



**Award of Planning Permission  
at 295-297 Camberwell New  
Road and 299 Camberwell New  
Road**

**Report of the Special Scrutiny  
Sub-Committee**

**July 2004**

<b>Contents</b>	<b>Page No</b>
Executive Summary	3
Introduction	9
The Scrutiny:	
• Purpose	11
• The Sub-Committee	11
• Methodology	11
• Evidence	12
• Structure of Report	13
Background Information	
• Audit Commission Public Interest Report	14
• Local Government Ombudsman Report	14
• Imperial Gardens nightclub	15
1. Southwark Planning Procedures, Policy and Practice	
• Background	16
• Evidence	16
– The Council’s Action Plan in response to recommendations of the Audit Commission report	16
– Independent Planning Expert	21
– Other Evidence	24
• Recommendations	25
2. Legal Mechanism for Assessing Possible Compensation	
• Background	26
• Evidence	26
• Recommendations	28
3. Proposed Camberwell train station	
• Background	29
• Evidence	30
• Recommendations	31
4. Allegations of Institutional Racism	
• Background	33
• Evidence	34
• Recommendations	35
Appendix 1: Independent Planning Expert Report	36
Appendix 2: Draft Council Action Plan in response to Audit Commission report [version circulated 12/07/04]	53
Appendix 3: List of Supporting Documents	66
Appendix 4: Nabarro Nathanson Solicitors Legal Advice	68
Appendix 5: Webster Dixon correspondence [1/07/04 & 2/07/04]	80

## Executive Summary

1. The Special Scrutiny Sub-Committee accepts the findings of the District Auditor's report into the Award of Planning Permission at 295-297 Camberwell New Road and 299 Camberwell New Road (site of the former Imperial Gardens nightclub).
2. We recommend that Council Assembly accepts the findings, together with the Strategic Director's action plan in response to the report, and apologises to the directors of THK Entertainments Ltd for the failings identified in the District Auditor's and Local Ombudsman's reports.
3. The Sub-Committee sets out our detailed recommendations below:

### *Member Development:*

4. Training of Members for the planning function should be sufficiently rigorous to ensure that the necessary competencies are achieved and applied.
5. The Sub-Committee recommends that the Borough Solicitor investigate the issue of compulsion for Member training and assessment of Members' competency to take planning decisions.

### *Corporate Governance*

6. The Council as a whole, including elected Members, should accept its own share of responsibility for the events that have led to the District Auditor's and Local Ombudsman's reports.

### *Strategic Director of Regeneration's action plan:*

7. The Sub-Committee notes the responses provided by Paul Evans, Strategic Director of Regeneration, and John East, Head of Planning & Transport, and the timeliness of these responses. We believe that the Strategic Director of Regeneration's draft action plan provides a way forward in addressing the issues raised in the Audit Commission report. We recognise that delivering the action plan will require a significant improvement in both the systems and culture of the planning division and it is therefore vital that a robust system of monitoring is put in place and followed through over the next 12 months.
8. We therefore ask the Executive as a whole to ensure that delivering the action plan can be tracked through the performance management system and can be addressed by both Executive and Scrutiny through the quarterly performance reports. Overview & Scrutiny Committee intends to play its full part in this process.
9. Overview & Scrutiny Committee (OSC) will conduct its own follow-up review, which will:
  - a) act as an extra layer of challenge to the authority's existing Equalities Impact Assessment process;

Special Scrutiny Sub – Committee: Final Scrutiny Report

- b) involve receiving the District Auditor's follow-up report and undertaking further scrutiny at that time;
  - c) provide an opportunity for OSC to examine certain issues which cannot be examined during the current scrutiny review;
  - d) enable OSC to look at the planning division's overall performance.
10. The scrutiny inquiry focused on systems and procedures with the intention of minimising the possibility of human error in the future. Its remit did not include the actions and motivation of the officers named in the District Audit report. The fact that a disciplinary investigation has been run concurrently with the scrutiny has meant that we have not been able to make any inquiries as to the actions of individual officers. We are of course aware of the evidence contained in the District Auditor's report. We also received evidence from the Strategic Director, the directors of THK Entertainments Ltd, and Martin Huckerby, a local resident. However, this was the timescale set by Council Assembly and that was required in law in respect of the District Audit report. It would have been preferable to complete this scrutiny report on the conclusion of the staff disciplinary proceedings, and also for these to be concluded more swiftly.
11. We must stress that it has not been for us to pass any judgement on what we were told about individuals. We take the District Auditor's concern as to the standards of Officer conduct very seriously. But it is for the disciplinary and police investigations to throw light upon these matters. In the meantime, our examination of planning processes and procedures has been rigorous.
12. Our inquiry has not provided us with any rational explanation for the way officers handled these planning applications. The explanations offered to the District Auditor were contradictory and untenable – we cannot see how officers could have forgotten about Imperial Gardens in respect of the Fairview Homes application when the directors of THK Entertainments Ltd were in touch with the Council in respect of their own and other planning applications. We reiterate the District Auditor's concern as to the standards of officer conduct. We look to the disciplinary and police investigations finally to shed some light on these matters.
13. The Sub-Committee recommends that the Strategic Director of Regeneration institute periodic quality control audits of a random basket of planning applications, to be reported on the first occasion to the Overview & Scrutiny Committee and subsequently to Planning Committee and the Executive.
14. It is recommended that occupiers be sent consultation letters, in line with Southwark procedure.
15. The Sub-Committee also recommends that the Strategic Director of Regeneration initiate a periodic random audit to check whether consultees have received their consultation letters.
16. The Sub-Committee recommends that planning officers register any interests they may have in cases prior to work being allocated to them. The response of the department is that a register of interests for staff is being implemented and will be regularly monitored and maintained.

17. The Sub-Committee recommends the Council, where it is able to do so, to encourage developers to undertake pre-application consultation, particularly where the Council is a stakeholder. The Sub-Committee requests the Executive to consider this issue (willingness to carry out pre-application consultation) as part of its criteria for selecting partners.
18. The Sub-Committee requested that performance indicators being developed for the planning division be provided to Overview & Scrutiny Committee for their consideration.

*Additional Issues Identified by District Auditor's Report*

19. The Sub-Committee recommends that Member training for the planning function must be sufficiently rigorous to ensure that the necessary competencies are achieved, and to enable sufficient understanding of the application of the function. The Sub-Committee asks the Borough Solicitor to consider how Members' competency to take planning decisions can be assessed.
20. The Sub-Committee asks the Strategic Director of Regeneration to ensure that an appropriate basket of performance indicators is reported quarterly to the Planning Committee and the Executive.

*Issues arising from evidence of independent planning expert*

21. The Sub-Committee recommends that the Council adopt such an approach [that Southwark should adopt "Wash Up sessions", i.e. feedback sessions conducted after planning committee had met to discuss any issues that had arisen during the meeting that Members had difficulty understanding or on which they needed clarification].
22. The Sub-Committee recommends that the Council adopt the Camden model and appoint an officer dedicated to consultation with hard to reach groups.
23. The Sub-Committee recommends a periodic audit of the staff register of interests.

*Camberwell train station:*

24. The Sub-Committee notes the frustrations the directors of THK Entertainments Ltd faced when trying to ascertain the details of the proposals for a Camberwell train station development. Whilst some documents were eventually provided, the Sub-Committee notes the difficulties that the directors of THK Entertainments Ltd had in ascertaining the exact status of developments for a train station at Camberwell, and that there were unacceptable delays and excuses in providing information. The documentation the directors of THK Entertainments Ltd obtained from Railtrack, in which the position of individual tenants was being discussed, does not correspond adequately with the information being supplied by the council.
25. This highlights for the Sub-Committee a problem inherent to regeneration plans - when does an aspiration for regeneration become a reality? We are aware of the issues around the requirements for commercial confidentiality, and the fact that the timing and viability of any regeneration scheme depends on a range of complex

factors. We believe that the judgement as to when and how to communicate with directly affected parties and/or the general public on individual schemes should not be left to officers.

26. We therefore recommend the Executive as a whole to ensure that it maintains oversight of schemes at all stages of development and has an appropriate communications strategy in place.
27. The Sub-Committee notes paragraph 74 in the District Auditor's report which states: *"In an internal memorandum [which was primarily related to a planning permission granted for residential development of a site just north of the Imperial Gardens nightclub at Badsworth Road and Medlar Street] dated 29 June 2001 from Mr Dennett addressed to Mr Cook and Dr Roy Turner, Transport Planner in the Transportation Department, it is evident that Mr Dennett was involved with and knew of the Council's railway station proposals. The occupation of these arches by the Imperial Gardens nightclub should therefore have also been very apparent and known to him during the same time that the Fairview New Homes [Camberwell] Limited application was being processed"*.
28. It was clear to Councillors that there was a desire to build a station at Camberwell, and that this might contribute to the regeneration of this area. It also seems clear that this general aspiration was not being imparted to those businesses most directly affected, including Imperial Gardens nightclub, and the Sub-Committee notes that, in an email to the then Strategic Director of Regeneration & Environment, it was stated that the Council had received *"some criticism for its Camberwell Station bid – regarding lack of consultation"*.
29. In terms of using a new station at Camberwell as part of a regeneration initiative in the area, the Council should have been consulting on this aspiration at a much earlier stage, and in addition should have ensured that its overall communication of this aspiration was effective in reaching local businesses.
30. The Sub-Committee notes the correspondence between the Council and Railtrack concerning the broader regeneration implications of the proposals concerning the railway station. The Sub-Committee also notes that the directors of THK Entertainments Ltd regarded this process as potentially undermining of their relationship with their landlord. However, the Sub-Committee acknowledges that this situation is in many ways inherent in any early consideration of the regeneration of a particular area.
31. The Sub-Committee recommends that the Executive consider this issue in relation to other regeneration schemes.

#### *Allegations of Institutional Racism:*

32. The Sub-Committee takes the allegations of racism very seriously but it is difficult for us to reach any conclusions since several of the complainants told us that they had been advised to withhold the substance of their allegations for use in another forum. We note that the Commission for Racial Equality is being kept informed of

progress on this matter. We also note that the Equalities Impact Assessment is under way.

33. We therefore recommend that the Chief Executive and the Leader maintain the dialogue with the Commission for Racial Equality, and where necessary seek advice to ensure that allegations are fully addressed and that the Chief Executive keeps all Members apprised of progress.
34. We believe that any individual with information or evidence of racism in any part of the council should come forward - this is a key issue of public confidence that must be fully worked through and resolved.
35. The Sub-Committee also notes that an Equalities Impact Assessment (EIA) of the planning division is underway and recommends that it consider routine monitoring of equalities issues both from a human resources and operational perspective.

#### Additional Points

##### *Small businesses:*

36. The Sub-Committee heard evidence provided during the scrutiny that Southwark Council's actions, especially in respect of delays to THK Entertainments Ltd's planning application, affected the company's position in terms of its ability to secure long-term finance. The Council should be mindful of the impact of its actions on small businesses.
37. The Sub-Committee will ask Regeneration & Resources Scrutiny Sub-Committee to carry out work on the way in which the authority deals with small businesses.
38. The Sub-Committee asks the Executive to investigate ways to expedite the planning process and look at ways in which the interests of small businesses are not prejudiced by the planning process.
39. We recommend that the Council should proactively work with small businesses to ensure that they receive appropriate assistance in the preparation of their planning applications and are assisted in accessing relevant physically available information held by the Council.
40. The Sub-Committee requests the Regeneration & Resources Scrutiny Sub-Committee to look at this issue as part of its review of the way in which the Council deals with small businesses.
41. Officers are asked to report to Regeneration & Resources Scrutiny Sub-Committee their performance in consulting with small businesses on the current Unitary Development Plan.

*Mechanism for assessing possible compensation:*

42. The Sub-Committee recommends that Council Assembly urge all parties to take the necessary steps to identify and resolve the legal issues as soon as possible. In particular we urge the Executive and the Directors of THK Entertainments Ltd to take all necessary steps to expedite the process in line with the strategy recommended by Nabarro Nathanson in their advice.

*Personnel Procedures/Correspondence with Members:*

43. Some Members reportedly received correspondence from a suspended officer during the course of this inquiry. In line with the provisions of the Member-Officer Protocol and Council HR practice, the Sub-Committee believes that all such correspondence should have been sent to Human Resources on receipt and have been dealt with accordingly. It is inappropriate for Council staff to contact Members directly on personal issues and this remains so if an officer is suspended.
44. The Sub-Committee recommends that in future this practice should be followed with the Member not attempting to deal with the correspondence but this being passed to the relevant Chief Officer for onward transmission to and response by the relevant officer dealing with the case.



## Introduction

45. This report sets out the findings and recommendations of the Special Scrutiny Sub-Committee's inquiry into the issues raised in the Audit Commission's public interest report, *Award of Planning Permission at 295-297 Camberwell New Road and 299 Camberwell New Road* and the Local Government Ombudsman report, *Investigation into Complaint No 02/B/08100 against London Borough of Southwark*.
46. These reports examined why a planning permission application for 299 Camberwell New Road (Imperial Gardens nightclub) took 4 years to process, and why the Imperial Gardens premises were not consulted about a new residential development occurring adjacent at 295-297 Camberwell New Road (Fairview New Homes).
47. The Audit Commission report found that consultation in respect of the residential development was flawed and that reports prepared by officers were inaccurate, inadequate and incomplete. The Local Government Ombudsman report had found maladministration causing injustice and recommended a £1000 payment.
48. Southwark's Council Assembly asked Overview & Scrutiny Committee to review and advise on the Council's response to issues raised in the Audit Commission and Local Government Ombudsman report, and the mechanism for assessing possible compensation.
49. The Overview & Scrutiny Committee met in April and May 2004. From July onwards a Special Scrutiny Sub-Committee, established to complete the review, continued its work. Evidence was received from council officers, the directors of THK Entertainments Ltd and interested members of the public.
50. The main issues raised during the scrutiny, and which form the basis of this report, were: planning procedures, policies and practice; the proposed development of Camberwell train station; allegations of institutional racism; and discussion of a legal mechanism for assessing possible compensation. In order to scrutinise the Strategic Director of Regeneration's action plan in response to the recommendations contained in the Audit Commission report an independent planning expert was commissioned.
51. An independent planning consultant (Mr Graham Beck), appointed by the Overview & Scrutiny Committee, helped to strengthen the Strategic Director's Improvement Plan through the provision of a number of suggestions, including:
  - The need to put in place robust procedures for the hand-over of planning applications;
  - The establishment of policy on viewing planning files, procedures for the information to be kept on files and guidance for the handling of confidential information;
  - The need to develop (with Member Services) a programme of comprehensive and regular training for Members on planning matters (including consideration of a 'wash-up' session after every Planning Committee); and

Special Scrutiny Sub – Committee: Final Scrutiny Report

- A number of individual improvements that could be made to consultation procedures and practice.
52. This scrutiny report will be presented to Council Assembly for their consideration in July 2004, and will assist the Council in providing a formal statutory response to the Audit Commission report. The scrutiny provided an appropriate forum for public discussion of the issues raised in the District Auditor's report, with many members of the public attending to show support for the directors of THK Entertainments Ltd, and greatly assisted the Council in identifying the key issues needing to be addressed and how to implement the recommendations contained in the Audit Commission report.

