remove the Designated Premises Supervisor. This option was rejected.

Option 4: To suspend the licence for a period not exceeding three months. This option was rejected.

Option 5: To revoke the licence. This option was approved.

The Sub-Committee noted that this application was discussed alongside the review for the other Regency premises and the application to transfer the premises licence for Regency in George Hudson Street as the applications covered some of the same ground.

Reasoning for decision

In reaching its decision, the Sub-Committee gave due consideration to:

- The promotion of the licensing objectives as set out in the Licensing Act 2003, in particular the prevention of crime and disorder and public safety.

- The Council's Statement of Licensing Policy.
- The Home Office Guidance issued under section 182 of the Licensing Act 2003.
- The Licensing Sub-Committee agenda pack for the application, the additional statement of Inspector Freer dated 29 May and the additional documents submitted by Mr Shaikh on 5 June 2020 and circulated before the start of the hearing.
- The oral representations made during the hearing.

In making its decision, the Sub-Committee:

- Considered the following parts of the section 182 Guidance:

“2.6 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises.

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities

should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.

11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law

enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.”

- Took account of the evidenced cases of repeated immigration offences at the premises, specifically the recorded incidents of 8 September 2017 and 6 September 2019 during which a number of immigration offenders were encountered. The Sub-Committee further noted that during submissions the premises licence holder disputed that the persons identified as working illegally at the premises on those dates were in fact employees. However, the Sub-Committee was of the view that on the basis of the evidence submitted by the Home Office, which are an intelligence-led organisation, and on the balance of probabilities it was more likely than it was not that they were so employed by the premises licence holder. The Sub-Committee was satisfied that the management was ineffective in any checking of the documentation of staff they were employing at the premises to ensure that they had a legal right to work in the UK and noted that the premises licence holder had not actually produced any documents to evidence that any such checks had in fact been carried out.
- Found the employment of illegal workers at the premises as wholly unacceptable and that it clearly undermines the licensing objective of prevention of crime and disorder.
- Were satisfied on the evidence that there had been sustained and significant breaches of licensing conditions and fire safety issues and that this undermined the prevention of crime and disorder and public safety licensing objectives.
- Noted that Mr Chen had been premises licence holder during the whole time that these immigration issues and fire safety and licence breaches had occurred.
- Took into consideration the fact that there have been no further incidents at the premises reported since November 2019 and that that the premises licence holder had not been

convicted or questioned by the Home Office with regard to immigration offences at the premises. They also noted that the revocation of the premises licence would be likely to harm the business and its employees.

- Noted that in light of the High Court decision in the case of *East Lindsey DC v Abu Hanif (t/a Zara's restaurant and Takeaway)*, the crime prevention objective did not require a crime to have been reported, prosecuted or established in court. The crime prevention objective is not retrospective; it is concerned with the avoidance of harm in the future.
- Put weight on the fact that despite several attempts by the Police and the Licensing Authority to work with the premises licence holder, there had been no engagement with those responsible authorities by the premises licence holder.
- Attached no weight to the food hygiene convictions in 2018 in respect of the Barbican Road premises, no weight to the caution of Ms Feng in 2017 for the sale of a knife to a child at the Regency Street premises and no weight to the ongoing wider criminal investigation (beyond the employment of illegal workers) referred to in the two restricted statements of Inspector Freer.
- Considered all the options open to them and noted that whilst the Sub-Committee had to consider what appropriate steps to take on review, such steps taken must also be proportionate. It recognised that a request for revocation of a licence was a major and severe step that had to be treated seriously, and that they had to consider whether there were alternative measures such as imposing conditions or adopting another sanction using its powers available to it under section 52 (4) of the Licensing Act 2003.
- They noted that the premises licence holder had a history of failure to comply with licensing conditions. They felt that given the history of repeated failings at the premises (significant breaches of conditions, fire safety issues and the presence of illegal workers) the premises suffers from either a lack of regard or poor management control had no faith in the premises license holder being able to sustainably uphold the licensing objectives in the future, particularly prevention of crime and disorder and public safety.

