

Licensing and Regulatory Committee

Minutes of the Licensing & Regulatory Committee held remotely, on Tuesday 16 November 2021, at 10.00am.

Present: Councillors Illingworth (Chairman), Boad, Cullinan, Grey, Kohler, Leigh-Hunt, Mangat, Norris, Redford, Roberts and Syson.

Also Present: Emma Dudgeon (Licensing Enforcement Officer, observing only), Lesley Dury (Principal Committee Services Officer), Rob Edwards (Committee Services Officer, who left the meeting near the start), Caroline Gutteridge (Council's Solicitor), Rachael Russell (Licensing Team Leader) and Kris Walton (Digital Content & Social Media Officer, responsible for the livestream of the meeting to YouTube).

19. **Apologies & Substitutes**

- (a) apologies for absence were received from Councillors Evans, Luckhurst and Wright.
- (b) Councillor Kohler substituted for Councillor C Gifford.

20. **Declarations of Interest**

Councillor Syson declared an interest because Binswood News and Leamington Drinks were both in Milverton for which she was Ward Member. She had been in one of these shops, but not to purchase alcohol.

21. **Application for a review of the premises licence issued under the Licensing Act 2003 for Binswood News Limited.**

The Panel considered a report from Health and Community Protection which sought a review of a premises licence for Binswood News Limited, 24 Binswood Street, Royal Leamington Spa.

The Chairman asked the applicant and the licence holder to introduce themselves:

- Mrs Gina Punia, wife and business partner to the applicant, Mr Kamalprit Singh Punia who ran Leamington Drinks;
- Ms Katie Stanton, Solicitor, Smith & Wells Solicitors, representing the applicant;
- Mr and Mrs Onkar Singh Thiara, Licence Holders, who ran Binswood News; and
- Mr Abdul Salam Khan, Solicitor, TLP Solicitors, representing the Licence Holders.

The Council's Solicitor explained the procedure for the hearing and informed those present that the Committee would endeavour to make a final determination that day, which would be circulated to the applicant via email. A summary of the decision would be published on the Council's website and written copies of the decision would subsequently be posted to all those who had made

representations in relation to the application. The applicant or any person who had made representations could appeal against the decision to the Magistrates Court within 21 days of formal notification of the decision. She further explained that at the end of the hearing, the Committee would consider its decision, during which time all parties would be asked to leave the meeting and a new meeting would be created for Members, herself, and the Principal Committee Services Officer. Her role was only to provide legal advice, and not to make any recommendations as to the determination to be given.

The Licensing Team Leader outlined the report and asked the Committee to consider all the information contained within it in order to determine what action, if any, should be taken further to the representations received from Mr Punia.

An application for a review was received from Mr Kamalprit Singh Punia by Warwick District Council Licensing Authority on 21 September 2021 for Binswood News Limited, 24 Binswood Street, Royal Leamington Spa. The application was attached as appendix 1 to the report. CCTV footage referred to in the report was to be shown as part of the hearing.

There had been a premises licence in place at 24 Binswood Street, Royal Leamington Spa since 2008. The licence was transferred to Binswood News Limited in January 2015. Mr Onkar Singh Thiara was the sole director of Binswood News Limited and became the Designated Premises Supervisor for the premises in January 2015. A copy of the current premises licence and conditions was attached as appendix 2 to the report.

There had not been any representations from Responsible Authorities. There had been one further representation in support of the review from a local resident which was attached as appendix 3 to the report.

Correspondence had been received from Trading Standards that a visit was made to the premises along with Warwick District Council Licensing to provide advice following reports of underage sales. A test purchase exercise then took place on 21 September 2021, which the premises passed. A copy of the letter sent by Trading Standards was attached as appendix 4 to the report.

The Chairman confirmed that a correction had been circulated because the addresses were incorrect in the original solicitor's letter about the application.

The Chairman invited Mrs Punia to introduce the application for review and because the submission would involve filmed evidence, he reminded her that at this stage in proceedings, it might be necessary to move into confidential session whilst the footage was shown.

