RECOMMENDATION

1. That the Sub-Committee considers an application by SOUTHWARK POLICE LICENSING OFFICE for a review of the Premises Licence granted under the Licensing Act 2003 to Messrs ROGER WALTON, LEE LAWRENCE & JOHN GAYLE in respect of the premises known as: VIRGO’S, 148 – 150 OLD KENT ROAD, LONDON, SE1 5TY

2. Notes
   a) The grounds for the review are stated in paragraph 10 – 15 of this report.
   b) A copy of the Council's approved procedure for hearings of the Sub-Committee in relation to an application made under the Licensing Act 2003, along with a copy of the Hearing Regulations, has been circulated to all parties prior to the meeting.

BACKGROUND INFORMATION

3. The Licensing Act 2003 (the Act) came into effect on 25 November 2005 the Act’s introduction provided a new licensing regime for the retail sale of alcohol; the provision of regulated entertainment; and the provision of late night refreshment.

4. Under the Act a premises user wishing to provide any of the licensable activities listed in paragraph 3 of this report must secure a premises licence from the local licensing authority for the area in which the business concerned is located. Where the retail sale of alcohol is involved a designated premises supervisor holding a Personal Licence issued by the local authority for the area in which that individual lives must be named upon the premises licence.

5. The Premises Licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51(1) of the Act it remains open to any responsible authority or interested party to apply to the local licensing authority for a review of the premises licence where there are concerns regarding one or more of the four stated licensing objectives.

MATTERS FOR CONSIDERATION

The Premises Licence

6. On the 3rd of August 2005, during the transitional period of the implementation of the Act, an application was made under Schedule 8 by Messrs ROGER WALTON, LEE LAWRENCE & JOHN GAYLE for the conversion of an existing Justices Licence into a Premises Licence in respect of: VIRGO’S, 148 – 150 OLD KENT ROAD, LONDON, SE1 5TY for a ground floor bar nightclub. The application also sought to simultaneously vary
the Premises Licence to extend the hours for regulated entertainment and the sale of alcohol.

7. The application was duly granted on the 2nd of October 2005. As a result Messrs ROGER WALTON, LEE LAWRENCE & JOHN GAYLE hold a Premises Licence which authorises the provision of regulated entertainment and the sale by retail of alcohol for consumption on & off the premises during the following hours:

**Regulated Entertainment**
- a) Monday to Wednesday: 09.00hrs to 03.00hrs
- b) Sunday & Thursday: 09.00hrs to 03.30hrs
- c) Friday: 09.00hrs to 05.30hrs
- d) Saturday: 09.00hrs to 06.30hrs

**Sale of Alcohol**
- a) Monday to Wednesday: 10.00hrs to 02.30hrs
- b) Thursday: 10.00hrs to 03.00hrs
- c) Friday: 10.00hrs to 05.00hrs
- d) Saturday: 10.00hrs to 06.00hrs
- e) Sunday: 12.00hrs to 03.00

**Opening Hours**
- a) As per the hours given for regulated entertainment

8. The Designated Premises Supervisor named on the licence at the time that this review was made was Mr. John Gayle.

9. A copy of the Premises Licence is attached as Appendix A to the report.

**THE APPLICATION FOR A REVIEW OF THE PREMISES LICENCE**

10. On the 10th of September 2007 an application requesting a review of the Premises Licence issued in respect of the premises was received from PC PAUL COMPTON of SOUTHWARK POLICE LICENSING OFFICE. A copy of the application is attached as Appendix B. The grounds for the review relates to the following licensing objective(s) and is summarized as follows:

11. **The Prevention of Crime and Disorder**

   Various incidents (detailed in Appendix B) relating to crime and disorder on the following dates:
   - 27th of August 2007
   - 23rd of July 2007 (2 alleged incidents)
   - 29th of July 2007
   - 9th of July 2007
   - 9th of June 2007
   - 13th of November 2006
   - 11th of September 2006

11. **The Protection of Public Safety**

   - As above and in particular discharge of a firearm on the 27th of August 2007 (further details are provided in appendix B).
Prevention of Public Nuisance -

- Various complaints from local residents to the police in respect of public disorder and / or noise nuisance caused by patrons of the premises.

12. In respect of the review application SOUTHWARK POLICE LICENSING OFFICE seek that the Sub-Committee give the following matters consideration:

- That the Metropolitan Police Venue Hire Agreement Form is adapted and placed upon the Premises Licence.

- That the issues detailed in the report by the crime prevention officer (see Appendix B) from Operation Trident should be acted upon.

- The possibility of curtailing the opening hours.

- A reduction and / or restriction in licensable activities.

