

## **REPORT OF THE DEPUTY CHIEF EXECUTIVE**

### **LICENSING SUB COMMITTEE – 21 NOVEMBER 2014**

#### **DETERMINATION OF AN APPLICATION FOR A REVIEW OF PREMISES LICENCE UNDER SECTION 52 OF THE LICENSING ACT 2003**

##### **FORTUNE FORTUNE, 12 FAWCETT STREET, SUNDERLAND**

**Licensee: Mr Jipeng Shang**

#### **1.0 PURPOSE OF REPORT**

- 1.1 To consider an application for the review of a premises licence relating to the above-mentioned premises.

#### **2.0 DESCRIPTION OF DECISION**

- 2.1 The Sub-Committee are requested to consider the application and to take such steps as they consider appropriate for the promotion of the licensing objectives.

#### **3.0 INTRODUCTION/BACKGROUND**

- 3.1 An application under Section 51 of the Licensing Act 2003 ('the Act') has been received from Sunderland City Council Trading Standards for a review of the above-mentioned premises licence on the grounds of the Prevention of Crime and Disorder. The application is attached as Appendix 1.

#### **4.0 CURRENT POSITION**

- 4.1 Once such an application has been received, the Council, in its role as the Licensing Authority, must advertise the fact that review is to take place and invite representations. Such notices were displayed for the statutory period of 28 days commencing on 2 October 2014.
- 4.2 Before determining the application the Council must hold a hearing to consider it and any relevant representations received. Representations have been received from Northumbria Police (attached as Appendix 2).

#### **5.0 REASONS FOR THE DECISION**

- 5.1 To comply with the requirements of Section 52 of the Licensing Act 2003.

## **6.0 ALTERNATIVE OPTIONS**

6.1 None submitted.

## **7.0 RELEVANT CONSIDERATIONS/CONSULTATIONS**

7.1 The provisions of sections 11.16 to 11.23 of the Secretary of State's Guidance (powers of a licensing authority on the determination of a review) apply to this matter.

'The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

The licensing authority may decide that the review does not require it to take any further steps appropriate to promote 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.

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.

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

- to 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;
- to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- to remove the designated premises supervisor, for example because they consider that the problems are the result of poor management;

- to suspend the licence for a period not exceeding three months;
- to revoke the licence.

In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems which impact upon the licensing objectives.

Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as a necessary means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence'.

## **8.0 GLOSSARY**

8.1 No acronyms or abbreviations have been used in this report.

## **9.0 LIST OF APPENDICES**

9.1 Appendix 1 - Application Form.

9.2 Appendix 2 – Representation from Northumbria Police.

## **10.0 BACKGROUND PAPERS**

10.1 None.

# Appendix 1

Sunderland City Council – Trading Standards

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I Sunderland City Council

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

<b>Postal address of premises or, if none, ordnance survey map reference or description</b> Fortune Fortune 12 Fawcett Street	
<b>Post town</b> Sunderland	<b>Post code (if known)</b> SR1 1SJ

<b>Name of premises licence holder or club holding club premises certificate (if known)</b> Mr Jipeng Shang
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<b>Number of premises licence or club premises certificate (if known)</b> 00CMPREM01047
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Part 2 - Applicant details

I am

Please tick ✓ yes

- 1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)
- 2) a responsible authority (please complete (C) below)
- 3) a member of the club to which this application relates

(please complete (A) below)

**(A) DETAILS OF INDIVIDUAL APPLICANT** (fill in as applicable)

Please tick ✓ yes

Mr  Mrs  Miss  Ms  Other title  
(for example, Rev)

**Surname**

**First names**

I am 18 years old or over

Please tick ✓ yes

**Current postal  
address if  
different from  
premises  
address**

**Post town**

**Post Code**

**Daytime contact telephone number**

**E-mail address  
(optional)**

**(B) DETAILS OF OTHER APPLICANT**

Name and address

Telephone number (if any)

E-mail address (optional)

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

Name and address Trading Standards Jack Crawford House Commercial Road Sunderland SR2 8QR
Telephone number (if any) <b>0191 561 1693</b>
E-mail address (optional)

**This application to review relates to the following licensing objective(s)**

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

Please tick one or more boxes ✓

- 
- 
- 
-



**Please state the ground(s) for review** (please read guidance note 2)

On 21 July 2014 Adrian Forster a Senior Consumer Protection Officer and Lynda Hodgson a Consumer Protection Officer employed in the Trading Standards Section of Sunderland City Council employed by Sunderland City Council attended the premises of Fortune Fortune at 12, Fawcett Street, Sunderland.

The visit was prompted by an intelligence report that illicit tobacco was being supplied from the premises. It is an offence under the Licensing Act 2003 to keep smuggled goods at licensed premises. It is also an offence under consumer protection legislation to possess for supply any tobacco product not complying with that legislation.

Both the Licensing Act 2003 and the relevant consumer protection legislation give authorised officers powers of entry at any reasonable time. The officers entered the premises and gave the person apparently in charge, Jennifer Zhan (Jinqui Zhao), a notice of "Powers and Rights" explaining the reason that they were there.