Mrs Punia informed Members that the application for a review had been made because of serious concerns about the sale of alcohol to people under the age of 18 which was taking place at Binswood News, contrary to the Licensing Act. This contravened the four licensing objectives. CCTV evidence had been provided of numerous incidents which had occurred over a two-month period; this had been provided to the Council. She then asked if the footage could be viewed. It was therefore

Resolved that

Under paragraph 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005, the Licensing Authority may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

Under Section 100A of the Local Government Act 1972 that the public and press may be excluded from the meeting for the following item by reason of the likely disclosure of exempt information within the paragraphs 1 and 2 of Schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006, as set out below.

Minute Number	Paragraph Numbers	Reason
21	1	Information relating to an individual
21	2	Information which is likely to reveal the identity of an individual

(The livestream to YouTube was paused for the duration of the confidential part of the hearing.)

Mrs Punia then explained that she would narrate her account of what was happening as each video was shown. It was her belief that the people in the footage were underage and that the evidence showed that as they emerged out of Binswood News, they were carrying alcohol. In some cases, she informed Members that the people filmed had tried to buy alcohol from Leamington Drinks beforehand but had been refused service based on age and failure to provide ID. Mrs Punia showed approximately 12 videos which she said demonstrated that underage people had been able to purchase alcohol from Binswood News.

In response to a question from the Council's Solicitor, Mrs Punia confirmed that she had filmed some of the first video on her mobile phone.

After confirming that Mrs Punia had nothing left to say that was confidential, the Chairman invited Members to ask Mrs Punia questions on anything that had to be asked in the confidential element of the hearing.

The Council's Solicitor advised Members that in licensing hearings, evidence tended to be admissible in all forms and that would include hearsay evidence. The important consideration was the weight attached to the hearsay evidence when reaching a decision, for example, some Members might choose to attach more weight to some of the videos they had been shown rather than others.

In the absence of questions from Members, the Chairman invited Mr Khan to speak. Mr Khan pointed out that the videos did not show inside Binswood News and therefore did not show that the people did not provide ID. He also stated that only one of the videos showed that beforehand, the people had been in

Leamington Drinks before proceeding into Binswood News. However, there was no sound to go with the recording, so it was not clear what had been said.

The Chairman confirmed there were no further points that needed to be made in confidential session and the hearing resumed public session with the YouTube livestream being re-started.

The Chairman asked Mrs Punia if she had anything further to add; she did not. The Chairman then invited Members to ask Mrs Punia any further questions they might have.

In response to questions from Members, Mrs Punia explained that:

- August and September, the months when the videos shown to Members had been filmed, were during schools' summer break and the instances of underage selling was happening sometimes on a daily / weekly basis. She believed this was because the children were on school holiday. However, this was not the only time underage alcohol sales had transpired, and it had happened before.
- Video evidence had been collected because it had become a regular occurrence.
- Challenge 25 was in operation at Leamington Drinks and a book was kept to record when sale of alcohol was refused because of a failure to provide ID or the person was intoxicated. These written records correlated with the CCTV evidence.
- She believed that Binswood News would have been aware that videos were recorded and would have been aware that Trading Standards would be conducting a test purchase.
- Copies of the videos had been provided to the licence holder prior to the hearing.
- Part of the first video that had been shown had been filmed by Mrs Punia. She had been working in Leamington Drinks that day and had refused to sell alcohol to the person in the footage. When she then saw him go into Binswood News, she went outside and took footage on her mobile phone.
- All other video evidence had been filmed on the CCTV system at Leamington Drinks.
- Leamington Drinks had CCTV cameras outside and inside, filming constantly. The footage was kept for 30 days before being deleted.

The Council's Solicitor explained that premises that sold alcohol were not required to keep records of the age of people they sold to, they had to keep records of when there was a failure to provide ID when challenged. This meant that the licensee or person serving had to judge the customer's age. A failure to provide ID did not automatically mean that the person challenged was underage, it could mean that they had failed to provide ID.

Mr Khan was invited to ask Mrs Punia questions. Mr Khan made the point that whilst the video evidence had been shown, Mrs Punia had spoken and explained what she considered was happening and the narrative she had given had been self-serving. What had not been provided by the applicant was evidence that on each of the occasions shown on video, the sale of alcohol had been refused in Leamington Drinks when this was stated in the narrative given by Mrs Punia. He asked Mrs Punia why the record of refused sales had not been submitted as part of the applicant's evidence.