Other Representations Submitted following Advertisement of the Review Application

13. In accordance with the provisions of the Act the application for a review of the premises licence was advertised on a post immediately outside of the premises, on the Council’s web site and at the Southwark Town Hall. Checks were made to ensure that posters displayed in the street and the premises remained in position. Further representations could be made up until the 8th of September 2007.

Responsible Authorities

14. The council’s Environmental Protection Team has submitted a representation in support of the review application in regards to the prevention of public nuisance. The representation is attached to this report as Appendix C. The representation indicates that since the Premises Licence was granted in October 2005 there have been 11 complaints of noise nuisance made by 7 separate residents in the local vicinity. The representation also states that noise nuisance is allegedly caused by patrons gaining access and egress to / from the club. Concerns are also raised that an unlicensed barbeque located in close proximity to the premises is used by patrons going to / from the premises, further adding to noise nuisance in the vicinity, however it is not alleged that there is a connection between the barbeque and the premises management or staff.

Interested Parties

15. There have been 2 representations made by interested parties. They are concerned with the effect on Crime and Disorder and Public Nuisance that the premises is having on the local vicinity. The representations from interested parties are attached as appendices D & E.

THE LOCAL VICINITY

16. A map of the local vicinity is attached as Appendix F. The premises is shown at the centre of the map and has a black diamond and the number 7778 indicating its position. The
circle shown on the map has a radius of 100 meters and is shown for the purposes of scale only. The following licensed premises are also shown on the map:

- **PAYLESS EXPRESS**, 157-163 Old Kent Road SE1 5UT (10911). Licensed for the (off) sale of alcohol, Mon – Sun: 24hrs
- **OFF LICENCE**, 154 Old Kent Road SE1 5TY (8430). Licensed for the (off) sale of alcohol, Mon – Sat: 08.00hrs to 23.00hrs, Sun: 10.00hrs to 22.30hrs.
- **PRESIDENTIAL RESTAURANT**, 162-164 Old Kent Road SE1 5TY (10718). Licensed for the provision of late night refreshment, Mon – Sun: 23.00hrs to 02.00hrs, (on / off) sale of alcohol Mon to Sat: 10.00hrs to 02.00hrs, Sun: 12.00hrs to 02.00hrs.
- **MODERN SUPERMARKET**, 177-179 Old Kent Road SE1 5NA (6855). Licensed for the (off) sale of alcohol, Mon to Sat: 08.00hrs to 23.00hrs, Sun 10.00hrs to 22.30hrs.
- **DANIELS BAR & RESTAURANT**, 207 Old Kent Road SE1 5NA (6812) Licensed for the provision of late night refreshment, Mon to Sat: 23.00hrs to 00.30hrs, Sun: 23.00hrs to 00.00hrs, (on / off) sale of alcohol Mon to Sat: 11.00hrs to 00.00hrs, Sun: 12.00hrs to 23.30hrs.
- **LIDL UK GMBH**, 96-120 Old Kent Road SE1 4NY (9435). Licensed for the (off) sale of alcohol, Mon to Sat: 08.00hrs to 23.00hrs, Sun: 10.00hrs to 22.30hrs.
- **LE JOINT WINE & SNACKS BAR**, 193 Old Kent Road SE1 5NA (10318). Licensed for the provision of late night refreshment, Mon to Sun: 23.00hrs to 02.30hrs, (on / off) sale of alcohol Mon to Sun: 10.00hrs to 02.30hrs.
- **FRIENDS/ HANDY NEWS**, 303 East Street SE17 2SX (9679). Licensed for the (off) sale of alcohol, Mon to Sat: 08.00hrs to 23.00hrs, Sun 10.00hrs to 22.30hrs.
- **PARRILLADUS DEL SUR**, 186-188 Old Kent Road SE1 5TY (10528). Licensed for the provision of late night refreshment, Fri – Sat: 23.00hrs to 23.30hrs, (on) sale of alcohol Fri & Sat: 12.00hrs to 23.30hrs, Sun: 12.00hrs to 22.00hrs, regulated entertainment, Mon to Thu: 10.00hrs – 18.00hrs, Fri to Sun: 16.00 – 22.00hrs.

**RECENT OPERATION OF THE PREMISES**

17. A Justices On Licence and Special Hours Certificate were previously held under The Licensing Act 1964 (repealed) in respect of the premises. A Public Entertainment Licence (PEL) was also held in respect of the premises.

18. On the 3rd of August 2005 Messrs ROGER WALTON, LEE LAWRENCE & JOHN GAYLE applied for the conversion of the Justices Licence and PEL into a Premises Licence under the licensing act 2003. The application was duly granted on the 2nd of October 2005.
19. On the 21st of August 2006 the Licensing Unit received an allegation from a local resident that the premises was giving rise to public nuisance. The complainant also raised the issue that a barbeque operating in close proximity to the premises was also giving rise to public nuisance and litter.