Adrian Forster followed Zhan (Zhao) to the rear stockroom area and she shouted something in her native language and as they entered the rear of the premises a young man was about to leave the office area carrying a bag containing what Mr Forster identified as a quantity of cigarettes that did not comply with national legislation.

The bag contained at least four or five sleeves of different oriental brand cigarettes and two of the sleeves were open. Mr Forster identified himself to the male who gave his name as Weng Hui and asked him who the cigarettes belonged to he told Mr Forster he had been given them by a friend. Mr Forster advised Zhan (Zhao) that they should not be on licensed premises and ascertained that Hui helped out in the shop. Mr Forster then took Hui's details and advised him and Zhan (Zhao) that he was going to seize them. Hui became agitated and tried to take the cigarettes from Mr Forster but then left. Mr Forster then found another plastic bag which was hidden under a coat on the bench where he and Zhan (Zhao) were standing, this also contained several sleeves of oriental brand cigarettes. At this point a man Mr Forster now knows as Jipeng Shang became involved. He told Mr Forster he was the owner and told him to get out of his shop. Mr Forster explained to him that he would not leave as he had powers to be there and he was going to seize the cigarettes. Mr Forster showed Shang his identification and a copy of the Powers and Rights Notice which he told him he had given to Zhan (Zhao), Zhan (Zhao) denied he had given her this. Shang then said he did not know who Mr Forster was and was shouting "get out" repeatedly, Mr Forster identified himself to him again and he told him he would call the Police and they would verify who Mr Forster was but Shang kept shouting "get out" repeatedly. As Mr Forster was dialling the Police on 101 Shang pushed him out of the office into the storeroom, and then grabbed Mr Forster's arm and pushed him into the back lane behind the shop and shut the doors behind him. Mr Forster then contacted the Police on 999 as his colleague Lynda Hodgson was left in the premises. The Police said they would attend immediately, and Mr Forster ran round to the front of the shop passing Hui in the street. As he entered the front of the shop and whilst still in contact with the Police switchboard, Shang confronted him and was shouting "get out" repeatedly, he said he would push Mr Forster again. Mr Forster told him he would not and that the Police were on the way. The Police arrived and Shang was arrested for assault on Mr Forster and a quick search of the office area revealed both sets of cigarettes had gone.

In addition to the assault of an officer performing his duties being a crime, the keeping of what are believed to have been smuggled goods on the premises is also a criminal offence under section 144 of the Licensing Act 2003. The Council is unable to take action in that regard as officers were illegally prevented from obtaining the evidence.

The Police have informed us that Mr Shang has accepted a caution for the assault.

**Please provide as much information as possible to support the application (please read guidance note 3)**

For these reasons I am seeking revocation of the premises licence of Mr Jipeng Shang of Fortune Fortune, 12 Fawcett Street, Sunderland.

tick ✓ **yes**

Have you made an application for review relating to the premises before

**Please**

If yes please state the date of that application

Day Month Year

┆	┆	┆	┆	┆	┆	┆	┆	┆	┆
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**If you have made representations before relating to the premises please state what they were and when you made them**

tick ✓ yes

Please

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

**IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION**

**Part 3 – Signatures** (please read guidance note 4)

**Signature of applicant or applicant's solicitor or other duly authorised agent** (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature

*Richard [unclear]*

Date

*1/10/14*

Capacity

*TRADING STANDARDS AND LICENSING MANAGER*

**Contact name (where not previously given) and postal address for correspondence associated with this application** (please read guidance note 6)

**Post town**

**Post Code**

**Telephone number (if any)**

**If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)**

**Notes for Guidance**

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

# Appendix 2

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**From:** [REDACTED]  
**Sent:** 29 October 2014 13:22  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Fortune Fortune [RESTRICTED]

Northumbria Police view the circumstances outlined in the review of premises licence document submitted by Mr Richard Redding as very serious.

Northumbria Police can confirm the arrest of the Designated Premises Supervisor Jipeng Shang dob 8/4/1980 on 21st July 2014 and that after being originally bailed he received an official Police Caution for assault on 25th August 2014 by Sgt 423 Robinson.

Further to this, Licensing Coordinators William Sproates and Sarah Howson can confirm that on Thursday 16th October 2014 at 13:00 they had cause to visit the shop Fortune Fortune routinely, they asked to see the DPS Jipeng Shang but were told he was on holiday in China for at least two weeks, they were unable to view the CCTV system as no one had knowledge of how it worked and clearly the two persons running the shop had no knowledge whatsoever of the licensing objectives although the female assistant (name unknown) did say she always asked the relevant questions when serving alcohol to anyone appearing under age. The premises licence was not on display and no one knew where it was nor were they familiar with anything contained within it ie conditions, hours of opening etc. Clearly the owner of the premises/DPS Mr Jipeng Shang has scant regard for the licensing objectives the recommendation for revoking the licence is supported by the Police.

Regards Bill Sproates

PP Sean McKenna



Handwritten signature of Bill Sproates, with the name 'W Sproates' and the number '45867' written below it.

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