Mrs Punia explained that there had been times when the people had come into Leamington Drinks and been refused service as evidenced on the CCTV footage inside Leamington Drinks. It was plain a conversation had taken place and the person had then walked out of the shop empty handed. They had then gone inside Binswood News.

Mr Khan asked why the refusals book from Leamington Drinks had not been provided as evidence alongside the CCTV footage. Mrs Punia stated that she had the book with her, and she could ask her solicitor to photocopy it and send it later. It would show a record in the book to correlate with the time the CCTV footage was taken. The Licensing Team Leader confirmed that the book had not been submitted in advance of the hearing as evidence, to which the Council's Solicitor explained that this meant it could not now be presented unless consent was received from all parties and new material could not be presented, only evidence that amplified material already in evidence. Mrs Punia, in response to a question from the Council's Solicitor, then confirmed that the dates and times she had given in the videos correlated with the records in the book. She also confirmed that refusals to sell alcohol had been made by her, her husband, and another member of staff.

In response to a question from Councillor Cullinan who questioned the weight to be applied to CCTV footage filmed inside Leamington Drinks, the Council's Solicitor explained Members would have to determine how much weight to apply to the video evidence and that she believed Mrs Punia was saying she considered that underage sales were taking place because staff working at Leamington Drinks considered the people filmed to be underage and they were unable to produce ID; these people then went into Binswood News where it was believed they were able to purchase alcohol.

Mr Khan pointed out that Leamington Drinks and Binswood News were competing businesses, both selling groceries and licensed goods. This had led to acrimony very soon after his clients moved into Binswood News from the owners of Leamington Drinks. An officer at the District Council, Economic Development (Chris Makasis) visited both premises to seek a resolution. He had suggested that the licence to sell alcohol at Binswood News should be relinquished but this was rejected because the licence to sell alcohol was already in place when it was taken over. The two businesses were in competition for the same custom. A letter sent to Licensing on 3 September, but not part of the papers for the hearing, which was sent to Smith and Wells contained a complaint about clients at Leamington Drinks standing at the door of Leamington Drinks trying to invite Binswood News' clients to shop in Leamington Drinks instead. His clients believed that this current episode was an attempt to get the licence revoked at Binswood News to the benefit of Leamington Drinks. Mr Khan, having watched the videos himself could not "genuinely say" what had been purchased on each of the occasions where the film showed some sort of bottle in the hands of any of the people filmed. It was not possible to judge what had been bought in the videos where there was commentary about bags being empty on entering Binswood News and then with contents on exit. They could have bought groceries. None of the videos showed that the people went into Binswood News and did not show ID and were not challenged about their age and were able to buy alcohol. His clients would say that the customers produced evidence of age and they were satisfied with that. In one video shown, Mrs Punia had said that the individual had been refused because of a failure to produce ID, but there was no evidence to prove this and there could have been several reasons why the person was unable to buy anything at Leamington Drinks. He returned about 10 minutes later and

bought something in Binswood News, but it was unclear what he purchased. His clients would claim that if it had been alcohol sold, then ID would have been produced. Mr Khan referred to another video and claimed that the person carrying the purchase out of the shop was not the person who had made the purchase and the person who had made the purchase had produced ID.

The test sale conducted by Trading Standards clearly demonstrated that the underage sale was refused. The licensees would not have known when the visit would have taken place because visits were made randomly. They received test visits for lottery sales also twice yearly and had never failed. Regardless of what the applicant said, even if there was a failure to produce ID to them, it did not mean that the person concerned was underage. His clients had experience and had been in business for seven years, they had demonstrated to Trading Standards that they did not sell to people below the age of 18, they were fully aware of their responsibilities and were fully discharging that responsibility and the evidence supplied by the applicant had to be considered in light of the dispute between the two businesses.

The Chairman asked whether the licensees had a refusals book. Mr Khan stated that they did and held up some "receipts". He felt that since the applicant had not been able to introduce new evidence, he had not felt it appropriate to show these.

