

Item No. 8.1	Classification: Open	Date: 21st July 2004	Meeting Name: Council Assembly
Report title:		District Auditor's Public Interest Report: Award Of Planning Permission At 295-297 Camberwell New Road And 299 Camberwell New Road	
Ward(s) or groups affected:		All	
From:		Chief Executive Director of Regeneration	

1. RECOMMENDATIONS

- 1.1 That Council Assembly notes and approves the response proposed by the Director of Regeneration and the improvement plan, which are set out at Appendix 1 to this report.
- 1.2 That Council Assembly agrees the following recommendations contained in the report of Scrutiny which are set out in Appendix 2 to this report:
 - a. That Council Assembly accepts the findings of the District Auditor, together with the Strategic Director's Action Plan, in response to the District Auditor's report, and apologises to the directors of THK Entertainments Ltd for the failings identified in the District Auditors and Local Ombudsman's report.
 - b. That 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 Government Ombudsman's report.
 - c. That Council Assembly urge all parties to take the necessary steps to identify and resolve the legal issues as soon as possible. The Executive and Directors of THK Entertainments Limited to take all necessary steps to expedite the process in line with the strategy recommended by Nabarro Nathanson in their advice.
- 1.3 That Council Assembly refers the other recommendations contained in the report of Scrutiny to the Executive or officers as stated in the recommendations.

2. BACKGROUND INFORMATION

- 2.1 Imperial Gardens is a club in the railway arches at 299 Camberwell New Road for which temporary planning permission was sought in 1996 and full permission sought in 1999. This was finally granted in 2002. The site at 297 Camberwell New Road is adjacent to the club. Planning permission was sought by Fairview Homes in May 2001 for a housing scheme. This was granted in October 2001.
- 2.2 Raymond Stephenson and Lucia Hinton complained to the Council that they had not been consulted about the Fairview application and that the decision had been taken without reference to the impact on the club. Following a number of exchanges about the circumstances of the granting of the two applications the Council asked the District Auditor to undertake an investigation in November 2002.
- 2.3 On the 5th February 2004 the District Auditor released a report. The report has been circulated to all members (including independent members) and is available as a background paper to this report. It is an 'immediate' or special report, made under Section 5 and 8 of the Audit Commission Act 1998 into the arrangements the council has made 'for securing economy, efficiency, and effectiveness in its use of resources,'
- 2.4 The Council was required within four months, to decide at a full meeting of the Council:
- Whether the report requires the body to take any action; and
 - What, if any action to take in response to the report
- 2.5 The District Auditor used his legal discretion to extend the four-month period to permit full consideration of the matters in question. He has indicated that he will not extend the period further.
- 2.6 The meeting to consider the recommendations must be publicised in a newspaper circulating in the area (in this case the Evening Standard.) When the Council has made its decisions it must notify them to the auditor and publish a summary of them, approved by the auditor, in a newspaper circulating in the area.

3. THE FINDINGS OF THE AUDITOR'S REPORT

- 3.1 The report contains 'key findings' about the specific cases and identifies concerns about general procedural weaknesses.
- 3.2 On the specific cases it found:

- a. Consultation in respect of the residential development was flawed;
- b. Reports prepared by officers were inaccurate, inadequate and incomplete;
- c. The Committee should have made further inquiries.

3.3 On more general matters the concerns are:

- a. Procedures for ensuring members have an adequate understanding of the processes were not always followed;
- b. Training for members was inadequate and some members participating in decisions had no training;
- c. The results of consultation were not fully reported to members;
- d. Mechanisms for the performance management of planning staff were inadequate;
- e. Documentation and files were incomplete;
- f. There was no mechanism for ensuring that the policy on consultation was consistently followed;
- g. There was no mechanism for ensuring that connections were made between related applications;
- h. Arrangements for ensuring compliance were poor.

3.4 Two officers were personally criticised about the handling of the case.

3.5 As a result of those findings the District Auditor made the following recommendations:

The Council should:

- a. Consider disciplinary action against the individuals;
- b. Improve the quality of reports to Committee;
- c. Institute a quality control process;
- d. Ensure that consultation procedures are followed;
- e. Provide training to officers about their responsibilities and the need for documentation;
- f. Introduce a register of interests for all staff involved in planning applications;

- g. Introduce a system of tracking applications and any conflict between related sites.

4. ACTIONS TO DATE

4.1 On the 18th February Council Assembly resolved:

- That Council Assembly notes the Local Government Ombudsman report (complaint No02/B/08100) (which found maladministration causing injustice).
- That Council Assembly requests Overview and Scrutiny Committee 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, bringing back recommendations within three months to Council/Executive as appropriate.

4.2 On the 31st March Council Assembly resolved that:

- That Council notes that the District Auditor and the Local Government Ombudsman have exhaustively investigated the events surrounding the granting of planning permission to Fairview Homes and the handling of the planning application by Imperial Gardens Nightclub.
- That Council asks Overview and Scrutiny Committee to look at failures in the planning system highlighted by both reports and the actions being taken by the Council to correct them.
- That Council notes the advice of Harriet Harman Q.C. that, in view of the previous history of the case, the Council should appoint an external independent person/s to assess the appropriate level of legal assistance and asks the Overview and Scrutiny Committee to undertake this recommendation within 14 days.