*Timescale for disciplinary proceedings*

53. The Sub-Committee was told that the Council's disciplinary proceedings start with an investigation. The investigation has begun and the estimated time of completion is by the third week of July. A hearing should take place within a month of the investigation being concluded. The duration of the hearing or hearings cannot be known but it is hoped that this process can be concluded by mid September. By their very nature, these proceedings have had an impact on the scrutiny inquiry and it would have been preferable if they had been completed in advance of the scrutiny process.
54. Should the outcome of Council disciplinary proceedings be dismissal, the subject of the proceedings would have the right of appeal to Members. Should the outcome be a sanction short of dismissal, the subject would have the right to an officer appeal.
55. A Member appeal might add approximately three months to the process; an officer appeal might add approximately one month. However, it should be noted that there are also proceedings in the employment tribunal available, or civil claims, and it is not possible to give any precise idea of the likely duration of these external processes.

## **The Scrutiny**

### **The purpose**

56. In line with the Council Assembly request of 18 February 2004, the remit of the Overview & Scrutiny Committee scrutiny was to:
- Review and advise on the Council's response to issues raised by the District Auditor, the Local Government Ombudsman, and;
  - The mechanism for assessing possible compensation.
57. It was not within the remit of the scrutiny to:
- Assess, or recommend, a figure of compensation;
  - Repeat the work of the Audit Commission or Local Ombudsman;
  - Examine issues of Member conduct, nor officer disciplinary matters.

### **The Committee**

58. Members on the Overview & Scrutiny Committee (and the Special Scrutiny Sub-Committee) were:
- Councillor Kim Humphreys - Chair
  - Councillor Linda Manchester - Vice-Chair
  - Councillor Barrie Hargrove
  - Councillor Billy Kayada
  - Councillor Eliza Mann
  - Councillor Gavin O'Brien
  - Councillor Lisa Rajan
  - Councillor Andy Simmons
  - Councillor Stephen Flannery - reserve
  - Councillor William Rowe - reserve
  - Councillor Ann Yates – reserve

### **The methodology**

59. The Council is obliged to provide formal responses to both the Audit Commission and Local Government Ombudsman reports within a limited timeframe. This dictated the timetable for the scrutiny and required the Sub-Committee to call additional meetings. The review was undertaken at meetings on 29 April, 13 and 20 May and 2, 12 and 13 July 2004. All meetings were held at Southwark Town Hall, were open to the public, and advertised in the local press. Agendas, minutes and information distributed during the meetings – other than information which was confidential or exempt from public consideration under the Council's Access to Information Procedure Rules – was posted on the Council's website (Refer Appendix 3).

## Evidence

60. During the course of the scrutiny, evidence and information was received from the following, i.e.:
- Lois Acton – Producer, ITV
  - Patrick Anderson – Black Planners Network
  - Patrick Augustus – Author
  - Graham Beck - Independent Planning Expert
  - Jon Durbin – Planning Aid for London
  - John East – Head of Planning and Transport, Southwark Council
  - Glen Egan - Assistant Borough Solicitor, Southwark Council
  - Paul Evans - Strategic Director of Regeneration, Southwark Council
  - Michael Groce – Poet
  - John Hoaral – Bless-d Band Member
  - Lucia Hinton – Director of Imperial Gardens nightclub [THK Entertainments Ltd
  - Martin Huckerby – Resident of Camberwell New Road
  - Councillor Jonathan Hunt – Livesey Ward Councillor
  - Lee Jasper – Policy Director [Equalities and Policing], Mayor’s Office, Greater London Authority
  - Sarah Naylor - Assistant Chief Executive [Performance & Strategy], Southwark Council
  - Scott Novell – Independent Video Producer
  - Councillor Dr. Abdur Rahman Olayiwola – Chaucer Ward Councillor
  - Raymond Stevenson – Director of Imperial Gardens Nightclub [THK Entertainments Ltd]
  - Alex Wheatle – Author
61. The developers of the site at 295-297 Camberwell New Road, Fairview New Homes, were formally invited to give evidence, but declined the invitation. The Sub-Committee wrote to Network Rail, which has taken over the responsibilities of Railtrack, but no reply was received.
62. The majority of evidence received was given verbally, but video and audio material was also submitted. Four written submissions were received. (Refer Appendix 3)
63. There was significant public interest in the scrutiny, and many members of the public attended the meetings. The Sub-Committee would like to thank everyone who was involved with the scrutiny and gave time to attend meetings.

### **Structure of report**

64. This report is structured around the main issues raised during the scrutiny, these being:
  - Planning procedures, policies and practice;
  - Proposed development of Camberwell Station;
  - Legal mechanism for Compensation; and
  - Allegations of Institutional Racism.
  
65. For each of these issues, a summary of the evidence presented during the scrutiny is set out, together with the Sub-Committee's recommendations.

## Background Information

### Audit Commission Report

66. The Audit Commission public interest report, *Award of Planning Permission at 295-297 Camberwell New Road and 299 Camberwell New Road*, examined two interrelated planning issues:
- Why an application for planning permission in respect of 299 Camberwell New Road (Imperial Gardens nightclub) took 4 years for the Council to process; and
  - Why the directors of THK Entertainments Ltd were not consulted about a new residential development by Fairview New Homes occurring adjacent to the club at 297 Camberwell New Road.
67. The Audit Commission found there to be general procedural weaknesses in Southwark's Planning department, in addition that consultation in respect of the residential development was flawed and that reports prepared by officers were inaccurate, inadequate and incomplete. The Audit Commission recommended that Southwark Council should:
- Consider disciplinary action against the individuals;
  - Improve the quality of reports to Committee;
  - Institute a quality control process;
  - Ensure that consultation procedures are followed;
  - Provide training to officers about their responsibilities and the need for documentation;
  - Introduce a register of interests for all staff involved in planning applications; and
  - Introduce a system of tracking applications and any conflict between related sites.

### Local Government Ombudsman Report

68. In addition to the Audit Commission report, the Local Government Ombudsman also investigated the issue. The scope of the Local Government Ombudsman report was more limited, in that it focussed on the failure of the Council to inform the directors of THK Entertainments Ltd about the Fairview New Homes development, and did not address the delay in the Council's processing of the planning application. The report concluded 'maladministration causing injustice' and recommended that the Council:
- Review its procedures for neighbour notification, the conduct and recording of site visits and meeting with developers; and
  - Review its record keeping in respect of the processing of planning applications.
69. The Local Government Ombudsman commented that he did not believe "that the Council's actions have caused the wider financial losses they claim to their business" (White, 2004, pg11) and that he was "not satisfied that the maladministration I have identified links directly to the adverse financial circumstances for the complainants" (White, 2004, pg.11).

70. The Sub-Committee notes that the Local Government Ombudsman acknowledged the additional points raised by the directors of THK Entertainments Ltd in respect of their planning applications from 1995. He remained of the view that there were no grounds on which he should have exercised his discretion to investigate these events.

### **Imperial Gardens nightclub**

71. Raymond Stevenson and Lucia Hinton, two of the directors of THK Entertainments Ltd, gave evidence throughout the scrutiny inquiry, however it was at the 13 May meeting that a large amount of their evidence was presented. (Michael Taylor, the third director, was present at some meetings but did not give evidence.) At this meeting they described the club itself together with other activities they led at the club, including development and promotion of young black musicians, a record label (Southside) and a number of community projects. The directors of THK Entertainments Ltd commented that the commercial operations of the Imperial Gardens nightclub subsidised the nightclub's community work.
72. Ms Hinton told the scrutiny inquiry that Imperial Gardens nightclub was one of the few clubs that had a 6am licence in Southwark and held events ranging from techno, R&B, poetry nights and live music. In addition it was used for numerous pop videos, record launches, local theatre and dance group rehearsals. The nightclub record label 'Southside' had worked with talented young singers, rappers and dancers, with national media exposure.
73. The directors of THK Entertainments Ltd presented video and audio evidence of these Southside label recordings. They told the Sub-Committee that the Imperial Gardens nightclub had used music as a tool to help young people deal with contentious issues they faced in the community, which had involved a band supported by the nightclub touring nationally on an anti-gun campaign. The directors of THK Entertainments Ltd also presented a range of media clippings and a letter from the Metropolitan Police, which acknowledged the community work of Imperial Gardens nightclub in promoting local, predominantly black, talent.
74. At the 13 May meeting, a number of artists who had benefited from the support provided by the Imperial Gardens nightclub spoke, including Alex Wheatle, Michael Groce & Patrick Augustus. They all told the meeting that the directors of THK Entertainments Ltd had been instrumental in developing and fostering their respective talents and that without this support they would have been unable to develop artistically.
75. The directors of THK Entertainments Ltd stated during the scrutiny process that they wanted the Council, assisted through the scrutiny process, to:
- Accept the Audit Commission report;
  - Accept all the findings in the Audit Commission report;
  - Accept that the Council's actions were either reckless, deliberate or wilful and led to the demise of Imperial Gardens.

## **Section 1. Southwark Planning Procedures, Policy and Practice**

### **Background**

76. The majority of the recommendations contained in the Audit Commission report concerned the policy and practices of Southwark's Planning division, recommending improvements to ensure that the problems experienced by Imperial Gardens did not recur. For this reason, the scrutiny in the main examined Planning division procedures, policies and practices and the response of the department to the Audit Commission recommendations.
77. Southwark Planning division is within the Southwark Regeneration department, which is headed by the Strategic Director of Regeneration – Paul Evans.
78. The Council is required to provide a response to the Audit Commission report, which includes a proposed action plan to address the report's recommendations, with the scrutiny and its final report assisting the Council in developing this response.
79. The Overview & Scrutiny Committee appointed an independent planning expert to assist in its scrutiny of the Strategic Director of Regeneration's proposed action plan in response to the Audit Commission Recommendations. Strict criteria were applied to the appointment of the expert, these being membership of the professional body (Royal Town Planning Institute), professional experience in a city planning environment and working for a planning department rated as 'excellent' under Comprehensive Performance Assessment and holding no personal, professional or business interests with Southwark Council or the borough. Following advertising of the position through a register of consultants held by the Royal Town Planning Institute, Graham Beck of Luken Beck Consultants Southampton was appointed.

### **Evidence**

#### *Council's Action Plan in response to the recommendations of the Audit Commission report:*

80. At the first meeting of the inquiry (29 April 2004), Paul Evans (Strategic Director of Regeneration) presented a draft action plan produced to address the Audit Commission and Local Government Ombudsman reports. This draft action plan is available on the Southwark Web Site. Members heard that the plan would form part of a longer-term process of improving the Planning division.
81. At the third meeting of the inquiry (20 May), Mr. Evans presented an updated action plan on the proposed responses to the Audit Commission report and a final action plan was submitted at the meeting on 2 July (Appendix 2). This final action plan responds to each of the Audit Commission recommendations:



*Audit Commission Recommendation 1: Consider whether to institute disciplinary action against individuals who have failed to meet the standards expected of them*

82. Mr. Evans informed the inquiry that disciplinary action against the individuals named in the Audit Commission report was being considered.
83. The scrutiny did not examine this issue because it was not within its remit. The latest update is included in the introduction.

*Audit Commission Recommendation 2: Take urgent action to improve the quality of reports presented to the Development Control Committees*

84. The department's response to this recommendation is that a comprehensive review of internal procedures and practices within the Development Control Service will be carried out by the Head of Planning and Transport (Mr. John East) and that an independent planning consultant appointed by the planning division (Mr. Graham Fischer) had undertaken a review of 19 planning applications and concluded that the standard of committee reports is very high, compared to other planning authorities. The department proposed that no additional action be taken.
85. The Sub-Committee recommends that the Strategic Director of Regeneration institute periodic quality control audits of a random basket of planning applications, to be reported on the first occasion to the Overview & Scrutiny Committee and subsequently to Planning Committee and the Executive.

*Audit Commission Recommendation 3: Institute a robust quality assurance process to ensure that the content of reports to the Development Control Committee are accurate and cannot be open to allegations of bias*

86. The response of the department to the recommendation is that the issue would be picked up by a review of internal procedures and practices within the department by the Head of Planning and Transport, the Equalities Impact Assessment and the review of 19 planning cases undertaken by the independent planning consultant. The actions taken by the department will depend upon the final report of the independent planning consultant appointed by Overview & Scrutiny Committee (Mr Graham Beck).

*Audit Commission Recommendation 4: Ensure that consultation procedures in relation to planning applications are rigorously followed*

87. The departmental response is that the Council's policy on consultation is appropriate and in line with best practice. However, the Sub-Committee's view is that improvements must be made to implementation of the policy.

88. The policy meets statutory requirements by having site notices, sending letters to adjacent residents and notices in newspapers when required. It goes beyond the statutory requirements by displaying planning applications at Community Council meetings, acknowledging receipt of consultation responses, publishing information on the website and sending information to Councillors who request information. Acolaid and GIS technology, as well as new procedures to improve checking on appropriateness of consultation, will assist improvements. Additional improvements include developing a pro-forma consultation checklist, amended consultation letters, maintaining a central database of interested community groups.
89. The scrutiny inquiry was interested in the policy of issuing letters to neighbours, and Mr. Evans informed them that sending letters was not a statutory requirement but considered best practice. It was the opinion of some Members that often the public are oblivious to site notices inviting them to participate in consultation, but are more likely to respond to an individual letter addressed to them. This then raises the question of where to draw the line at letters being sent to members of the public potentially interested in commenting on a planning application, as well as the resource implications of doing this.
90. Additionally, there is the issue of how to ensure that the letters are reaching the intended recipients. Mr. Evans commented that no method could be 100% effective but that GIS technology would improve reliability. The scrutiny inquiry also examined the problems of having consultation letters addressed to landlords of premises, compared with occupiers of premises.
91. It is recommended that occupiers be sent consultation letters, in line with Southwark procedure.
92. The Sub-Committee also recommends that the Strategic Director of Regeneration initiate a periodic random audit to check whether consultees have received their consultation letters.

*Audit Commission Recommendation 5: Provide training to Officers about their responsibilities and the need for documentation*

93. The department response is to establish an additional training programme for planning staff and create an understanding that the case officer is wholly responsible and accountable to ensure procedure and practice is followed properly.
94. With regards to improving documentation practices of staff, the department is looking to ensure that all documentation is kept on file including records of meetings, the registration sheet, a copy of the consultation letter, the list of persons consulted, an Ordnance Survey map to show where site notices were posted, press advertisements, re consultation on revised plans and general correspondence.

*Audit Commission Recommendation 6: Introduce and maintain a Register of Interests for all staff involved with dealing with planning applications*

95. The Sub-Committee recommends that planning officers register any interests they may have in cases prior to work being allocated to them. The response of the department is that a register of interests for staff is being implemented and will be regularly monitored and maintained.
96. The Sub-Committee discussed the policy concerning pre-application consultation, as this was an issue that the Imperial Gardens nightclub owners claim was not effectively implemented. Mr. Evans informed the Sub-Committee that there is no requirement for developers to conduct pre-application consultation with potentially affected stakeholders but that it is something that the department encourage developers to do.
97. The Sub-Committee recommends the Council, where it is able to do so, to encourage developers to undertake pre-application consultation, particularly where the Council is a stakeholder. The Sub-Committee requests the Executive to consider this issue (willingness to carry out pre-application consultation) as part of its criteria for selecting partners.