20. On the 17th of September 2006 The Licensing Unit received an allegation from a different local resident that the premises was operating past the terminal hours permitted by the Premises Licence issued in respect of the premises. A warning letter was sent to the licensees in regards to the allegation.

21. On the 19th of September one of the Licensees, Mr. Roger Walton, contacted the Licensing Unit. Mr. Walton was given advice as to the operating hours of the premises and also told that issues in regards to public disorder and/or public nuisance emanating from the premises or patrons outside the premises needed to be addressed by the premises management. Mr. Walton asserted that the barbeque referred to in the initial complaint was not connected to the premises in any way.

22. On the 25th of September 2006 and 2nd of October 2006 council officers noted the premises to be operating past the hours permitted on the Premises Licence issued in respect of it. Crowds of patrons gaining both access and egress from the premises were noted to be engaging in loud conversation and many were noted using an unlicensed barbeque located adjacent to the premises.

23. On the 28th of September 2006 the Licensing Unit received further allegations from a previous complainant that public disorder and public nuisance was continuing to occur in the local vicinity as a result of the premises’ operation. Further to this, a third local resident raised similar matters to the Licensing Unit via a local MP on the 18th of October 2006.

24. On the 4th of October 2006 the licensees were invited to attend interviews under caution in accordance with the Police and Criminal Evidence Act 1984 (PACE) in regards to the alleged breaches of the Licensing Act 2003 observed on the 25th of September 2006 and 2nd of October 2006.

25. On The 24th of October 2006 council officers noted a number of people congregating outside the premises whilst it was in operation. Loud voices were noted and double parking was also observed in close proximity to the premises. Council officers witnessed a fight between persons congregating outside of the premises. It was not substantiated whether they had been attending the premises or not.

26. On the 10th of November 2006 two of the Licensees (Mr. Lee Lawrence and Mr. John Gayle) attended PACE interviews in regards to the alleged breaches of the Licensing Act 2003. Further to this the remaining Licensee, Mr. Roger Walton attended a PACE interview in regards to the same matter on the 19th of January 2007.

27. On the 24th of November 2006 an application to vary the Premises Licence issued in respect of the premises to extend the hours for the sale by retail of alcohol was received. Due to representations submitted by interested parties a Licensing Sub Committee was convened to determine the application on the 29th of January 2007. The application was refused as the sub-committee was not satisfied that the applicant had demonstrated good reasons that the application promoted the licensing objectives of the promotion of public safety and the prevention of public nuisance.

28. On the 18th of March 2007 the Licensing Unit received further allegations from a previous complainant that public disorder and public nuisance was continuing to occur in the local vicinity as a result of the premises' operation. The complainant raised concerns over the
shooting incident of the 11th of September 2006 and indicated that unlicensed barbeques located in close proximity to the premises were still operating. It is noted that to date there is no evidence that the unlicensed barbeques have any connection to the premises management or staff.

29. On the 10th of September 2007 Southwark Police Licensing Unit submitted the application for review that is the subject of this report.

SOUTHWARK STATEMENT OF LICENSING POLICY

30. Council Assembly approved the Southwark Statement of Licensing Policy on 8 December 2004. Sections of the Statement that are considered to be of particular relevance to this application are

a) Section 3 which sets out the purpose and scope of the policy and reinforces the four licensing objectives;
b) Section 4 which sets out the arrangements for the administration, exercise and delegation of functions;
c) Section 5 which sets out the Council’s approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence;
d) Section 6 details other relevant Council and Government policies, strategies, responsibilities and guidance, including the relevant Articles under the Human Rights Act 1998;
e) Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours;
f) Section 8 provides general guidance on ensuring public safety including safe capacities;
g) Section 9 provides general guidance on the prevention of nuisance; and
h) Section 10 provides general guidance on the protection of children from harm.

31. The purpose of Southwark’s Statement of Licensing Policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the Sub-Committee when considering the applications. However, the Sub-Committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.

RESOURCE IMPLICATIONS

32. No fee is payable in respect of an application for a licence review.

CONSULTATIONS

33. Consultation undertaken upon this application has been carried out in accordance with the provisions of the Licensing Act 2003. Responses are detailed elsewhere in this report.

EQUAL OPPORTUNITIES IMPLICATIONS

34. Each application is required by law to be considered upon its own merits with all relevant matters taken into account.