In response to questions from Members, Mr Khan explained that:

- CCTV was in operation at Binswood News as a condition of their licence. By the time they became aware of the review, the system had already deleted the footage taken inside their shop which was why no CCTV evidence had been submitted. Like most systems, the footage self-deleted after a set period.
- His clients clearly did operate Challenge 25 and the receipts were evidence of this. A receipt was produced every time a sale was refused because of a person failing to produce id or appearing not to be 18. (On being pressed again about Challenge 25, Mr Khan spoke with his clients and they confirmed that they operated Challenge 25.)
- This was not the first business his clients had owned which sold alcohol.
- Only Mr and Mrs Thiara handled alcohol sales in the shop.
- When there were school holidays, children might try to buy alcohol, but they were always refused if staff were unsure of their age. If they saw people congregating around their shop who appeared to be underage, they would be asked to move on. They were not part of any other scheme to prevent underage sales other than self-enforcing the rules for not selling to people under 18.

The Chairman asked the applicant if there were any questions for the licence holder. Mrs Punia referred to a point made by Mr Khan and stated that the only reason the review had been requested was because of concerns for the safety and wellbeing of young children. Prior to running Leamington Drinks, she had been a youth worker and had trained to be a social worker in the area of children's services. She had witnessed the effect alcohol had on lives. She also felt the licence holder had had adequate time to collect CCTV footage to refute the claims she had made. Whilst Binswood News had been in business for seven years, Leamington Drinks had been in business for 20 years and had never had any issues with Licensing, Police or Trading Standards and worked alongside those agencies. They had also run a public house, the Golden Cross in Coventry

for eight years. Currently they ran a public house in Leamington Spa where Mrs Punia was the licence holder and Mr Punia was a DPS. She therefore was clear that the only reason for requesting the review was for the safety and protection of young children and young adults.

After checking if Mrs Punia had any questions for the licence holders, he invited her to sum up.

Mrs Punia reminded everyone that no evidence had been produced to refute anything she had presented on video and that there had been breaches of the Licensing Act with the sale of alcohol taking place to people below the age of 18, and therefore they should be held accountable.

Mr Khan was asked if he had anything else to say. Mr Khan informed Members that a few letters had been submitted speaking to the character of the licensees, copies of which were sent to the applicant. The applicant had made the point that they had been in business for 20 years, of which the last seven there had been the competing business of Binswood News. He suspected they would not have been happy about that.

The Licensing Team Leader confirmed that Mr Khan had sent in about six letters from residents, but there had been concerns about including them in the report because of questions on relevance. They were dated September 2020 and were regarding previous communications between the two premises and not concerning the current review. The Council did not have permission from the individuals that they were happy for the details of their letters to be shared in this way and so the letters were not included in the report.

At 11.40am, the Chairman reminded those present of the procedure: the remote meeting would be ended by the Committee Services Officer; a separate meeting would be arranged with the Members of the Committee, the Council's Solicitor, and the Committee Services Officer; the decision would be communicated in writing to the interested parties with a summary of the decision published on the Council's website.

Resolved that new conditions be added on the licence in respect of promoting the licensing objective "The protection of children from harm".

The application for a review of the premises licence was heard by the Warwick District Council ("the Council") Licensing Committee via a virtual hearing on 16 November 2021.

The premises are at 24 Binswood Avenue, Leamington Spa and trade as Binswood News ("the Premises").

The Applicant is Mr Kamalprit Singh Punia who is the leaseholder of Leamington Drinks situated next door to the Premises. Leamington Drinks is also licensed to sell alcohol.

The Licence Holder of the Premises is a company by the name of Binswood News Limited and the current premises licence permits the sale of alcohol to be consumed off the premises from 06:45 to 23:00 hours Monday to Sunday.

The licence was issued on 8 January 2015 and names Mr Onkar Singh Thiara as the Designated Premises Supervisor.

The Applicant was represented by his wife and business partner Ms Gina Punia with solicitor Ms Katie Stanton assisting. The License Holder was represented by solicitor Mr Abdul Salam Khan and Mr Onkar Singh Thiara and Mrs Thiara were also in attendance.

In reaching their decision Members of the Committee carefully considered all of the evidence appended to the Licensing Officer's report, the evidence provided on behalf of the Applicant (including the video evidence shown at the hearing) and the oral evidence given by both parties. The Committee have also had regard to the statutory guidance issued under section 182 of the Licensing Act 2003 and the Council's Statement of Licensing Policy.