*Audit Commission Recommendation 7: Introduce a robust system of tracking planning applications including any potential conflict between applications for adjoining or nearby sites*

98. On this recommendation, the department has agreed to over-haul its existing filing system and set up separate files for planning applications using computer technology. The department has received advice from the independent planning consultant that a senior filing officer should hold overall responsibility, and that a policy should be developed on procedures for public viewing of planning files.
99. Mr. Evans also responded to some of the 'significant concerns' the Audit Commission had in his report about procedural weaknesses:
100. Mr. Evans told the scrutiny inquiry that the department was working to ensure that a filing system is created so that linked planning applications could be identified. The reason for developing a new filing system is to cross-reference applications that are not linked by site or applicant. Currently the filing system in operation is based on the site of the application, rather than the individual planning applications. Mr. Evans commented that the advantage of the current system is that there is a complete history on sites, however it is problematic if the file is lost. There is recognition that it is best practice to have a filing system based on individual planning applications and the planning division is taking steps to introduce such a system. It will be important to ensure that information is co-ordinated across the two different filing systems.
101. The Sub-Committee requested that performance indicators being developed for the planning division be provided to Overview & Scrutiny Committee for their consideration.

*Additional issues identified in the District Auditor's report*

*Training for Members in planning issues was inadequate and some Members with no training participated in planning decisions*

102. Mr. Evans told the scrutiny inquiry that a new round of training for Members delivered by Planning Aid for London was set for June and that Member Services was discussing how to improve consideration of planning applications at Community Councils. The Department will develop a comprehensive training programme for Members in conjunction with Member Services and review whether this training should be made compulsory for Members considering planning applications.
103. Mr. Evans told the inquiry that the Department was planning to review and update the Development Control Service Charter Guidance and Information Notes, which indicate the level of service the public could expect.
104. There was a discussion by the scrutiny inquiry on how effective the existing Member training was, with several Members commenting that it was too short, and did not test Members on their knowledge.
105. The Sub-Committee recommends that Member training for the planning function must be sufficiently rigorous to ensure that the necessary competencies are achieved, and to enable sufficient understanding of the application of the function. The Sub-Committee asks the Borough Solicitor to consider how Members' competency to take planning decisions can be assessed.

*Mechanisms for performance management of planning staff were inadequate*

106. Mr. Evans informed the scrutiny inquiry that a review of local performance indicators for the planning division is currently underway and that an internal review of procedures and practice of management is currently being undertaken. Additionally an independent planning consultant has been offering advice such that the Head of Development Control needs to adopt a permanent monitoring role and that regular monitoring of performance management and handling of cases should take place.
107. The Sub-Committee asks the Strategic Director of Regeneration to ensure that an appropriate basket of performance indicators is reported quarterly to the Planning Committee and the Executive.

*Arrangements for ensuring compliance with planning decisions were poor*

108. Mr. Evans told the scrutiny inquiry that additional enforcement staff and a new enforcement manager had been appointed. The action for the department was to review procedures for tracking temporary planning consents and put in place mechanisms to alert applicants and officers of the need to review expired consents.

**(Evidence contd.)**

*Independent Planning Expert*

109. The scrutiny inquiry set a series of work tasks for the independent planning expert, Mr. Graham Beck. These tasks were mainly to compare and contrast Southwark planning policies and implementation with 'best practice' planning departments. For a full list of tasks please refer to the inquiry minutes. Also included was the selection of five 'live' Southwark planning applications with similar characteristics to Imperial Gardens and assessment of whether consultation had occurred in line with best practice, whether quality control mechanisms were utilised and all information had been provided to Members in the planning committee report.
110. Mr Beck reported back on 20 May and explained that he had chosen the London Borough of Camden and Portsmouth City Council for the purpose of comparison with Southwark planning division. Both of these councils were rated 'excellent' under comprehensive performance assessment in respect of planning. Members were advised that Portsmouth Council operates an effective paper-based system.
111. Mr. Beck's report concluded that:
- A comprehensive package of training can and should be made available to all Planning Committee Members as well as other Members of the Council taking planning decisions;
  - The planning application consultation processes need to be modified in line with 'best practice';
  - A system of defining a framework for consultation should be determined and regularly monitored;
  - To facilitate the easy transition of live case files from one officer to another, the contents of all files should be comprehensive and up-to-date;
  - Consultation procedures and mechanisms should adopt best practice with specific guidance given to the handling of confidential information;
  - Irrespective of whether files are held and stored electronically or on paper, it is good practice to ensure the whole process and system is robust and regularly monitored;
  - Quality Control embraces a raft of issues from clear responsibility and accountability of officers to service delivery and the production of a quality product. Checks and balances need to be in place for the whole service to create an atmosphere, style and culture of excellence;
  - Consideration needs to be given to prioritising limited resources and costs of managing change;
  - From an examination of the paper files undertaken on the 13<sup>th</sup> May 2004, there were omissions of material not consistent with 'good practice', some small degree of inconsistency was evident in the consultation process and there were missed opportunities to improve the quality of the information on file demonstrating methodology, process and decision making;
  - The written reports for planning committee adopted a good standard approach outlining all material considerations as well as third party views on the application;
  - Quality Assurance was evident in the decision making process through the named case officer and manager;

Special Scrutiny Sub – Committee: Final Scrutiny Report

- Quality checks in terms of process were less evident;
- There was no evidence on file of material sent to Members;
- From an examination of the two 'best practice' authorities, there was no overall mechanism established to consider race matters and the effect or otherwise of service delivery.

112. In response to a direct question from Mr Stevenson, Mr Beck responded that in all his experience he had not seen or heard of a case in which procedures had collapsed in the way they appeared to have done in Southwark. The scrutiny inquiry also received evidence that tenants of other railway arches had not been consulted by the Council in 2001 with regard to a similar application (Brayards Road).

113. A full copy of Graham Beck's report can be found at Appendix 2.

114. Mr Beck concluded that:

*Member Training on Planning Issues:*

115. Mr. Beck stressed that member training programmes in both Camden and Portsmouth varied considerably, even though both Councils were considered best practice. He told the scrutiny inquiry that Southwark should incorporate Portsmouth's "Wash Up sessions"; feedback sessions conducted after planning committee had met to discuss any issues that had arisen during the meeting that Members had difficulty understanding or on which they needed clarification.

116. The Sub-Committee recommends that the Council adopt such an approach.

*Consultation Mechanisms, Processes & Consultation Areas:*

117. Mr. Beck told the scrutiny inquiry that although councils might have good consultation policies in place it was essential that these policies were being implemented effectively and this implementation monitored. He commented that Camden appeared to have very good consultation policy and implementation of this policy, creating a culture of excellence in completing consultation and using many different 'layers' of consultation mechanisms to ensure consultation was effective. Additionally, Camden uses GIS technology and an electronic filing system that assists in selecting the consultation areas on planning applications. Consultation lists were imported from existing planning applications, and updated.

118. Mr. Beck told the scrutiny inquiry that if all the related monitoring and implementation systems were put in place in respect of Southwark's consultation policy, it could be considered best practice.

119. The Sub-Committee recommends that the Council adopt the Camden model and appoint an officer dedicated to consultation with hard to reach groups.

*Staff Handover Procedures:*

120. Best practice in respect of staff handover procedures was to ensure that working files were kept up to date, to enable smooth transition to new staff members.

*Pre application procedures:*

121. Best practice in respect of pre-application procedures included being transparent and encouraging the developers to be similarly transparent in their dealings. Best practice is to have a register of staff interests, but guidance and staff training was needed to ensure that staff understand when and what constitutes an “interest”.
122. The Sub-Committee recommends a periodic audit of the staff register of interests.

*File Management:*

123. Camden has a fully electronic file management system that enables a high level of transparency enabling the public to access planning applications and track decision-making. Were Southwark to move to an electronic file management system, caution would need to be applied, as it was Mr. Beck’s opinion that important information might be lost during the changeover from paper to electronic systems.

*Quality Control:*

124. Mr. Beck told the scrutiny inquiry that quality control was important to examine the overall system, including both the product and the service. He commented that both best practice councils he had contacted felt that if a culture of excellence were created in the service delivery then it would follow that the product would be best practice.

*Spot Checking of Planning Applications:*

125. Mr. Beck was also tasked to examine five live planning applications to assess if best practice was occurring in Southwark planning department. He commented that files did not contain notes of any meetings or of telephone conversations, one of the files did not have any record of site visits, but that the files showed that every single consultee had been responded to. He suggested that the ‘Planning Application Worksheet’ was filled in correctly but could also be used to record file correspondence.
126. The scrutiny inquiry gave the planning division the opportunity to respond to Mr. Beck’s observations and John East, Head of Planning and Transport, told the inquiry that he was encouraging a culture of taking notes of meetings and telephone conversations on planning applications. Paul Evans, Strategic Director of Regeneration, commented that he thought Southwark planning division consultation policies were reasonable, and had a similar methodology to Camden council. He told the scrutiny inquiry that some of the best practice methods Mr Beck had outlined at Camden and Portsmouth could be integrated at Southwark, including ‘wash up’ procedures and tailoring consultation for hard to reach groups.

## Other Evidence

127. Jon Durbin presented the Planning Aid for London's submission to the scrutiny inquiry. Planning Aid for London believed there had been significant and inexplicable failings in the handling of both the Fairview New Homes and Imperial Gardens planning applications, and that these failings led to the direct financial failure of the Imperial Gardens nightclub.
128. Mr. Durbin told the scrutiny inquiry that Imperial Gardens nightclub had been consulted on two previous planning applications with regard to the Fairview New Homes site, and that there were a number of occasions when references to Imperial Gardens nightclub has been ignored by the planning division.
129. Mr. Durbin believed that planning permission should never have been granted to Fairview Homes, given its proximity to Imperial Gardens nightclub. He argued that the Council's planning decisions in respect of Imperial Gardens nightclub and Fairview New Homes were wholly inconsistent, given that initially Imperial Gardens nightclub had been refused planning permission on the grounds that noise would affect residents' 40 metres away, whereas permission was granted for Fairview New Homes which is 3 metres away from the nightclub. Mr Durbin stated that, once the Fairview Homes application had been approved, it was in his opinion difficult to see how the permanent application for Imperial Gardens could have been approved.
130. Mr. Huckerby addressed the scrutiny inquiry at its third meeting (20 May), explaining that he was a nearby resident to the Imperial Gardens nightclub and that he had been involved in recommending that the Council invite the Audit Commission to complete an investigation. Mr. Huckerby told the inquiry that he had written to inform the planning division of the need to consult Imperial Gardens nightclub on the Fairview New Homes planning application and that the planning division had acted on other points raised in his letter, but had ignored reference to Imperial Gardens nightclub. He also urged the meeting to take into account the injustices the owners of Imperial Gardens nightclub had experienced when considering compensation.
131. Mr. Huckerby informed the scrutiny inquiry that it was his view that the issues surrounding Imperial Gardens resulted because of a wrong doing rather than an error, and that the solution was not improvements in process but disciplinary action against officers involved.
132. The directors of THK Entertainments Ltd consistently told the scrutiny inquiry that they believed that there were deliberate wrongdoings by particular staff that resulted in discrimination against Imperial Gardens, rather than a flawed consultation policy. The directors of THK Entertainments Ltd believed that process or policy improvements would not have solved the consultation problems that occurred on Imperial Gardens and the main issue was intentional fraudulent acts of staff.



## Recommendations

133. The Sub-Committee notes the responses provided by Paul Evans and John East and the timeliness of these responses. We believe that the Strategic Director of Regeneration's draft action plan provides a way forward in addressing the issues raised in the Audit Commission report when combined with robust Member level monitoring.
134. The Sub-Committee recognises that delivering on the action plan will require a significant improvement in both the systems and culture of the planning division and it is therefore vital that a robust system of monitoring is put in place and followed through continuously.
135. We therefore ask the Executive as a whole to ensure that this can be tracked through the performance management system and can be addressed by both Executive and Scrutiny through the quarterly performance reports. Overview & Scrutiny Committee intends to play its full part in this process.
136. The scrutiny inquiry focused on systems and procedures with the intention of minimising the possibility of human error in the future. Its remit did not include the actions and motivation of the officers named in the District Audit report. The fact that a disciplinary investigation has been run concurrently with the scrutiny has meant that we have not been able to make any inquiries as to the actions of individual officers. We are of course aware of the evidence contained in the District Auditor's report. We also received evidence from the Strategic Director of Regeneration, the directors of THK Entertainments Ltd, and Martin Huckerby, a local resident. However, this was the timescale set by Council Assembly and that was required in law in respect of the District Audit report. It would have been preferable to complete this scrutiny report on conclusion of staff disciplinary proceedings, and also for these to be concluded more swiftly.
137. We must stress that it has not been for us to pass any judgement on what we were told about individuals. We take the District Auditor's concern as to the standards of Officer conduct very seriously. But it is for the disciplinary and police investigations to throw light upon these matters. In the meantime, our examination of planning processes and procedures has been rigorous.
138. Our inquiry has not provided us with any rational explanation for the way officers handled these planning applications. The explanations offered to the District Auditor were contradictory and untenable – we cannot see how officers could have forgotten about Imperial Gardens in respect of the Fairview Homes application when the directors of THK Entertainments Ltd were in touch with the council in respect of their own and other planning applications. We reiterate the District Auditor's concern as to the standards of officer conduct. We look to the disciplinary and police investigations finally to shed some light on these matters.

## **Section 2.**

### **Legal mechanism for assessing possible compensation**

#### **Background**

139. The Local Government Ombudsman report recommended that Mr. Stevenson and Ms Hinton be compensated £1000 for the Council's maladministration. The Local Government Ombudsman report did not however, agree that the Council's actions resulted in the financial demise of Imperial Gardens.
140. The Audit Commission's report did not address compensation but commented that the Council was exposing itself to reputational and financial risks of litigation by complainants if the issue was not addressed urgently.
141. Council Assembly directed the Overview & Scrutiny Committee to examine *mechanisms* for assessing possible compensation, for which a range of options existed. As mentioned earlier, it was not within this Sub-Committee's remit to assess, or recommend, a compensation figure.

