

Committee: <b>Licensing Sub-Committee</b>	Date: 7 <sup>th</sup> September 2010	Classification: UNRESTRICTED	Report No. LSC 26/011	Agenda Item No.
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Report of: <b>Colin Perrins</b> <b>Head of Trading Standards and Environmental Health (Commercial)</b>  Originating Officer: <b>Nick Kemp - Licensing Officer</b>	Title: <b>Licensing Act 2003</b>  <b>Application to Review the Premises Licence for: Montana &amp; Co, 101 Burdett Road, E3 4JN.</b>  Ward affected: <b>Mile End East</b>
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## 1.0 Summary

Name and  
Address of premises:                   **Montana & Co**  
  **101 Burdett Road**  
  **London**  
  **E3 4JN**

Licence under review:                   **Licensing Act 2003**  
  ▪ **Sale by retail of alcohol**

Representations:                         **Metropolitan Police**

## 2.0 Recommendations

2.1 That the Licensing Committee considers the application for review and then adjudicates accordingly.

### LOCAL GOVERNMENT 2000 (Section 97) LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

Brief description of "background paper"	Tick if copy supplied for register	If not supplied, name and telephone number of holder
<ul style="list-style-type: none"> <li>• Guidance Issued under Section 182 of the Licensing Act 2003</li> <li>• Tower Hamlets Licensing Policy</li> <li>• File</li> </ul>		020 7364 7446

### 3.0 Review Application

This is an application for a review of the premises licence for: Montana & Co, 101 Burdett Road, London, E3 4JN. The review was triggered by Metropolitan Police.

3.1 A copy of the review application is attached in **Appendix 1**.

### 4.0 The Premises

4.1 The premises licence was issued on 27<sup>th</sup> September 2005. A copy of the current licence is contained in **Appendix 2**.

4.2 Maps showing the premises, surrounding area and vicinity of local residents are included in **Appendix 3**.

### 5.0 Representations

5.1 This hearing is required by the Licensing Act 2003, because a review has been triggered by the Metropolitan Police:

5.2 **This Service respectfully refers the Licensing sub-committee to the Guidance issued under Section 182 of the Licensing Act 2003 by the Secretary for State for Culture, Media and Sport. In particular the Service requests that you consider paragraphs 11.23 to 11.28, Reviews arising in connection with crime, making reference to paragraph 11.26. Paragraph 11.26 states that there is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises for, amongst other things, the sale of smuggled tobacco. In paragraph 11.27 the guidance advises that revocation of the licence should seriously be considered, even at first instance.**

5.3 Only representations that relate to the following licensing objectives are relevant:

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

5.4 In the view of the responsible authorities it is necessary to achieve the licensing objectives of **prevention of crime & disorder**.

### 6.0 Review Explained

6.1 The Licensing Act 2003 was described by the Government at the time as “light touch” but as Baroness Blackstone stated in the Lords at the time

of the second reading (26 Nov 2002) “Local residents and businesses as well as expert bodies, will have the power to request that the licensing authority review existing licences where problems arise. Such a review could result in the modification of the licence, its suspension, or ultimately, revocation.”

- 6.2 The Department for Sport, Culture and Media Affairs has issued guidance under Section 182 of the Licensing Act 2003 in relation to reviews and that is contained in **Appendix 4**. It is available on the Government’s website, [www.culture.gov.uk](http://www.culture.gov.uk). It was last revised in March 2010.
- 6.3 Members are particularly asked to note the comments in relation Crime and Disorder. In particular the DCMS advice is that “The role of the licensing authority when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure that the crime prevention objective is promoted.”
- 6.4 In relation to its advice on representations the DCMS has also advised that “there is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations.” It has also issued revised guidance about Crime and Disorder, and the pool of conditions which might be considered in relation to any identified problems. **See Appendix 5**.
- 6.5 Members should also note the Council’s Licensing Policy in relation to Crime and Disorder, the relevant parts of which are contained in **Appendix 6**. The Pool Conditions in the Policy are the same as the Government’s.
- 6.6 The DCMS has advised that in relation to reviews “It is important to recognise that the promotion of licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims. It is therefore equally important that reviews are not used to drive a wedge between those groups in a way that would undermine the benefits of co-operation. It would be good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. It is expected that a failure to respond to such warnings would lead to a decision to request a review.”
- 6.7 The licensing authority itself cannot trigger a review; that can only be done by a responsible authority or an interested party (local resident or business).
- 6.8 An interested party or a responsible authority can trigger a review at any time, but the grounds must be relevant to the licensing objectives. The form of the application, and the advertisement of the review are the subject of regulations (The Licensing Act 2003 (Premises Licences and

Club Premises Certificate) Regulations 2005). In addition, the licensing authority has to satisfy itself of certain matters in relation to the Licensing Act 2003. The Licensing Services Manager Ms Jacqueline Randall is the delegated officer who deals with this on behalf of the licensing authority. All the matters stated in 5.0 were considered before any representations were accepted for inclusion in this report.

6.9 The Licensing Act 2003 requires that the Licensing Authority satisfies itself that it should reject the grounds for a review because:

- The ground is not relevant to one or more of the licensing objectives
- In the case of an application by a local resident that the application is frivolous, vexatious or repetitious.

## 7.0 Review Advertisement

7.1 The review was advertised by a blue poster, next to the premises, by the Licensing Section. This was periodically monitored by the Section to ensure it was on continuous display, and replaced as necessary. It was also advertised at Mulberry Place, 5 Clove Crescent, London E14 2BG.

7.2 The party that triggers the review must notify the licence holder and responsible authorities. The review documents were sent to the licence holders.

7.3 The procedure for a review can be summarised as follows:

- A review is triggered by a responsible authority or interested party
- Consultation is conducted for 28 full days
- Other responsible authorities or interested parties may join in the review
- Members conduct a hearing
- Members make a determination
- All the parties to the review have the right of appeal to the magistrates court (i.e. the licence holder, the person who triggered the review and those who have made a representation).

## 8.0 Licensing Officer Comments

8.1 The Governments advice in relation to reviews is contained in **Appendix 4**. Members must consider all the evidence and then decide from the following alternatives:

- Take no further action as they do not consider it proportionate to do so
- Impose conditions (including altering existing permissions) that relate to problems which they consider have been identified and

which are necessary and proportionate to ensure that the licensing objectives are met

- Suspend the licence for a period
- Revoke the licence completely

8.2 The licence should only be suspended or revoked if Members believe that alterations to the existing licence, including imposing new conditions does not have a reasonable prospect of ensuring that the licensing objectives are met.

8.3 Members should bear in mind that conditions may not be imposed for any purpose other than to meet the licensing objectives.

8.4 In all cases the Members should make their decision on the civil burden of proof that is “the balance of probability.”

8.5 In all cases Members should consider whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.

## 9.0 **Legal Comments**

9.1 The Council’s legal officer will give advice at the hearing.

## 10.0 **Finance Comments**

10.1 There are no financial implications in this report.

## 11.0 Appendices

<b>Appendix 1</b>	Copy of the review application
<b>Appendix 2</b>	Current Premises Licence
<b>Appendix 3</b>	Maps of the premises and surrounding area
<b>Appendix 4</b>	Guidance issued under Section 182 by the Department for Sport, Culture and Media Affairs for reviews.
<b>Appendix 5</b>	Guidance Issued by the Department for Culture Media and Sport under Section 182 of the Licensing Act 2003 concerning Crime and Disorder
<b>Appendix 6</b>	London Borough of Tower Hamlets Licensing Policy in relation to the prevention of Crime and Disorder