The Committee made the following findings:

1. The application for review was relevant to the promotion of the licensing objectives. The objective that was most engaged was the protection of children. The prevention of crime and disorder and the prevention of public nuisance were also of relevance in this case.
2. The Applicant asserted that the video footage showed numerous incidents of alcohol being supplied at the Premises to underage persons during August and September 2021. The Committee noted that the majority of the videos were taken from a CCTV camera fixed to the outside of Leamington Drinks at 26 Binswood Avenue. Footage of refused sales inside Leamington Drinks was also shown and there was one video taken by Mrs Punia outside the Premises showing customers leaving. None of videos showed transactions taking place inside the Premises. The Committee felt that a number of the videos were not evidence of underage sales at the Premises either because alcohol could not be seen, or because it was not apparent that the customer was under the age of 18. The Committee did however conclude that on at least two occasions the video evidence showed customers who did appear to be under 18 leaving the Premises holding bottles of alcohol. The Panel also noted that Mrs Punia asserted that customers would be refused service at Leamington Drinks because they appeared to be underage and could not produce valid ID but were then seen to go next door to Binswood News where it seemed that they were able to purchase alcohol. The Committee decided that, on the balance of probabilities the video evidence showed that it was very likely that underage sales at the Premises had taken place on occasion.
3. The Committee noted that the Premises had been subject to a test purchase by Trading Standards on 21

September 2021 and sale of alcohol to a person under the age of 18 had been refused. The Committee did not consider that there was any evidence that the Licence Holder could have been aware that this was going to take place. The Committee also noted that the licence had been in place since 2015 and there was no record of complaints and no representations by the Police or any other Responsible Authorities.

4. On behalf of the Licence Holder Mr Khan said that there had been disputes between the Applicant and Mr and Mrs Thiara who were competing businesses. He said that a Council officer had attempted mediation between the parties in the past but this had been unsuccessful. Mr Khan said that Mr and Mrs Thiara did not employ other members of staff and were responsible for all transactions. They did operate a refusals log and the Challenge 25 scheme. They denied selling alcohol in contravention of the premises licence. The Committee noted there was a history of dispute between the parties.

The Committee considered that action was appropriate in this case on the grounds that they felt that on the balance of probabilities there was some evidence that underage sales of alcohol had taken place albeit not to the extent asserted by the Applicant.

The Committee have therefore determined that the premises licence should be modified to remove the words "*All staff will be trained to be under 21 aware*" (under the heading *General*) and the following new conditions shall be imposed:

1. Signage to be displayed around the premises in prominent places informing both staff and customers of the 'Challenge 25' policy.
2. A notice(s) shall be displayed in and at the entrance to the premises where they can be clearly seen, indicating that there is a "Challenge 25" policy in place at the premises.
3. The premises will operate a "Challenge 25" proof of age policy.
4. The premises is to maintain a refusals book/record to record the details of incidents where a member of staff has refused to sell alcohol to a person suspected of being under the age of 18. The Premises Licence holder / Designated Premises Supervisor or nominated representative shall regularly monitor the book make a record of these checks. The book must be made available to a Police Constable/Authorised Officers of the Licensing Authority on request.

5. Any person who is authorised to sell alcohol at the premises will be provided with training on first appointment and on a regular basis thereafter. Training will include information on how to prevent underage sales and any other relevant matters. A written record will be kept of all training provided and this record will be kept on the premises for inspection by any Responsible Authority.

The Committee considers that the imposition of the additional conditions is appropriate to promote the licensing objectives.

The Committee would like to warn the Licence Holder that it is imperative that underage sale of alcohol does not take place at Binswood News and that the conditions of the licence are strictly adhered to at all times. The sale of alcohol to persons under the age of 18 is a criminal offence that could result in prosecution. A copy of this decision will be kept on record and it may be referred to at any future hearings. The Licence Holder should note that if the Licensing Authority were to be made aware of any future underage sales at the Premises then a Licensing Committee may feel it appropriate to take more serious action which could include the revocation of the licence.

Warwick District Council
Licensing Committee
16 November 2021

(Members of the Committee who attended 16 November 2021:

Councillors: Illingworth (Chairman), Boad, Cullinan, Grey, Kohler, Leigh-Hunt, Mangat, Norris, Redford, Roberts and Syson.)

(The meeting ended at 12.49pm)

CHAIRMAN
21 March 2022