#### **Evidence**

142. The Assistant Borough Solicitor, Glen Egan, explained that the legal issue regarding compensation rested on 'misfeasance in public office'. Please see definitions of misfeasance in public office contained in Webster Dixon's letter dated 1 July 2004 (paragraph 2) at Appendix 5 and paragraph 5.2 of the advice to the Council provided by Nabarro Nathanson Solicitors at Appendix 4.
143. Webster Dixon, solicitors for the directors of THK Entertainments Ltd, had advised the Council that compensation of approximately £1 million would be pursued. The Assistant Borough Solicitor advised Members that in his view if this matter went to litigation it would be tried in the high court and that this process was unlikely to be in the interests of either the Council or the directors of THK Entertainments Ltd, being both lengthy and costly. The scrutiny inquiry was advised that Alternative Dispute Resolution was the only other viable option for resolving the claim and that this might be done through either mediation or arbitration.
144. Webster Dixon Solicitors sought advice from Andrew Arden Q.C. whose preliminary view had linked misfeasance in public office to the losses occurred by the directors of THK Entertainments Ltd. Mr. Webster explained that any compensation would need to take into account the costs of an alternative location for the nightclub, including refurbishment, relocation and start up costs, as well as losses for personal investment and personal liability. Mr. Webster commented that he was confident there was sufficient evidence of public misfeasance and that substantial damage could be secured.
145. Mr. Webster commented that his clients were willing to go to court over the issue but currently were open to alternative processes. Mr. Webster told the scrutiny inquiry that it was necessary to reach a position where the Council admitted its errors and looked to settle in a realistic way.

146. Mediation would involve an independent person, agreed to by both parties, seeking to find the middle ground without apportioning blame. Mediation was not recommended by Mr Egan for this case however because of the high amount of the claim for compensation.
147. Mr. Egan informed the scrutiny inquiry that arbitration, involving the appointment of an independent person certified by the Institute of Arbitration, would aim to reach a fair and binding decision swiftly and in addition had the following advantages:
- The arbitrator would determine the procedures to be followed, including the ability to limit the number of witnesses, the duration of their evidence, and the number of documents submitted, thus reducing both the length and legal cost of the process;
  - Arbitration is generally conducted in private therefore avoiding the adversarial nature of a trial;
  - There is only very limited scope for appeal;
148. The disadvantages of arbitration were:
- The decision of the arbitrator would be final and both parties must agree to be bound by any decision;
  - The arbitrator determines the procedures to be followed including the number of witnesses, the length of their evidence and the documents submitted. The rules of admissibility of evidence may not necessarily apply.
  - There is little scope for either party to appeal the decision of the arbitrator, only if it is based on the arbitrator making an error of law.
149. Members were advised that arbitration relied upon agreement between the parties involved. Glen Egan cautioned that courts were taking an increasingly dim view of parties who unreasonably refused to submit to arbitration and in some cases might impose costs if the matter went to court.
150. At the meeting on the 20 May, Mr. Egan recommended the Council offer to enter into arbitration with the directors of THK Entertainments Ltd to resolve the following:
- (i) Whether the Council has been guilty of misfeasance in public office
  - (ii) If so, whether any compensation was payable by the Council and to whom such compensation is payable.
151. Mr. Egan did not recommend mediation because:
- A claim of misfeasance in public office was a serious claim and it would be difficult for a compromise to be reached through alternative dispute resolution;
  - It was unlikely that council officers could recommend a substantial settlement where there was no finding of liability against the council; and
  - The company [THK Entertainments Ltd] was in liquidation, and therefore the liquidator would need to be involved in the mediation and this might compromise claims brought by creditors of the company.

152. At the 20 May meeting, Mr Stevenson & Ms Hinton told the scrutiny inquiry that they were opposed to arbitration as a means to solving the compensation claims. Their solicitor had advised them against arbitration because the process only allowed limited evidence to be tabled. They feared that with limited evidence the arbitrator might be unable to understand the complexities of the case.
153. The directors of THK Entertainments Ltd stated that they wanted the Council to:
- Accept the Audit Commission report;
  - Accept all the findings in the Audit Commission report;
  - Accept that the Council's actions were either reckless, deliberate or wilful and led to the demise of Imperial Gardens nightclub.
154. Independent legal advice was received from Nabarro Nathanson. There were a number of courses of action proposed, these including arbitration, litigation and mediation. We are aware that the claimants are unwilling to pursue arbitration or mediation at this stage unless the Council is willing to unreservedly accept the findings of the District Auditor's report and confirm that it is willing to pay substantial compensation.
155. Members agreed that paragraph 5.1 of the legal advice was not relevant to the matters in the scrutiny report, and accordingly should be disregarded. In addition, Raymond Stevenson reported that assault charges against the claimant had been dropped during this inquiry.

## **Recommendations**

156. The Sub-Committee recommends that Council Assembly urges all parties to take the necessary steps to identify and resolve the legal issues as soon as possible. In particular that the Executive and the Directors of THK Entertainments Ltd be urged to take all necessary steps to expedite the process in line with the strategy recommended by Nabarro Nathanson in their advice.

### **Section 3. Proposed Camberwell train station**

#### **Background**

157. During the course of the scrutiny it became apparent that an important issue was a possible relationship between the Council's aspirations for the development of Camberwell train station and consultation with the Imperial Gardens Nightclub, Fairview Homes, Railtrack and other businesses on these aspirations. The Sub-Committee wrote to Network Rail, which has taken over the responsibilities of Railtrack, but no reply was received.
158. The proposal for a train station at Camberwell was part of the 1995 Unitary Development Plan (UDP) and Railtrack and Southwark Council were in talks. Various studies were commissioned and undertaken:
- Evaluation of Camberwell Station, Report on Demand and Economic Evaluation*, by Symonds Travers Morgan, July 1998, undertaken for London Transport Planning and London Borough of Southwark
- Feasibility Study for Camberwell Station*, Railtrack, Thameslink 2000 (project group), October 1998, for Railtrack
- Feasibility Study for Camberwell Station Option 3*, Railtrack, Thameslink 2000 (project group), November 1998, for Railtrack
- Transport Study - Camberwell Green Station*, by Colin Buchanan and Partners, July 1999, for London Borough of Southwark
- New Station At Camberwell, Pre-Qualification Bid* (Rail Passenger Partnership bid to the Strategic Rail Authority), by Symonds Group Ltd, November 2000, for London Borough of Southwark
- Development of Train Service Options, consultancy assignment undertaken by Nick Alexander* (an Independent Consultant), November 2001-January 2002, for London Borough of Southwark
159. The proposed development of Camberwell train station at Camberwell Railway Arches would have significant financial and physical impacts on businesses and potential future businesses in the area, including Imperial Gardens Nightclub (as one of the proposed train station sites would have been where Imperial Gardens nightclub stood) and Fairview New Homes. For this reason consultation on the proposed station development, and the timings of these consultations, was an important issue that required critical examination and analysis by the scrutiny inquiry.

160. Various negotiations and feasibility studies were undertaken and carried out and Option 1 of the 1998 Railtrack feasibility study states: “The option would require the permanent acquisition of the tenancy at 299 Camberwell New Road; this tenant currently occupies Arches 342 and 343. The tenancy arrangements in this case could be terminated within 6 months. It may be possible to relocate this tenant to an alternative arch site but given its use as a nightclub, opportunities for relocation within the area may be limited.” It is not plausible that officers who were involved in these proposals would not have been aware of the contents of this Study and thereby the references in it to the Imperial Gardens nightclub and its exact location.

## **Evidence**

161. During the inquiry, the directors of THK Entertainments Ltd alleged that the Council developed aspirations for the development of Camberwell train station at Camberwell Railway Arches but had failed to voluntarily disclose such aspirations to Imperial Gardens Nightclub at any stage. The directors of THK Entertainments Ltd alleged that the Council had been in consultation with Railtrack (now Network Rail) in respect of these aspirations, but that both organisations had denied any knowledge of such aspirations. It was claimed that the Council actively used its aspiration for a Camberwell train station at Camberwell Railway Arches to entice both Fairview New Homes and Sainsbury’s Plc to the area, and that in doing so the Council had treated these businesses preferentially to local, black businesses. Additionally the directors alleged inappropriate collusion between staff in Railtrack, the Council & Fairview New Homes, alleged to be indicated by evidence of information exchange between these organisations.
162. The directors of THK Entertainments Ltd stated that it was for the reasons above that Southwark Council granted Imperial Gardens nightclub only a temporary planning application, took four years to process their planning application and ultimately granted planning permission to Fairview New Homes’ residential development three metres from IGN, which action finally resulted in the closure of Imperial Gardens nightclub.
163. The directors of THK Entertainments Ltd presented evidence that demonstrated that the Council were discussing plans for a Camberwell train station in 1996 a few months after Imperial Gardens nightclub first occupied the arches. They told the scrutiny inquiry that officers had denied plans for the development of Camberwell train station and on one occasion it was only after intervention by the Police that documentation demonstrating otherwise was provided. They produced letters from Railtrack and Network Rail, which demonstrate consultation and support for the proposed Camberwell train station between Railtrack and the Council. A Railtrack feasibility study presented to the Committee showed that there was consideration that Imperial Gardens nightclub occupied the proposed site and would require permanent acquisition of the tenancy and relocation or expiration of tenancy contract.

164. Other evidence presented included Southwark internal briefings and emails about the proposal for Camberwell train station and the need to encourage retail development in the arches. Mr. Stevenson told the scrutiny inquiry that the site of Fairview New Homes was offered to Imperial Gardens nightclub for £350,000, yet was bought by Fairview New Homes developers for £2.1million. They felt Fairview New Homes had known the financial value of the land would increase once the proposed Camberwell train station was developed. Also presented were maps produced by the Council for the proposed Camberwell train station that did not reflect the existence of Imperial Gardens nightclub.
165. The directors of THK Entertainments Ltd told the scrutiny inquiry that they believed both the Council and Railtrack had a policy to displace tenants and business that threatened the viability of the proposed Camberwell train station. The directors provided evidence in the form of letters from Spacia wherein another arches tenant was told that his evacuation was necessary due to building stability work, which needed to be completed on the arches. The directors told the inquiry that other arches tenants were threatened with Compulsory Purchase Orders from the Council.
166. An issue raised by the directors of THK Entertainments Ltd was the existence of the proposed Camberwell train station in the Unitary Development Plan, about which they claimed the Council gave inconsistent responses. Letters from Southwark Officers highlighting inconsistencies were produced, with one letter claiming that because the proposed Camberwell train station was in the Unitary Development Plan it could be considered to be an aspiration for the area, and another expressing the opposite. Members commented that the local media had been discussing the proposed development of Camberwell train station for a number of years and that it was possible there was a general level of awareness in the community about this development. Mr Stevenson highlighted that the Council had not informed the directors of THK Entertainments Ltd of the aspirations for the proposed train station, even though they had a planning application with the Council from 1995-2002.
167. Another issue raised during the scrutiny was whether the obligation to inform Imperial Gardens nightclub of the proposed Camberwell train station rested with landlords, Railtrack, or the Council. Jon Durbin (Planning Aid for London) confirmed that statutory obligations rest with the owner of the premises (Railtrack) to inform lessees.

## **Recommendations**

168. The Sub-Committee notes the frustrations the directors of THK Entertainments Ltd faced when trying to ascertain the details of the proposals for a Camberwell train station development. Whilst some documents were eventually provided, the Sub-Committee notes the difficulties that the directors of THK Entertainments Ltd had in ascertaining the exact status of developments for a train station at Camberwell, and that there were unacceptable delays and excuses in providing information. The documentation the directors of THK Entertainments Ltd obtained from Railtrack, in which the position of individual tenants was being discussed, does not correspond adequately with the information being supplied by the council.

169. This highlights for the Sub-Committee a problem inherent to regeneration plans - when does an aspiration for regeneration become a reality? We are aware of the issues around the requirements for commercial confidentiality, and the fact that the timing and viability of any regeneration scheme depends on a range of complex factors. We believe that the judgement as to when and how to communicate with directly affected parties and/or the general public on individual schemes should not be left to officers.
170. We therefore look to the Executive as a whole to ensure that it maintains oversight of schemes at all stages of development and has an appropriate communications strategy in place.
171. The Sub-Committee notes paragraph 74 in the District Auditor's report which states: *"In an internal memorandum [which was primarily related to a planning permission granted for residential development of a site just north of the Imperial Gardens nightclub at Badsworth Road and Medlar Street] dated 29 June 2001 from Mr Dennett addressed to Mr Cook and Dr Roy Turner, Transport Planner in the Transportation Department, it is evident that Mr Dennett was involved with and knew of the Council's railway station proposals. The occupation of these arches by the Imperial Gardens nightclub should therefore have also been very apparent and known to him during the same time that the Fairview New Homes [Camberwell] Limited application was being processed"*.
172. It was clear to Councillors that there was a desire to build a station at Camberwell, and that this might contribute to the regeneration of this area. It also seems clear that this general aspiration was not being imparted to those businesses most directly affected, including Imperial Gardens nightclub, and the Sub-Committee notes that in an email to the then Strategic Director of Regeneration & Environment, it was stated that the Council had received *"some criticism for its Camberwell Station bid – regarding lack of consultation"*.
173. In terms of using the development of a station at Camberwell as part of a regeneration initiative in the area, the Council should have been consulting on this aspiration at a much earlier stage, and in addition should have ensured that its overall communication of this aspiration was effective in reaching local businesses.
174. The Sub-Committee notes the correspondence between the Council and Railtrack concerning the broader regeneration implications of the proposals concerning the railway station. The Sub-Committee also notes that the directors of THK Entertainments Ltd regarded this process as potentially undermining of their relationship with their landlord. However, the Sub-Committee acknowledges that this situation is in many ways inherent in any early consideration of the regeneration of a particular area.
175. The Sub-Committee recommends that the Executive considers this issue in relation to other regeneration schemes.



## **Section 4. Allegations of Institutional Racism**

### **Background**

176. During the course of the scrutiny the directors of THK Entertainments Ltd, together with Mr. Lee Jasper (Policy Director (Equalities & Policing) – Mayor’s Office Greater London Authority), the Black Planners Network and two Southwark Councillors (Cllr Hunt and Cllr Dr Abdur Rahman Olayiwola) alleged that there was evidence of institutional racism within the planning division at Southwark Council. Although not in the terms of reference for the scrutiny, the allegations were taken very seriously by the scrutiny inquiry and warranted investigation.

177. Institutional Racism, as defined in the McPherson Report is:

*“The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin which can be seen or detected in processes; attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantages minority ethnic people.”*  
(McPherson Report)

178. The Audit Commission report does not make any conclusions or recommendations regarding individual or institutional racism with the planning department or Southwark Council, or that the problems experienced by Imperial Gardens were racially motivated. Similarly, the Local Government Ombudsman report does not make any references to racism or ethnicity. The Audit Commission was contacted about this issue, and confirmed that, “at no stage was the remit ever extended to any other issues connected with Institutional Racism or similar matters and any such investigation would necessary have entailed a more detailed investigation. On the subject of motivation, be it racist or otherwise, the report makes clear that [the District Auditor] found no evidence that would enable [the District Auditor] to establish a motive for the actions of the named individuals within it”.

179. Southwark Council is conducting an equalities impact assessment (EIA) of the planning division, which is being coordinated by a steering group composed of internal officers, external individuals and academic experts. The Council has initiated correspondence with the Commission for Racial Equality (CRE), which has been invited to offer advice at any stage.