- Due to the gravity of the situation and taking into particular account the promotion of the crime prevention objective, including acting as a deterrent, believed that other sanctions including the imposition of further or amended conditions or a suspension of the licence would be ineffective in the promotion of the licensing objectives of prevention of crime and disorder and public safety. Accordingly it was determined that the premises licence should be revoked.

Decision (Transfer Application)

Having regard to the transfer application and any relevant representations, the Sub-Committee had to determine the application in accordance with Section 44 (5)(b) and consider the following two options:

Option 1: Grant the application. This option was rejected.

Option 2: Reject the application if considered appropriate for the promotion of the crime prevention objective to do so. This option was approved.

Taking into consideration the evidence and submissions received, the Sub-Committee deliberated the two different options available to them. The Sub-Committee's decision was to agree Option 2: to reject the application because it was considered appropriate for the promotion of the crime prevention objective to do so.

The Sub-Committee noted that this application was discussed alongside the review for this premises and the review of the Regency at Barbican Road as the applications covered some of the same ground. They noted that if the transfer was refused the licence would revert to Mr Chen but any revocation of the licence would also apply in that case.

Reasoning for decision

In reaching its decision, the Sub-Committee gave due consideration to:

- The promotion of the licensing objectives as set out in the Licensing Act 2003, in particular the prevention of crime.
- The Council's Statement of Licensing Policy.

- The Home Office Guidance issued under section 182 of the Licensing Act 2003.
- The Licensing Sub-Committee agenda pack for the applications, the additional statement of Inspector Freer dated 29 May and the additional documents submitted by Mr Shaikh on 5 June 2020 and circulated before the start of the hearing.
- The oral representations made during the hearing.

In making its decision, the Sub-Committee:

- Noted from the evidence presented that the multi-agency raids to the premises on 8 September 2017 and 6 September 2019 indicated a history of repeated serious failings at the premises including:
 - Significant and persistent breaches of licence conditions, in particular relating to CCTV
 - Illegal workers found on the premises (including one person found on 8 September 2017 and four persons on 6 September 2019).
- Noted that on the occasion of the raid on 6 September 2019, Ms Feng was present on the premises as restaurant manager.
- Noted that there have been repeated fire safety failures at the premises.
- Felt from the evidence presented that Ms Feng is closely associated with Mr Chen and had been involved with the running of the premises at the time of these failings.
- Noted that it was the Police's belief that the prevention of crime and disorder objective would be undermined by the transfer of the licence to the applicant and the Sub-Committee shared those concerns. In particular they considered the employment of illegal workers at the premises as wholly unacceptable and that it clearly undermines the licensing objective of prevention of crime and disorder.
- Took into consideration the submission by and/or on behalf of the applicant including that paperwork regarding a person's right to work in the UK is being checked, that illegal workers have not knowingly been employed at the

premises, that Home Office Immigration have not taken any enforcement action against the management and that CCTV systems would be replaced and fire systems would be upgraded.

- Attached no weight to the food hygiene convictions in 2018 in respect of the Barbican Road premises, no weight to the caution of Ms Feng in 2017 for the sale of a knife to a child at the Regency Street premises and no weight to the ongoing wider criminal investigation (beyond the employment of illegal workers) referred to in the two restricted statements of Inspector Freer.
- Felt, however, given the history of serious failings at the premises whilst the applicant has been involved with the running of the premises (significant breaches of conditions, fire safety issues and the presence of illegal workers), that it was not satisfied that as a premises licence holder Ms Feng would be a responsible licensee, that there would be any change in how the business would be operated in the future if she were the licensee and that the prevention of crime and disorder objective would be undermined by the transfer of the licence to her. They therefore rejected the application for transfer. The Sub-Committee considered this decision to be appropriate for the promotion of the crime prevention objective.

Cllr G Norman, Chair

[The meeting started at 10.00 am and finished at 1.10 pm].