SUPPLEMENTAL ADVICE FROM THE BOROUGH SOLICITOR
35. The Sub-Committee is asked to determine, under Section 52 of the Licensing Act 2003, an application, made under Section 51 of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or an interested party may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

PRINCIPLES FOR MAKING THE DETERMINATION

36. The principles, which Sub-Committee members must apply, are set out below.

The licensing authority must hold a hearing to consider an application for review of a premises licence where -

(a) the application is properly made in accordance with Section 51 of the Act.
(b) the applicant has given notice in accordance with Section 51(3) of the Act.
(c) the advertising requirements provided for under Section 51(3) of the Act are satisfied.
(d) the licensing authority has considered the ground(s) of review not to be frivolous, vexatious or repetitious.
(e) the licensing authority has considered the ground(s) of review to be relevant to one or more of the licensing objectives.

The four licensing objectives are -

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

Each objective must be considered to be of equal importance.

The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers necessary for the promotion of the licensing objectives. The steps are to-

- modify the conditions of the licence by altering, omitting or adding any condition.
- exclude a licensable activity from the scope of the licence.
- remove the designated premises supervisor.
- suspend the licence for a period not exceeding three months.
- revoke the licence.

For the purpose of determining a relevant representation under section 52 of the Act a "relevant representation" means representations which -

(a) are relevant to one or more of the licensing objectives.
(b) are made by the holder of the premises licence, a responsible authority or an interested party within the prescribed period
(c) have not been withdrawn
(d) if made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.

Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.
The authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives.

In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than a necessary and proportionate response.

It is of particular importance that any detrimental financial impact that may result from a licensing authority’s decision is necessary and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

**Reasons**

37. Where the authority determines an application for review it must notify the determination and reasons for making it to –

(a) the holder of the licence.
(b) the applicant
(c) any person who made relevant representations
(d) the chief officer of police for the area (or each police area) in which the premises are situated

**HEARING PROCEDURE**

38. Subject to the Licensing Hearing regulations, the Licensing Committee may determine its own procedures. Key elements of the regulations are that

- The hearing shall take the form of a discussion led by the authority. Cross-examination shall not be permitted unless the authority considered that it is required for it to consider the representations
- Members of the authority are free to ask any question of any party or other person appearing at the hearing
- The committee must allow the parties an equal maximum period of time in which to exercise their rights to
  - Address the authority
  - If given permission by the committee, question any other party.
  - In response to a point which the authority has given notice it will require clarification, give further information in support of their application.
- The committee shall disregard any information given by a party which is not relevant
  - to the particular application before the committee, and
  - the licensing objectives.
- The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private.
- In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.
39. This matter relates to the review of a Premises Licence under section 51 of the Licensing Act 2003. Regulation 26(1) (a) requires the Sub-Committee to make its determination at the conclusion of the hearing.

THE COUNCILS MULTIPLE ROLES AND THE ROLE OF THE LICENSING COMMITTEE

40. Sub-Committee members will note that, in relation to this application, the Council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the Council as authority responsible respectively for environmental health, trading standards, health, and safety and as the planning authority.

41. Members should note that the Licensing Sub-Committee is meeting on this occasion solely to perform the role of licensing authority. The Sub-Committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the Licensing Law, Guidance, and the Council's Statement of Licensing Policy.

42. As a quasi-judicial body the Licensing Sub-Committee is required to consider the application on its merits. The Sub-Committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The Licensing Sub-Committee must give fair consideration to the contentions of all persons entitled to make representations to them.

43. The Licensing Sub-Committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.

44. Members will be aware of the Council’s Code of Conduct, which requires them to declare personal and prejudicial interests. The Code applies to Members when considering licensing applications. In addition, as a quasi-judicial body, Members are required to avoid both actual bias, and the appearance of bias.

45. The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case-to-case basis.

46. Under the Human Rights Act 1998, the Sub Committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The Sub-Committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the Borough.
47. Interested Parties, Responsible Authorities and the applicant have the right to appeal the decision of the Sub-Committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

GUIDANCE

48. Members are required to have regard to the DCMS Guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

BACKGROUND INFORMATION

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<tr>
<th>Background Papers</th>
<th>Held At</th>
<th>Contact</th>
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<tbody>
<tr>
<td>Licensing Act 2003</td>
<td>The Chaplin Centre, Thurlow Street, SE17 2DG</td>
<td>Mrs Kirty Read at the Chaplin Centre Telephone 0207 525 5748</td>
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<tr>
<td>DCMS Guidance</td>
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<td>Secondary Regulations</td>
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<td>Statement of Licensing Policy</td>
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<td>Various papers from the premises</td>
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Lead Officer: Gill Davies, Director of Environment & Housing
Report Author: Wesley McArthur, Licensing Enforcement Officer
Version: Final
Dated: 8th October 2007
Key Decision?: No

CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER

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<tr>
<th>Officer Title</th>
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<td>Strategic Director of Legal &amp; Democratic Services</td>
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<td>Executive Member</td>
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Date final report sent to Constitutional Support Services: 9th October 2007