## Evidence

180. The directors of THK Entertainments Ltd felt that they were victims of racial discrimination by Southwark Council. They told the scrutiny inquiry that the actions of the Council in relation to Imperial Gardens, namely the delay in processing Imperial Gardens planning application and failure to consult about Fairview New Homes planning application, were racially motivated. The directors alleged that there was a case of institutional racism at the Council that needed to be investigated by the CRE. These comments were supported by Cllrs Hunt and Dr. Abdur Rahman Olayiwola.
181. Paul Evans, Strategic Director of Regeneration, responded that he did not believe the allegations of racism within the planning division were true, and explained that the planning division had initiated, in response to the Racial Equalities Amendment Act 2002, an Equalities Impact Assessment (EIA) which was due to be completed in the forthcoming months. Additionally, the aspiration and policies of the planning division, as expressed within the Unitary Development Plan, fit with the London Plan and therefore the Mayor's plan for racial diversity. With regards to tracking of planning applications based on ethnic data, the planning division had and do not do this. The independent planning expert stated that neither Camden nor Portsmouth Councils conduct ethnic monitoring of planning applications, but these Councils were still considered examples of best practice. Sarah Naylor, Assistant Chief Executive, explained how the planning division's work fitted in to the Councils strategic obligations to conduct ethnic monitoring.
182. The Black Planners Network, represented by Patrick Anderson, presented to the scrutiny inquiry [13<sup>th</sup> May] their submission, which was supported by the directors of THK Entertainments Ltd. The Black Planners Network asserted the existence of institutional racism at the Council, and that race had been a significant factor in the issuing of Fairview New Homes planning application and in how the applications submitted by Imperial Gardens was dealt with. Mr. Anderson told the scrutiny inquiry that the evidence for the claim of institutional racism had come from the Audit Commission report, discussions with the directors of THK Entertainments Ltd and previous employees of Southwark planning department. The Black Planners Network suggests that a thorough investigation by an external body (Commission for Racial Equality) was needed.
183. Paul Evans responded to the Black Planners Network submission, disagreeing with the allegation of racism in the planning department, and specifically the points made on employment complaints based on race. He told the scrutiny inquiry that, of 14 Employment Tribunal claims (8 relating to one individual) that featured a racial element, only 2 had been in any way upheld as to the race discrimination claim (these dating to complaints from the mid-1990s). He quoted from the summarised exit interview of a member of staff of the planning division. Mr. Evans told the inquiry that the notes of the exit interview indicate the concerns raised in the exit interview were pay scales, the lack of black managers in the department, and a comparison between the leaving employee's home country and the UK.

184. Mr. Lee Jasper (Policy Director (Equalities and Policing), Mayor's Office - Greater London Authority) informed the scrutiny inquiry [13<sup>th</sup> May] that in his view Southwark Council was guilty of institutional racism and could not counter claims of institutional racism, as it was unable to positively demonstrate otherwise. The Council's lack of ethnic monitoring or race indicators in relation to the planning function meant that Southwark could not demonstrate that race wasn't a factor in the issues faced by Imperial Gardens nightclub. He also felt that racial tensions in the borough on race were high as a result of the treatment of Imperial Gardens and needed to be addressed.
185. Mr. Jasper recommended that an independent investigation be conducted to investigate institutional racism allegations. He also suggested that the Council's ethnic monitoring policy needed to be mainstreamed across all Council departments, particularly the planning division.

### **Recommendations**

186. The Sub-Committee takes the allegations of racism very seriously but it is difficult for us to reach any conclusions since several of the complainants told us that they had been advised to withhold the substance of their allegations for use in another forum. We note that the Commission for Racial Equality is being kept informed of progress on this matter. We also note that the Equalities Impact Assessment is under way.
187. We therefore recommend that the Chief Executive and the Leader maintain the dialogue with the Commission for Racial Equality, and where necessary seek advice to ensure that allegations are fully addressed and that the Chief Executive keeps all Members apprised of progress.
188. We believe that any individual with information or evidence of racism in any part of the council should come forward - this is a key issue of public confidence that must be fully worked through and resolved.
189. The Sub-Committee also notes that an Equalities Impact Assessment (EIA) of the planning division is underway and recommends that it consider routine monitoring of equalities issues both from a human resources and operational perspective.

## **APPENDIX 1: Independent Planning Expert Report**

### **Executive Summary**

- 1.1 This report has been prepared in strict compliance with the brief set out in public by the Overview and Scrutiny Committee [O&SC] at its meeting on the 29<sup>th</sup> April 2004.
- 1.2 Comparisons of service and experience have been drawn from the London Borough of Camden and Portsmouth City Council together with experience of the expert advisor, the author of this report.
- 1.3 In essence, the report concludes that;
  - A comprehensive package of training can and should be made available to all Planning Committee Members as well as other Members of Council;
  - The planning application consultation processes need to be modified to adopt 'best practice';
  - A system of defining a framework for consultation should be determined and regularly monitored;
  - To facilitate the easy transition of live case files from one officer to another, the contents of all files should be comprehensive and up-to-date;
  - Consultation procedures and mechanisms should adopt best practice with specific guidance given to the handling of confidential information;
  - Irrespective of whether files are held and stored electronically or on paper, it is good practice to ensure the entire process and system is robust and regularly monitored;
  - Quality Control embraces a raft of issues from clear responsibility and accountability of officers to service delivery and the production of a quality product. Checks and balances need to be in place for the whole Service to create an atmosphere, style and culture of excellence;
  - Consideration needs to be given to prioritising limited resources and costs of managing change;
  - At the time of finalising the report, the quality check on the selection of six planning applications had not been completed for which reason the results will be tabled at Committee on the 20<sup>th</sup> May 2004.

### **2. Background and Terms of Reference**

- 2.1 At the last meeting of the Overview and Scrutiny Committee a report was presented to Members by the Strategic Director of Regeneration in response to a report by the District Audit and Ombudsman in respect of planning permission granted at 295-297 Camberwell New Road and 299 Camberwell New Road.

- 2.2 At Committee, the process of appointing an independent expert was outlined and explained with the result that Graham Beck attended the last meeting and listened to the discussion.
- 2.3 The independent expert worked in local government for over twenty years with a number of different Councils, the last appointment held being Head of Planning and Development at Southampton City Council. Qualifications held include a BA in Town and Country Planning, an LLB, and an MBA. Graham Beck is a Chartered Town Planner and Member of the Royal Town Planning Institute as well as a Member of the Chartered Management Institute. He is also a Justice of the Peace. For the last seven years, he has worked as an independent planning, development and management consultant providing a range of services to central government, local government and the private sector.
- 2.4 Following a discussion by Committee on the 29<sup>th</sup> April 2004, a brief was agreed for the independent planning expert to examine various aspects of the report and offer advice to the Committee. Rather than repeat the terms of the engagement, they are appended to this report at Appendix I.

### **3. Methodology**

- 3.1 Notwithstanding the general role of expert to provide independent advice to Committee on planning issues and provide expertise on 'best practice' in planning issues, the tasks requested are helpfully quite specific. For this reason, combined with the strict timescale for the preparation of a report, the advice offered is based upon comparisons with two other local planning authorities as well as the extensive experience of the expert.
- 3.2 Committee agreed that in order to assess the recommendations of the Strategic Director of Regeneration, it would be prudent to compare Southwark Council with other 'best practice' authorities. It was also agreed to review such authorities from elsewhere in London together with other major urban unitary authorities. With the assistance of the Head of Overview and Scrutiny Committee, a search of Audit Commission Reports was undertaken as a result of which two Councils were identified; the London Borough of Camden and Portsmouth City Council. Both Authorities have been subject to recent Development Control reviews and are considered 'good to excellent'. It was originally intended to include two London Boroughs but firstly there are few London Authorities with an 'excellent' to 'good' rating, secondly it was considered that up-to-date reports would provide more useful data and thirdly, the timescale to complete the exercise was very short.
- 3.3 Based upon Members' discussion at the last meeting and the report under consideration, a range of questions was devised on each of the seven tasks given to the expert. The objective of the questions provided a basis for discussion with Camden and Portsmouth to illicit the most helpful and constructive information that would assist Members in their deliberation. The questions are appended to this report at Appendix II.

- 3.4 The first telephone interview took place with the Head of Development Control at Camden, Mr. Robin Harper, on Friday the 7<sup>th</sup> May 2004. The second interview took place with Mr. Paul Newbold, Director of Planning at Portsmouth City later the same day. A third telephone call was made to Wandsworth Council but the Head of Development Control was unavailable for which reason no data is available.
- 3.5 In order to offer the best and most considered advice to Committee, the report is set out under each of the seven tasks drawing upon information from both Councils mentioned above, together with personal experience. Appropriate comments are made throughout the text.
- 3.6 Although outside the scope of the brief, a final section on resources highlights questions for the Council.

#### **4. Key Issues**

##### **Member Training on Planning Issues**

- 4.1 Member training programmes vary considerably from Authority to Authority and even those Councils recognised as being ‘best practice’ can be differentiated in the programmes offered to Members.
- 4.2 At Camden the Chair of Planning Committee attends the annual Royal Town Planning Institute organised ‘Summer School’ which is an intensive programme over several days dealing with the full range of planning related matters including changes to legislation, planning procedures and separate topics such as design, transport, retailing and housing. Any Member may attend these events.
- 4.3 It is compulsory for all Members who sit on Planning Committee at Camden to attend an introductory course on ‘Planning’ and failure to attend will result in their not being eligible to determine planning applications. There are 16 Planning members on committee out of a total complement of 60 on Council.
- 4.4 Training for Members takes place throughout the year comprising talks and seminars from a range of officers from the Council, external trainers including barristers, planners and other experts. Members are encouraged to attend external courses as well.
- 4.5 Training is also available for Members who do not sit on Planning Committee but it is not compulsory. Monitoring of all training is undertaken by the Chief Officer in consultation with his senior colleagues and the Chair of Committee.
- 4.6 At Portsmouth, training for Members is available and encouragement is given to all Councillors to take part but it not compulsory, even for those who sit on Planning Committee.
- 4.7 Only 9 Councillors sit on Committee at Portsmouth out of 42 Members of Council. Apparently because there are only 9 Members, it is easy to monitor training needs and ensure that all those on Committee have sufficient training

to make informed decisions. The comment was made that as 92% of all development control decisions are delegated to the Head of Development Control, a relatively small but important part of the decision making process is undertaken at Committee. This process itself allowed training to continue 'on the job'. For the sake of comparison, 93% of all development control decisions at Camden are made by the Head of Development Control.

- 4.8 In common with Camden, training is offered throughout the year comprising a combination of internal and external trainers and monitored by the Head of Department, normally in consultation with the Chair.
- 4.9 To summarise 'best practice' and to offer further advice, the Camden model is well considered, providing all Members with an opportunity to learn about the planning process and procedures. The compulsory nature of training for Committee Members is commended but some Councillors may find the training too onerous given their other commitments to family, the Council or community work. Unfortunately, the nature of the planning process today and the decision making processes, which are quasi judicial, demand a considerable level of knowledge and understanding which requires constant training not just for Members but for planning officers as well.
- 4.10 Training should be monitored on a regular basis, at least two or three times a year. All new members should be given some form of training before attending Committee so that they are able to contribute to discussions with confidence, addressing all material planning considerations appropriately.
- 4.11 A programme of training for existing Members at Southwark Council, for those on Committee as well as other non-planning Members could be progressed quite quickly. To some extent, training should also address individual needs as some Councillors will benefit from different experiences and training programmes.

#### **Consultation mechanisms and processes**

- 4.12 It must be remembered that one of the key reasons why the Committee is considering this aspect of the Development Control system is because in the case of the Camberwell New Road applications, the process fell down.
- 4.13 Nevertheless, it is essential to adopt a policy for consultation, monitor the process regularly and employ checks and balances all the time.
- 4.14 A general policy of consultation at Camden is included within their Concordat 2001 approved Service Charter. The Head of Development Control is responsible and accountable. The fact they employ a highly efficient and regularly updated Geographic Information System, much reliance is placed upon the first stage consultation being map based. There is no strict geographical zone surrounding any one planning application site because each case warrants a different approach. However, initial letters are sent to immediate neighbours, a site notice or notices are posted by the Council and applications are advertised in a local newspaper. A list of Community Groups,

interest groups and amenity societies plus any other notified organisations are monitored regularly for up-to-date details so they can be consulted automatically. All information is computerised for which reason it is easy to notify all parties.

- 4.15 A Planning Service Agreement has been reached with the Government Office for London to replace the normal 'advertising regime' with a more targeted 'hard to reach groups' approach. A part time officer is employed solely to ensure 'hard to reach groups' are consulted in appropriate cases.
- 4.16 Most application sites are visited by the case officer (possible exception of advertisements) and a check is made to ensure the first consultation exercise was appropriate. If not, further letters are delivered and the consultation extended.
- 4.17 The Council acknowledges the receipt of every response from neighbours or groups and keeps them informed throughout the planning process. This enables them to re-consult on amended plans or further information if necessary.
- 4.18 Respondees are invited to attend Committee and are allowed to address Committee in accordance within a strict protocol, notified beforehand.
- 4.19 The case officer for each planning application is wholly responsible to ensure that proper procedures are followed and the consultation exercise is carried out accurately. A great deal of the process is maintained electronically and all records are kept on computer. Access to such information is available to the public.
- 4.20 Councillors are sent a weekly list of all planning applications so that they can arrange to read the files or obtain further information as necessary.
- 4.21 Portsmouth operates a similar system but because their computer system appears more basic, much of the consultation process is paper based.
- 4.22 The checks and balances are in place because each case officer, who is again wholly responsible and accountable to ensure procedure and practice is followed properly, visits the site. If the first trawl of consultees is deemed to be inappropriate for any reason, further letters will be sent out, all records held on file. At least two officers together determine the extent of the first consultation.
- 4.23 The nature of the consultation letters is worthy of note as each letter encourages neighbours to bring the matter to the attention of anyone else who might be interested. It is made clear in correspondence that the process is not closed; in fact it is open to any third party to comment.
- 4.24 Both Camden and Portsmouth have adopted policies of consultation beyond the statutory minimum.



- 4.25 In the report presented to O&S Committee on the 29<sup>th</sup> April, paragraphs 4.4 to 4.9 outline the Council's consultation process. It concludes by stating the process remains appropriate but it will be reviewed. During the debate, the complainants made the observation that regardless of the consultation policy and process, its implementation fell down. In response, one Member called for Performance Management Targets, a framework in order to drive efficiency and effectiveness. The Chair remarked that quality assurances and checks should be considered.
- 4.26 Prima facie, on the strength of the processes outlined at Committee regarding the Southwark planning consultation process, it is not surprising that a system operates that complies with statutory requirements and in some respects goes beyond. Nevertheless, to avoid similar problems in the future, it would be prudent to adopt checking mechanisms like Camden and Portsmouth to reduce the possibility of overlooking consultees. It would also be useful to ensure that one officer is wholly responsible and accountable for the process in order that appropriate action can be taken should the process fail.
- 4.27 Given the comparisons with the two Local Planning authorities above, more detailed work could be undertaken internally by Southwark Officers in consultation with colleagues at Camden in particular.

#### **Consultation areas**

- 4.28 Portsmouth City adopts a simplistic but flexible zoning policy based upon the likely effect of any proposed development on the immediate neighbours. The entire process is delegated to the Director of Planning and implemented in accordance with a framework interpreted by a professional planning officer, in consultation with one other. The second stage process is to undertake a site visit and review the consultation process and re-consult if the planning officer believes some properties have been omitted. A third stage is to respond to any requests for additional consultations resulting from the first two stages or from Councillors or from community groups.
- 4.29 Camden adopts a very similar approach, the most important aspect being they nominate the case officer to oversee the procedure and take full responsibility. To enhance their own procedures, applicants are advised to submit accurate planning applications specifically identifying immediate neighbours. This information is used to supplement the first stage exercise.
- 4.30 As will be discussed later in this report, the system of recording each event on file, be it paper or electronic, is extremely important. At both Camden and Portsmouth, site notes and consultation notes are fully available on file.
- 4.31 At Southwark there is a process involved and the action identified in the last report to Committee at paragraph 4.13 subparagraphs a to c, clearly adopt the models practiced by the comparative authorities. It is essential to support the consultation process within an overall qualitative framework for the whole service and set up monitoring procedures. Timing has been considered by the Director and a period of two months has been mentioned already. This

would seem eminently sensible although work on improving the current arrangements should not be delayed.

### **Staff Handover procedures**

- 4.32 In view of the recent history at Southwark where several officers were involved in the application at Camberwell New Road, Members of O&S specifically requested to know how other authorities organise any handovers.
- 4.33 In both cases at Portsmouth and Camden, the only occasions where it is necessary to change the case officer is during periods of extended leave, such as long term illness, holidays, maternity leave or where an officer leaves the employment of the Council. In all cases, due to the comprehensive records of the planning process on file, it is considered a relatively straightforward matter to hand the file over. All meetings, important telephone conversations, site visit notes and consultation decisions are recorded.
- 4.34 Where cases **are** handed over, it is desirable for the original case officer to explain the process to the new incumbent but due to the comprehensive nature of material on file, it is not critical to hold the meeting. To some extent, it depends upon the nature of the application. Where applications are complex or contentious, it is highly likely that at least one other officer will have knowledge of the case; in such cases the Head of Development Control is likely to be well briefed as part of the on-going monitoring process.
- 4.35 The key issue during handover is to make it clear that any new planning officer adopting a case is totally responsible and accountable for the planning process.

### **Pre planning application procedures**

- 4.36 Camden Council encourages pre-application discussions with developers particularly on major application proposals. This often includes extensive pre-application consultation with third parties such as the local neighbourhood, amenity and interest groups as well as some statutory external consultees. Portsmouth adopts a similar approach.
- 4.37 In both cases, the developer will carry out the consultation, sometimes involving exhibitions and public meetings with the Council's officers and Councillors being invited but not necessarily participating – simply to retain their neutrality.
- 4.38 Confidentiality of information is seldom an issue in such circumstances because a developer or land owner has purchased a site and wishes to pursue its development. In these cases, file notes of meetings are retained on file all of which are available for public inspection. When a formal planning application is received, the pre-application meeting notes and any other material forms part of the file documentation.

- 4.39 Issues of confidentiality can arise where developers or land owners wish to share ideas about developing land but have issues of financial or commercial confidentiality. Since the **Access to Information Act 1985**, many local planning authorities have used the exemptions of ‘enforcement’ and ‘financial / commercially sensitive’ information to create separate files and mark as ‘Confidential’ on the cover. Such files are not available to the public and the information is stored separately.
- 4.40 Any information regarding a current planning application eventually forms part of the ‘Planning register’ and must remain available for public viewing. There are different legal interpretations concerning access to planning file information. For example Portsmouth informs all consultees in their initial consultation letter that any correspondence received will be publicly available on the planning file. Other authorities do not allow third party correspondence to become available until five days prior to a Committee meeting date.
- 4.41 Within the spirit of the Act, it is advocated that the system should be as transparent as possible and all information available to the public. It is noted at paragraph 4.16 c of the Director’s report, that sometimes “*documents may find themselves filed on public files simply for ease of administration.*” Whilst the system should enable easy access to information, it is equally important to protect confidential information in accordance with the legislation. Should commercially sensitive information become available and form the basis of a press release, the Council may experience a different set of problems.
- 4.42 It is noted that the Director has informed Members that a Register of Staff Interests is to be created. This would follow best practice and remove any doubt regarding potential conflicts of interest. The register must be actively managed and subject to regular monitoring however. Such an exercise would cost little and be undertaken quickly.

### **File Management**

- 4.43 The two ‘best practice’ authorities enjoy the benefit of two very different filing systems, one highly automated, and the other essentially paper based but rapidly moving towards full computerisation.
- 4.44 Regardless of the nature of the filing systems at Camden or Portsmouth, it is common practice that the processes are well understood, thorough records are maintained and personnel understand who is responsible and accountable.
- 4.45 The senior filing officer is totally responsible for overall filing whilst individual planning case officers are responsible during the planning process to ensure the files are regularly maintained.
- 4.46 At Camden, the filing process is automated on computer much of which is available on the web site. Details of the application, notes of site visits, meetings, photographs of each site, lists of all consultees, consultation responses and other correspondence is available on computer. All

subsequent reports are also on line. Portsmouth adopts an equally robust system only it is mainly paper based although supplemented by a computerised system. The decision has been made to move wholly towards automation.

- 4.47 Both systems are geographically based and history files are available immediately to help inform the decision making process.
- 4.48 As a general rule, four copies of a planning application are submitted to planning authorities although experience suggests that with the growing number of consultees, some authorities request five or even six copies. With electronic files, although there is a 'master' file, in the sense that the case officer only can alter or change information on screen, the information is generally available to Members, other officers around the Council, the developer and the public. With a paper-based system, it is common practice to hold one 'working' file controlled by the case officer but material is available to the public in those authorities where a more liberal interpretation of the Planning Register prevails. Second copies of applications are normally available at Reception for inspection but these papers include the application forms and drawings only.
- 4.49 For the avoidance of doubt it is good practice to return a full set of drawings stamped 'Approved' or 'Refused' to the applicant at the conclusion of the process.
- 4.50 Any policy on viewing planning files should be soundly based upon the interpretation of the legislation but it is matter for the Council. Decisions in this regard can be taken relatively quickly.

### **Quality Control**

- 4.51 During discussions with the Head of Development Control at Camden it became clear that the entire development control process is important and each stage requires careful consideration and monitoring. The same view is adopted at Portsmouth.
- 4.52 At the last meeting of O&S Committee several Members referred to the style, the culture, the structure, leadership and system approach in Development Control all of which affect morale, output and quality. Whilst it is helpful to review elements of the process it is crucial to comprehend the entire purpose of the Development Control system so that every officer clearly understands their role and function. Only then can they take pride in their work and act as ambassadors for the Service as well as the Council.
- 4.53 In terms of quality control, there are normally two main strands; quality of service delivery and quality of product. Dealing with the latter briefly, many local authorities engage locally appointed architects' panels that are consulted on a regular basis to assess quality of development. Not all proposals are subject to such scrutiny but the largest, prestigious or contentious applications are. At the most formal level, the Commission for

Architecture and the Built Environment does become involved in some schemes.

- 4.54 With regard to service provision, at Camden and Portsmouth the Head of Division adopts a permanent monitoring role and takes full responsibility for the actions of colleagues. Team Leaders allocate cases to planning officers in the first instance ensuring the correct level of experience and resource is allocated to the job. Consultations are determined by at least two people and checked on site.
- 4.55 Planning Officers gauge planning applications against national and local planning policies and determine applications in accordance with policy and all other material planning considerations. In view of the very high level of delegation to officers the decision making process must be rigorous and robust. Notes are made on file explaining the reasons for decision where delegation is exercised. At Camden, delegation is authorised by Council in Standing Orders to the Head of Development Control whereas at Portsmouth, it is the Director of Planning.
- 4.56 Whether delegated or Committee decisions are made, the case officer makes a recommendation. The quality check is deemed to be the delegating officer or Committee. Where Committee is not involved, internal conferences may take place amongst the planning officers before the Head of Division makes the final decision. In many cases, the delegated officer can exercise discretion and request the Committee to consider the matter. Some Authorities retain the option for Members to specifically request an application to be considered by Committee although with pressure growing on all Councils to expedite applications and deliver quicker decisions; many local authorities have closed this opportunity.
- 4.57 In the case of delegated decisions, there is a strict framework within which the nominated officer must operate. This in itself is an important quality check. All decisions made by Officers are reported to Committee for information to enable Committee to ask questions and monitor the process.
- 4.58 In any event, all decision-making is subject to scrutiny through the Ombudsman in the event of maladministration. Members on the O&S Committee will be familiar with the broader implications should proper procedures not be followed. Within the planning process itself of course, if any applicant is dissatisfied with the Council's decision, they can appeal to the Secretary of State for the Environment. This in itself is a quality check and some Council's monitor success rates at appeal measured against national statistics. At best it is a guide only.

## **5. Resources**

### **Priorities and costs**

- 5.1 Committee did not stipulate that the brief should include any advice on resources, priorities and costs but these are matters for consideration.

- 5.2 A sensible balance must be achieved between prioritising different aspects of the development control service in order to management change. Some changes proposed by the Director will cost little but any investment in computerisation and training will attract extra costs.
- 5.3 Quality personnel management and the adoption of good practices has an indirect cost but the benefits of providing an attractive work environment, pride in the job and respect combine to develop a certain style and management conducive to excellence. This in turn, can outweigh the investment of time as the service shares common values to deliver high quality in every aspect.

## **Appendix**

Appendix I – Terms of Reference approved at O&S Committee on the 29<sup>th</sup> April 2004.

### **Role of Independent Planning Expert:**

- To provide Independent advice to the Overview and Scrutiny Committee (OSC) on planning issues;
- To provide expertise on 'best practice' in planning issues, in particular if the proposals in the Southwark Planning department improvement plan (as presented by Mr. Paul Evans on 29<sup>th</sup> April OSC meeting) are an effective response to the recommendations in the Audit Commission report; and
- To complete specific tasks set by the Overview and Scrutiny Committee.
- The Independent Planning Expert will not address issues of compensation nor disciplinary matters.

### **Background Information:**

The objective for the Overview and Scrutiny Committee is to:

- Report back to Council Assembly on issues raised in the Audit Commission report and recommend a mechanism for assessing possible compensation.

The Scrutiny will not:

- Assess, or recommend, a figure of compensation;
- Repeat the work of the Audit Commission or Local Ombudsman;
- Examine issues of Member conduct, nor officer disciplinary matters.

### **Procedures to follow:**

Mr. Beck is employed as an independent consultant, advising the Overview and Scrutiny Committee. Work tasks are set by the Overview and Scrutiny Committee in public meetings of this committee. In the first instance any contact with Council officers should

be arranged through Head of Overview and Scrutiny Committee (Ms. Shelley Burke). It may be necessary for Mr. Beck to receive briefings from Mr. Paul Evans and/or Mr. John East.

**Tasks:**

All tasks due in report (Wednesday 12<sup>th</sup> May), for presentation Thursday 20<sup>th</sup> May.

- 1 Compare and contrast the Member Training on Planning provided by Southwark with that of other 'best practice' local, urban authorities.
- 2 Compare and contrast the planning consultation mechanisms and processes of Southwark with that of other 'best practice' local, urban authorities. The use of letters and methods of sampling to see if letters are reaching intended recipients should be considered.
- 3 Compare and contrast the Southwark process of determining consultation areas in planning applications with that of other 'best practice' local, urban authorities.
- 4 Compare and contrast staff handover procedures in Southwark with that of other 'best practice' local, urban authorities.
- 5 Compare and contrast Southwark pre planning application consultation procedures and mechanisms with of other 'best practice' local, urban authorities. Confidentiality standards should be considered.
- 6 Compare and contrast Southwark File Management with that of other 'best practice', local urban authorities. The use of paper filing systems and alternatives to paper filing systems should be considered
- 7 Compare and contrast Southwark 'quality control' procedures and practices with other 'best practice', local urban authorities. How planning cases are allocated and how case officers develop recommendations should be considered.
- 8 Select six 'live' planning application from Southwark with similar characteristics to the 'Imperial Gardens' planning application and assess if:
  - Consultation was 'best practice';
  - All planning information was forwarded to Members;
  - Quality Control mechanisms and processes were utilised;

Appendix II – Questions used as a basis for discussion with the London Borough of Camden and Portsmouth City Council.

## Questions for London Borough of Camden and Portsmouth City of Southwark

1. Training practices for Members a) on planning committee and b) other Members not on Planning Committee?  
How many Members sit on planning committee?  
Frequency of training, depth of training?  
Who undertakes training – internal/external or combination?  
Is training compulsory or not?
2. DC consultation processes?  
What general policy exists for public consultation on planning applications?  
Are all other types of application consulted in the same way – LBC's; CAC's; LDC's; TPO's etc?  
How is enforcement dealt with?  
What method does the Council employ to comply with statutory requirements?  
How is the system monitored?  
How does the LPA communicate with residents/neighbours (residential or commercial) using post cards/letters/site notices/newspaper notices/community based organisations?  
Does the Council acknowledge receipt?  
Once contact is made, how are third parties kept informed of the process – amended plans; additional information; committee dates/attendance/presentation at Committees?  
How often is the process monitored?  
Who is responsible for the management of the application process?  
Are weekly lists made available and to whom?  
What is the role, if any, of Ward Members?  
Does the LPA have a web site?  
How does that work to consult?  
Are Applicants responsible for consultation?  
How is the whole process documented – paper and/or electronic?
3. How does the LPA determine the scope of consultation zones surrounding an application site?  
Who determines consultations on a site basis?  
Is there any discretion and how is that determined?  
What quality assurance checks are in place?
4. Are there specific handover mechanisms in place when one case officer transfers an application to another case officer?  
What happens during holidays or some other temporary/permanent absence of the case officer?  
How are files kept – in paper and /or electronic form?  
Are file notes of meetings, site visits and telephone conversations made and retained on file for all to view, including the public?
5. Does the LPA encourage/allow pre-application consultations with applicants?  
How is the process managed?  
Is the public involved or the process restricted to the Council?



What levels of confidentiality are adopted?

What criteria is used – Council policy, Standing Orders or legislation? Are file notes kept and are they copied onto planning application files for background or separately filed under ‘exempt information/confidential’?

6. How are file records of planning applications created, maintained, used, stored and monitored?  
Are they paper and / or electronic?  
Is the filing system geographically based, site based or applicant based?  
Who is responsible for the creation of the filing system?  
Is this the same person who maintains and monitors the filing system? What practice is used to identify relevant historic files with current/live files?  
How does the Planning register assist?  
Who is responsible for ‘live’ files?  
How many copies of the live file exist?  
What information is available to the public in terms of access to information and the planning register?  
How is confidential information stored particularly enforcement material and financial?
  
7. How is the Development Control process managed through Quality Control?  
What checks and balances are in place to ensure the whole process complies with planning policies, council standards of service delivery, fairness to all concerned in the process including applicants and third parties?  
Are quality standards in place and monitored?  
Who allocates cases and in accordance with what criteria – is it discretionary?  
What is the process for developing recommendations/decisions on planning applications?  
What percentage of applications is considered under delegated powers?  
What checks are in place in the consideration of a) recommendations to Committee and b) decisions under delegated powers?

## **ADDENDUM REPORT REQUESTED BY COMMITTEE ON 13<sup>TH</sup> MAY 2004**

### **PREPARED BY INDEPENDENT PLANNING EXPERT**

#### **6. Executive Summary**

- 6.1 This report provides an addendum to the first report requested by the Overview and Scrutiny Committee [O&SC] at its meeting on the 29<sup>th</sup> April 2004.
- 6.2 In summary, the report concludes that;
- From an examination of the paper files undertaken on the 13<sup>th</sup> May 2004, there were omissions of material not consistent with 'good practice', some small degree of inconsistency was evident in the consultation process and there were missed opportunities to improve the quality of the information on file demonstrating methodology, process and decision making;
  - The written reports for Committee adopted a good standard approach outlining all material considerations as well as third party views on the application;
  - Quality Assurance was evident in the decision making process through the named case officer and manager;
  - Quality checks in terms of process was less evident;
  - There was no evidence on file of material sent to Members;
  - From an examination of the two 'best practice' authorities, there was no overall mechanism established to consider race matters and the effect or otherwise of service delivery.

#### **7. Additional tasks**

- 7.1 As part of the original instruction to research and offer advice on good practice, it was agreed by Committee on the 29<sup>th</sup> April 2004 that a number of 'live' files from Southwark would be selected and scrutinised to;
- Review best practice on 'consultation';
  - Review all planning information forwarded to Members, and
  - Review Quality Control mechanisms and processes.
- 7.2 This work was delayed for a few days in order to co-ordinate various diaries, the result of which meant that the findings could not be included in the original written report to Committee on the 20<sup>th</sup> May. The results of the exercise were notified to Members however during a presentation on the 20<sup>th</sup> May.
- 7.3 On the afternoon of 13<sup>th</sup> May 2004, several files were identified by the Chair of O&S Committee in consultation with the Head of O&S following which an examination of those files was undertaken by the independent consultant.

- 7.4 In terms of the brief, the following observations were made in respect of the files read;
- There were no notes on file of any internal or external meetings, important telephone conversations or site visits;
  - There was no indication on the paper file of any Member notification;
  - All files contained a list of consultees but one file simply referred to the previous consultation list implying that reliance had been made on the previous history file. There was no evidence that the consultation had been reviewed or updated. Nevertheless, it was clear on all files that consultation had taken place.
  - All replies to consultations were acknowledged and even those letters returned by the Royal Mail were retained on file as a record.
  - The planning application work 'pink sheets' were well maintained but an opportunity to use the sheets to record additional information was not in evidence.
  - The record of site notices was consistent on all files and in one case, despite the note on file that an advertisement was not necessary, the planning application was advertised regardless.
  - Committee reports on file drafted for Members, adopted a consistent and comprehensive format addressing all material planning considerations as well as outlining the background to the site, results of consultations, equal opportunities and Agenda 21 issues.
  - The case officer for each file was identified as well as the manager/team leader suggesting there was a QA process in place.
  - It was unclear whether or not the public were able to view the paper files only or enjoyed access to computer records as well.
- 7.5 By and large, the evidence speaks for itself but only the paper files were examined. The material was inconclusive to determine whether or not best practice on consultations had been employed. On all but one file, it was clear that an officer had considered the consultation list; the only doubt surrounds the single incident where the previous list was imported but there may have been good reason and discretion exercised deliberately. The previous list may have been perfectly adequate under the circumstances.
- 7.6 In addition to the above, during the meeting of the Overview and Scrutiny Committee on the 13<sup>th</sup> May 2004 three additional tasks were identified for clarification, including;
- Establish what is best practice for sharing information with developers, of a confidential nature;
  - Establish best practice for planning departments to address racial discrimination issues, particularly tracking or monitoring planning applications based on racial indicators;
  - Establish best practice on the importation of consultation lists into new applications.
- 7.7 Given the discussion at Committee on the 20<sup>th</sup> May 2004, no further information was requested or observations made in respect of the first or the last issues as both had been debated in full.

- 7.8 The one remaining matter was looked into albeit superficially as it is recognised that this topic could require much more consideration than current timescales allowed. In order to assist Members, a further examination was undertaken of the two local planning authorities at Camden and Portsmouth City to establish how they might address the subject.
- 7.9 Camden do not carry out any monitoring of the development control process through public questionnaires related specifically to race for which reason it is not possible to assess any implications on the service. Portsmouth City does monitor the service however but this process has now evolved from a simplistic development control monitoring to a wider customer care evaluation which includes questions regarding race. The data provides the opportunity to analyse trends in decision making towards or away from ethnic minorities as well as other groups.
- 7.10 Other material that might be helpful stems from research by Southampton City Council development control service with the University of Warwick resulting in a lengthy 'ethnic monitoring' exercise designed to assess whether the service was biased in any way with regard to decision-making. Questionnaires prepared by officers of the Council, managed by one of the Council's internal Equal Opportunities Officers, were sent out to users of the service over several years. Notwithstanding the returns were lower than expected, the results failed to illustrate any problems. Following recent telephone discussions with Southampton, as requested by O&S Committee, the previous system has been abandoned but a review is currently being considered to examine a wider custom care approach, to include questions of ethnicity.
- 7.11 At the last meeting of the O&S Committee on the 20<sup>th</sup> May 2004, Members asked to establish what complaint mechanisms were in place at both the London Borough of Camden and Portsmouth City.
- 7.12 Each Council employs internal formal complaints procedures starting with the filing of a complaints form. At Portsmouth, the complaint is handled by a line manager but if satisfaction is not achieved, the Head of Department becomes involved to review the complaint. If the complainant continues to be dissatisfied, then the complaint is moved on to the Chief Executive's Department before finally being sent to the Ombudsman. At Camden the process is similar in that a line manager hears the first stage complaint before it is forwarded to the Council's Departmental complaints section. A stage three is available whereby the complaint is handled by a central complaints division of the Council. Ultimately, the matter may end up with the Ombudsman.
- 7.13 This report is now concluded having addressed all matters requested by the Overview and Scrutiny Committee.

**APPENDIX 2:**

**STRATEGIC DIRECTOR OF REGENERATION - ACTION PLAN TO ADDRESS RECOMMENDATIONS CONTAINED IN AUDIT COMMISSION REPORT**

<b>Key Finding/Recommendations of Audit Commission</b>	<b>Action</b>	<b>Officer responsible</b>	<b>Timescale</b>	<b>Comments/Independent Planning Consultant's recommendations</b>
1. Consider whether to institute disciplinary action against individuals who have failed to meet the standards expected of them	Investigation and disciplinary action against the individuals named in the Audit Commission's report to be considered	Strategic Director for Regeneration	Conclusion of investigation and consideration of findings by July 2004	
2. Take urgent action to improve the quality of reports presented to Development Control Committees	Undertake assessment of the quality of Development Control reports (by an independent planning consultant) and implement recommendations	Strategic Director for Regeneration/ Graham Fisher (Independent Planning Consultant)	By May 2004	Review of 19 cases undertaken by independent planning consultant suggests that the standard of committee reports is very high, in comparison to those produced by other planning authorities. The consultant confirms that the reports are comprehensive, and the correct planning issues are identified and analysed Given the findings of the consultant, no additional action proposed at this time
3. Institute a robust quality assurance process to ensure that the content of reports are accurate and cannot be open to allegations of bias	Undertake a comprehensive review of internal procedures and practices within the Development Control Service	Head of Planning and Transport	Commence May 2004 Completion of review and Action Plan by July 2004	Quality Assurance processes to be considered as part of the review. Equalities implications will be picked up as part of the EIA (see below)

Key Finding/Recommendations of Audit Commission	Action	Officer responsible	Timescale	Comments/Independent Planning Consultant's recommendations
	Equalities Impact Assessment (EIA) to be undertaken and any gaps/deficiencies to be addressed by the Head of Planning and Transport	Head of Planning and Transport/Interim Development Control Manager/Principal Policy Officer (Strategic Services)	Commence June 2004 Final report by end August 2004 Implementation of recommendations – August 2004 onwards	
	Consider and incorporate independent planning consultant's proposals on best practice with regard to addressing racial discrimination issues and implementing anti-discrimination policies	Head of Planning and Transport	To be incorporated into EIA process By end August 2004	Awaiting independent planning consultant's report on best practice. Will consider additional actions following receipt of consultant's report
	Undertake assessment of the accuracy of the content of reports by an independent planning consultant and re-consider cases where complaints have been made of irregular handling (19 cases)	Strategic Director for Regeneration/ Graham Fisher (Independent Planning Consultant)	Review to be undertaken by May 2004 Reporting of any issues to be addressed arising from the review to Planning Committee by September 2004	Review of 19 cases undertaken by independent planning consultant suggests that reports contain the correct headings and content Review of cases identified that the processing of applications and consultation was good. However, the independent planning consultant identified some minor failings and in two cases recommended further specific action on the cases, which will be reported separately to Planning Committee.

Key Finding/Recommendations of Audit Commission	Action	Officer responsible	Timescale	Comments/Independent Planning Consultant's recommendations
4. Ensure that consultation procedures in relation to planning applications are rigorously followed	Review Council's policy on Consultation, amend to adopt best practice, build in monitoring mechanisms and present to Planning Committee for endorsement	<ul style="list-style-type: none"> <li>Interim Development Control Manager/Group Manager (PC)</li> </ul>	<ul style="list-style-type: none"> <li>Project plan to be agreed by end-June 2004</li> <li>Revised policy to be presented to Planning Committee for endorsement by November 2004</li> </ul>	<ul style="list-style-type: none"> <li>The Council's policy on Consultation was originally approved on 1 July 2002</li> <li>The Independent Planning Consultant has recommended that a system of defining a framework for consultation should be determined and regularly monitored</li> </ul>
	Examine consultation process and procedures at LB Camden with a view to adoption (and build into wider review of consultation procedures – see above)	<ul style="list-style-type: none"> <li>Group Manager (PC)</li> </ul>	<ul style="list-style-type: none"> <li>By end July 2004</li> </ul>	<ul style="list-style-type: none"> <li>Recommendation of Independent Planning Consultant</li> </ul>
	Review and amend consultation letters to adopt best practice	<ul style="list-style-type: none"> <li>Group Manager (PC)</li> </ul>	<ul style="list-style-type: none"> <li>By end August 2004</li> </ul>	<ul style="list-style-type: none"> <li>The Independent Planning Consultant has recommended that a) the Council re-consider and revise the text of standard consultation letters b) 'Best Practice' authorities consultation letters encourage neighbours to bring the matter to the attention of anyone else who might be interested</li> </ul>
	Put in place mechanisms to ensure that all properties for consultation purposes are identified	<ul style="list-style-type: none"> <li>Group Manager (PC)</li> </ul>	<ul style="list-style-type: none"> <li>By end September 2004</li> </ul>	<ul style="list-style-type: none"> <li>The Independent Planning Consultant has highlighted that there are problems of undertaking consultations where properties have been sub-divided into flats which needs to be addressed</li> </ul>

Key Finding/Recommendations of Audit Commission	Action	Officer responsible	Timescale	Comments/Independent Planning Consultant's recommendations
	Implement new checking mechanisms for consultation (prior to decision making), and undertake further review (following recommendation of independent consultant) to ensure that they accord with best practice	Interim Development Control Manager/Group Manager (PC)	New checking mechanisms to be in place by May 2004 Undertake review and make further amendments – by September 2004	<ul style="list-style-type: none"> <li>• New procedures have been introduced to clarify the level of checking. DC case officers are required to confirm that all due procedures have been carried out in the consideration of the application and the preparation of the report for Committee, Community Council or delegated decision</li> <li>• The Independent Planning Consultant has recommended that checking mechanisms similar to those found in Best Practice authorities be adopted to reduce the possibility of overlooking consultees (consultations are determined by at least two people and checked on site)</li> </ul>
	Put in place mechanism to ensure that DC case officers confirm that the appropriateness of consultations has been checked on the ground	Interim Development Control Manager	May 2004	<ul style="list-style-type: none"> <li>• Procedures now in place requiring DC case officers to confirm that the appropriateness of consultations has been checked on the ground (following a site visit)</li> <li>• The Independent Planning Consultant has recommended that consultations should be determined by at least two people and checked on site</li> </ul>
	Introduce a pro-forma consultation checklist	Group Manager (PC)	By end August 2004	<ul style="list-style-type: none"> <li>• Recommendation of Independent Planning Consultant</li> </ul>



Key Finding/Recommendations of Audit Commission	Action	Officer responsible	Timescale	Comments/Independent Planning Consultant's recommendations
	Review with CIDU process for establishing and maintaining a list of Community Groups and other interested persons expressing a wish to be consulted on planning applications and devise mechanisms for regular monitoring	Group Manager (PC)	By end October 2004	<ul style="list-style-type: none"> <li>• Independent Planning Consultant has recommended that best practice is to ensure that there is regular monitoring of a list of Community Groups and other interested groups to ensure it is up-to-date</li> <li>• Meeting the timescale outlined will depend on the availability of Plantech to undertake the work</li> </ul>
	Put in place mechanisms to ensure that all records concerning consultations are held on the planning application file (including procedures for dealing with returned letters from GPO)	Group Manager (PC)	By end August 2004	<ul style="list-style-type: none"> <li>• Independent Planning Consultant has recommended that best practice is to ensure that all records concerning consultation are held on the planning applications file</li> </ul>
	Review process for logging pre-application enquiries onto Acolaid and disseminate procedures to Development Control staff	Group Manager (PC)	By end September 2004	
	Review and update Development Control Service Charter, plus Guidance Notes and Information Notes pertaining to consulting and commenting on planning applications	Head of Planning and Transport/ Interim Development Control Manager/ Group Manager (PC)/ Communications Manager	By end October 2004	

Key Finding/Recommendations of Audit Commission	Action	Officer responsible	Timescale	Comments/Independent Planning Consultant's recommendations
	Complete improvements to Acolaid software to enable consultees to be identified through GIS	Group Manager (PC)	Implement GIS method of identifying consultees by end September 2004 Complete Acolaid improvements by end September 2004	<ul style="list-style-type: none"> <li>• The Independent Planning Consultant identified that 'best practice' authorities use GIS for consultations</li> <li>• Improvements to the consultation have already been made through the introduction of Acolaid software but this work now needs to be completed</li> </ul>
5. Provide training to officers about their responsibilities and the need for documentation	Establish comprehensive training programme for Development Control staff	Head of Planning and Transport/Interim Development Control Manager	By end July 2004	
	Prepare a programme to disseminate/train staff in the new procedures adopted following the conclusion of the Imperial Gardens investigation, including recommendations of the Overview and Scrutiny Committee, and decisions of the Executive	Head of Planning and Transport	July 2004 onwards	
	Review and revise Procedures Manual and disseminate to all DC staff	Group Manager (PC)	By end November 2004	

Key Finding/Recommendations of Audit Commission	Action	Officer responsible	Timescale	Comments/Independent Planning Consultant's recommendations
	Introduce procedures for, and improvements to the documentation of information on application and case files, and undertake sampling to ensure that procedures are followed through	Group Manager (PC)	By end August 2004	<ul style="list-style-type: none"> <li>• The Independent Planning Consultant has recommended that 'best practice' is that the case officer is wholly responsible and accountable to ensure procedure and practice is followed properly</li> <li>• The Independent Planning Consultant has recommended that site notices and consultation notices should be fully available on file</li> <li>• A review of case files undertaken suggests that improvements need to be made to the documentation kept on file – to include: records of meetings, the registration sheet, a copy of the consultation letter, the list of persons consulted, an OS map to show where site notices were posted, press advertisements, re-consultations on revised plans and general correspondence</li> </ul>
	Establish procedures for recording of re-consultations on files	Group Manager (PC)	By end July 2004	<ul style="list-style-type: none"> <li>• The Independent Planning Consultant has recommended that re-consultations should be noted by a clear written record on file of both the officer's instruction and the administrative officer's confirmation that it has been done, through use of a pro-forma</li> </ul>

Key Finding/Recommendations of Audit Commission	Action	Officer responsible	Timescale	Comments/Independent Planning Consultant's recommendations
	Establish procedures for the hand-over of planning applications	Group Manager (PC)	By end July 2004	The Independent Planning Consultant has recommended that procedures should be in place for the hand-over of planning applications (which make it clear that any new planning officer adopting a case is totally responsible and accountable for the planning process and ensure that the contents of all files should be comprehensive and up-to-date)
6. Introduce a register of interests and for all staff involved in planning applications	Introduce Register of staff interests	Strategic Director for Regeneration	March 2004	Register in place
	Put in place procedures to ensure monitoring and regular update of Register of staff interests	Head of Planning and Transport	By July 2004	The Independent Planning Consultant has advised that the Register of staff interests needs to be actively managed and subject to regular monitoring
7. Introduce a robust system of tracking applications including any potential conflict between applications for adjoining or nearby sites (Issues raised by O&S concerning pre-application consultation procedures and mechanisms, including confidentiality standards) (Issues raised by O&S	Undertake review of Development Control Administration in order to clarify roles and responsibilities	Head of Planning and Transport	Review to commence – September 2004 Completion of review and re-structuring (where necessary) by December 2004	The Independent Planning Consultant has recommended that a senior filing officer should be totally responsible for overall filing whilst individual planning case officers should be responsible during the planning process to ensure that files are regularly maintained
	Overhaul filing system to set up separate files for planning applications	Records and Finance Lead Officer	By end September 2004	

Key Finding/Recommendations of Audit Commission	Action	Officer responsible	Timescale	Comments/Independent Planning Consultant's recommendations
concerning File Management)	Complete computerisation of Development Control filing system (including scanning)	Group Manager (PC)	Agree preferred option by January 2005 Implementation (dependant on resources) January 2005 onwards	The Independent Planning Consultant has recommended that 'best practice' authorities have computerised individual files to enable access to information/ exchange of information The ability to fully scan historical files and the extent of computerisation will be dependent on the resources available
	Establish policy on viewing planning files, procedures for information to be kept on files and guidance for the handling of confidential information	Group Manager (PC)/Legal Services	By end September 2004 Policy to be presented to Planning Committee for endorsement by November 2004	The Independent Planning Consultant has recommended that a policy should be in place on procedures for the public to view planning files; that procedures for information to be kept on files/the public register should be as transparent as possible and all information available to the public; and that confidential information (e.g. that which is commercially sensitive) should be protected in accordance with the legislation (through establishment of separate files marked 'confidential')
	Review procedures for pre-application meetings/discussions	Interim Development Control Manager/Group Manager (PC)	By end September 2004	<ul style="list-style-type: none"> <li>The Independent Planning Consultant has advised that 'best practice' is that encouragement should be given to pre-applications with developers, particularly on major application proposals</li> </ul>

<b>Key Finding/Recommendations of Audit Commission</b>	<b>Action</b>	<b>Officer responsible</b>	<b>Timescale</b>	<b>Comments/Independent Planning Consultant's recommendations</b>
8. Training for Members in planning issues was inadequate and some Members with no training participated in planning decisions	Provide immediate training for Members on planning matters	Community Council Manager	June 2004	<ul style="list-style-type: none"> <li>• Training, using Planning Aid for London, has been organised for 30<sup>th</sup> June</li> </ul>
	Develop (with Member Services) a programme of comprehensive and regular training for Members on planning matters	Head of Planning and Transport/ Community Council Manager	By October 2004	<ul style="list-style-type: none"> <li>• The Independent Planning Consultant has advised that 'best practice' would be that a comprehensive package of training be made available to all Planning Committee Members as well as other Members of Council, that regular training for Members takes place throughout the year, and that training should be monitored on a regular basis</li> </ul>
	Review constitution with regard to requirement to undertake training in order to decide planning applications	Borough Solicitor/Head of Planning and Transport	By January 2005	<ul style="list-style-type: none"> <li>• The Independent Planning Consultant has suggested that the consideration should be given to whether training should be compulsory for Members involved in decision making on planning applications</li> </ul>
	Prepare joint report (with Member Services) with recommendations for improvements to the consideration of planning applications at Community Councils	Head of Planning and Transport/ Community Council Manager	By August 2004	<ul style="list-style-type: none"> <li>• Workshop with Development Control and Member Services to discuss improvements to consideration of planning applications at Community Councils held in May, and outcomes will form the basis of a report to Members</li> </ul>
9. Mechanisms for performance management of planning of planning staff were inadequate	Undertake comprehensive review of internal procedures and practices within the Development Control Service	Head of Planning and Transport	Commence May 2004 Completion of review and Action Plan by July 2004	

Key Finding/Recommendations of Audit Commission	Action	Officer responsible	Timescale	Comments/Independent Planning Consultant's recommendations
	Undertake review of team and management structure within Development Control (to maximise performance, and enable effective management and customer responsiveness)	Head of Planning and Transport	Review to commence – September 2004 Completion of review and re-structuring (where necessary) by December 2004	
	Review job descriptions and roles of Team Leaders and Group Managers to ensure consistency and clarity of respective roles and functions across DC Groups	Head of Planning and Transport/ Interim Development Control Manager	Initial review to be carried out June 2004, and interim arrangements to be introduced Formal review to be incorporated into wider review of team and management structure of DC (see above) by December 2004	<ul style="list-style-type: none"> <li>• Initial review undertaken, and interim arrangements put in place</li> <li>• The Independent Planning Consultant has advised on the need for every officer to clearly understand their role and function</li> <li>• The Independent Planning Consultant recommends that the Head of Development Control adopts a permanent monitoring role</li> </ul>
	Review arrangements for allocation and supervision of cases and case officers	Interim Development Control Manager	Initial review to be carried out June 2004, and interim arrangements to be introduced Formal review to be incorporated into wider review of team and management structure of DC (see above) by December 2004	<ul style="list-style-type: none"> <li>• Initial review undertaken, and interim arrangements put in place</li> <li>• Independent Planning Consultant recommends that Team Leaders (Group Managers) should allocate cases to planning officers ensuring the correct level of experience and resource is allocated to the job</li> </ul>

Key Finding/Recommendations of Audit Commission	Action	Officer responsible	Timescale	Comments/Independent Planning Consultant's recommendations
	Put in place mechanisms to ensure regular monitoring of performance and management and handling of cases	Interim Development Control Manager/Group Managers	By end July 2004	<ul style="list-style-type: none"> <li>Recommendation of Independent Planning Consultant</li> </ul>
	Review and consider arrangements for assessment and signing off of delegated cases	Interim Development Control Manager/ Group Manager (TK)	June 2004	<ul style="list-style-type: none"> <li>The Independent Planning Consultant recommends that delegated decisions should be authorised by the Head of Development Control</li> </ul>
	Undertake review of Local Performance Indicators for Development Control and agree targets	Head of Planning and Transport	June 2004	<ul style="list-style-type: none"> <li>Review of Local Performance Indicators for Development Control currently underway</li> </ul>
	Consider mechanisms for assessing and reviewing quality of process and outcome and implement	Head of Planning and Transport/ Design and Conservation Manager	By March 2005	<ul style="list-style-type: none"> <li>The Independent Planning Consultant has advised that 'best practice' would be to establish a locally appointed architects' panel to regularly assess and review quality of development</li> </ul>
10. Arrangements for ensuring compliance with planning decisions were poor	Ensure that the Enforcement Team is fully staffed	Head of Planning and Transport	February 2004	<ul style="list-style-type: none"> <li>Additional enforcement staff and a new Enforcement Manager has been appointed</li> </ul>
	Review procedures for tracking temporary planning consents and put in place mechanisms to alert applications of the need to renew expired consents	Group Manager (PC)/Enforcement Manager	By end September 2004	



Key Finding/Recommendations of Audit Commission	Action	Officer responsible	Timescale	Comments/Independent Planning Consultant's recommendations
	Fully develop Acolaid system for Enforcement to ensure proper recording and performance management of all reported unauthorised development	Group Manager (PC)/Enforcement Manager	By end October 2004	

## Appendix 3: Supporting Documents

The following lists the documents and submissions presented to the Committee during the course of the scrutiny:

<b>Title of Report</b>	<b>Report Author</b>	<b>Presented</b>
Audit Commission Public Interest Report: Award of Planning at 295-297 Camberwell New Road	Audit Commission	29 <sup>th</sup> April
Local Ombudsman Report: Report into an investigation into Complaint No: o2/B/o8100 against London Borough of Southwark	Local Ombudsman	29 <sup>th</sup> April
Report of Action planned following District Audit and Ombudsman's reports on Award of Planning Permission at 295-297 Camberwell New Road and 299 Camberwell New Road	Strategic Director of Regeneration: Paul Evans	29 <sup>th</sup> April
Presentation to OSC by Glen Egan: Assistant Borough Solicitor	Assistant Borough Solicitor :Glen Egan	29 <sup>th</sup> April
Documents submitted by Lucia Hinton and Mr. Raymond Stevenson: <ul style="list-style-type: none"> <li>• Submission from Lucia Hinton &amp; Raymond Stevenson</li> <li>• Audit Commission Public Interest Report</li> <li>• Local Ombudsman Report</li> <li>• Media Clippings</li> <li>• Submission: Planning Aid for London</li> <li>• Submission: Black Planners Network</li> <li>• Other Business affected</li> <li>• Fairview Homes Plan</li> <li>• Camberwell train station</li> <li>• Legal Correspondence &amp; Letter from Chief Executive Southwark</li> <li>• Letters of Support</li> <li>• "Documents we rely on"</li> </ul>	Lucia Hinton & Raymond Stevenson Audit Commission  Local Ombudsman  Jon Durbin  Patrick Anderson	13 <sup>th</sup> May
Independent submission: Martin Huckerby	Martin Huckerby	13 <sup>th</sup> May
Southwark Council Implementation of Race Relations (Amendment) Act 2002	Assistant Chief Executive [Performance & Strategy]	13 <sup>th</sup> May
Report from Independent Planning Expert:	Graham Beck	20 <sup>th</sup> May
Southwark HR Procedures	Head of HR: Bernard Nawrat	20 <sup>th</sup> May
Complaints Statistics Southwark Planning Department	Strategic Director of Regeneration: Paul Evans	20 <sup>th</sup> May
Report from Borough Solicitor: Recommended Legal Mechanism for Compensation	Assistant Borough Solicitor: Glen Egan	20 <sup>th</sup> May
Development Control Service Manual	Strategic Director of Regeneration: Paul Evans	20 <sup>th</sup> May
Training Notes for Planning for Councillors	Strategic Director of Regeneration: Paul Evans	20 <sup>th</sup> May
Statutory Obligations for Planning Applications	Strategic Director of Regeneration: Paul Evans	20 <sup>th</sup> May
Planning Applications that took more than three years to determine	Strategic Director of Regeneration: Paul Evans	20 <sup>th</sup> May
Information report: The Committee members who	Shelley Burke: Head of	20 <sup>th</sup> May

<b>Title of Report</b>	<b>Report Author</b>	<b>Presented</b>
considered the Imperial Gardens and Fairview New Homes planning application	Overview and Scrutiny	
Summary of Proposed responses to Audit Commission report on award of planning permissions	Strategic Director of Regeneration: Paul Evans	20 <sup>th</sup> May
Letter from Webster Dixon Solicitors	Michael Webster	20 <sup>th</sup> May
Letters from Southwark Council regarding Noise Complaints	Environmental Health and Trading Standards Noise Team	20 <sup>th</sup> May
Race related Employment Tribunals in the Regeneration Department	Strategic Director of Regeneration: Paul Evans	20 <sup>th</sup> May
Submission: Cllr Hunt	Councillor Jonathan Hunt	20 <sup>th</sup> May
Timetable of Legal Requests for information regarding Imperial Gardens	Debbi Gooch: Senior Lawyer Community Services	2 <sup>nd</sup> July
Final Action Plan: Summary of Proposed responses to Audit Commission report on award of planning permissions	Strategic Director of Regeneration: Paul Evans	2 <sup>nd</sup> July
Legal Advice	Nabarro Nathanson Solicitors	2 <sup>nd</sup> July
Draft response to Audit Commission Report	Strategic Director of Regeneration: Paul Evans	2 <sup>nd</sup> July
Chronology of requests for information in respect of planning permission for Arches 341, 342, 343-299 Camberwell New Road for continued use for public entertainment comprising use as a nightclub/restaurant and public/exhibition hall	John East	12 <sup>th</sup> July
Suggestion for report amendment	Martin Huckerby	12 <sup>th</sup> July
Update on timescale for completion of disciplinary proceedings against Council officers	Graeme Gordon, Corporate Strategy	12 <sup>th</sup> July
Officer response to allegations that Raymond Stevenson and Lucia Hinton were misled by Roy Turner in respect of the existence of a Camberwell train station proposal	John East and Roy Turner	12 <sup>th</sup> July
Correspondence from Andy Cook to Paul Evans [9 May 2004] and to Councillor Kim Humphreys [4 June 2004]	Andy Cook	12 <sup>th</sup> July
Information on why occupiers of the Arches had not been consulted in respect of planning application for 35-55 Brayards Road	John East	12 <sup>th</sup> July
Information note on Local Government Ombudsman procedure in respect of timescale for consideration of events	Graeme Gordon, Corporate Strategy [following advice from Assistant LGO]	12 <sup>th</sup> July
[Closed] Submission from Lucia Hinton and Raymond Stevenson	Lucia Hinton and Raymond Stevenson	12 <sup>th</sup> July
Correspondence from Webster Dixon Solicitors to Debbi Gooch dated 1/7/04 & 2/7/04, plus resolution flowchart	Webster Dixon Solicitors	12 <sup>th</sup> July
Submission from Unison Branch Secretary	John Mulrenan; Unison Branch Secretary	12 <sup>th</sup> July

These reports, as well as minutes from meetings, are available on the Southwark Council website at: [www.southwark.gov.uk](http://www.southwark.gov.uk). Follow the links to 'Agendas & Minutes' and click on 'Overview and Scrutiny Committee'.

## **Appendix 4: Nabarro Nathanson Solicitors Legal Advice**