4.3 On the 5th April Overview and Scrutiny agreed the following terms of reference for the Scrutiny:

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

The Scrutiny agreed it would not:

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

4.4 The Director of Regeneration was requested to prepare a draft response to the auditor's report and an improvement plan, for consideration firstly by Scrutiny. The Scrutiny Sub-Committee met on the 29th April 13th and

20th May, and the 2nd, 12th and 13th July. Evidence was taken from a number of parties as set out in the report, including the complainants and their advisers and lawyers.

5. APPROVING THE RESPONSE

5.1 In approving the response the focus of members should be on the specific **findings** of the District Auditor and his **recommendations** as set out above. Members should consider whether the response of the Director of Regeneration to each finding and recommendation is adequate and reasonable having regard to the views of Scrutiny and any other relevant matters.

5.2 Some issues contained in the main narrative of the report are subject to ongoing examination and investigation which may or may not provide new information. Further material has already been provided to Scrutiny relating to matters such as the proposed Camberwell Station and the progress of Imperial Gardens own planning application. However, the Director of Regeneration considers that it is reasonable to accept the findings of the District Auditor are acceptable and act upon as he describes necessary and the Council should act upon recommendations as he describes.

5.3 The response to the findings of the District Auditor is set out in paras 5.6 to 5.10 of the report of the Director of Regeneration.

5.4 The response to the recommendations of the District Auditor is set out in paras 5.12 to 5.16 of the report of the Director of Regeneration.

6. OTHER ISSUES

6.1 The Ombudsman's report

The Ombudsman report relating to Imperial Gardens recommended a payment of £500 to each of the complainants in that matter. The formal response to the report is within the terms of reference of the Executive who will consider the report and decide whether to follow the recommendation.

6.2 Compensation

6.2.1 The issue of compensation to the complainants is not part of the District Auditor's report but was referred to Scrutiny for advice on the mechanism of determining issues relating to compensation, which is set out at para 156 of their report.

6.2.2 The instruction of Council Assembly with regard to agreeing the level of legal assistance has been taken forward. Materials to put before an assessor appointed by the Bar Council have been agreed with solicitors for THK Entertainments Ltd.

6.2.3 The strategy recommended by Nabarro Nathanson is appended to the Scrutiny report (Appendix 3 to this report). One step in the strategy is that the liquidator of THK Entertainments be approached and this is currently being undertaken.

6.3 Police Investigations

The District Auditor's report was referred to the police by the Chief Executive for investigation. The investigating is still proceeding.

6.4 Commission for Racial Equality

6.4.1 The District Auditor's report was referred to the Commission for Racial Equality, seeking advice and an assessment of what role the CRE might take in addressing the allegations of discrimination against black businesses by the Council through its regeneration, planning and licensing roles raised by the complainants. It was explained at this time that the Council had already committed itself to an early equalities impact assessment of these functions. The formal response to the report will similarly be sent to the Commission.

6.4.2 The Chief Executive has been in communication with the CRE since the publication of the DA's report. The Commission has noted what the Council has been doing to follow up the issues raised by the District Audit report, in particular the equalities impact assessment of Planning, and commented that it was good to see that the Council was including to external people on the steering group.

6.4.3 The Commission have made no criticism of actions taken or proposed by the Council. They have, however, advised the Council to make more widely known the work already undertaken to improve the planning function and have also argued a swift resolution to the issue of compensation.

6.4.4 The Chief Executive has also been in contact with the Southwark Race and Equality Council on this issue, and the SREC continues to be represented on the Equalities and Diversity Panel, which challenges, advises and comments on the equalities impact assessments being undertaken within the Regeneration Department.

7. SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

7.1 Chief Finance Officer

7.1.1 The cost of inquiry by the District Auditor has been carried by the budget of the Regeneration Department.

7.1.2 Any consequential costs arising from the issues raised in the report will fall through to be met from the Regeneration Departmental budgets. Although

there is no specific budget set aside for any such costs they are underwritten by the Council's balances and its Financial Risk Reserve.

7.2 Borough Secretary and Solicitor

7.2.1 The legal implications are set out in the main body of this report.

7.2.2 To ensure the Council's compliance with the timescales set out in the Audit Commission Act 1998, a decision on the recommendations set out in this report must be taken at the meeting arranged on 21 July 2004.

8. REASONS FOR URGENCY

The Council Assembly must consider this report in the timescale required by the Auditor.

9. REASONS FOR LATENESS

Scrutiny has conducted a full hearing of the matters referred to it by Council Assembly. Its final meeting was held on the 12th July. To allow its conclusions to be incorporated into the report the report is circulated with less than five clear days notice.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Public Interest Report – Award of Planning Permissions at 295-297 Camberwell New Road and 299 Camberwell New Road	Constitutional Team Southwark Town Hall, Peckham Road, SE5 8UB	Ian Millichap 020 7525 7225

APPENDICES

Appendix	Title
Appendix 1	Draft Response of London Borough of Southwark to Public Interest Report – Award of Planning Permissions at 295-297 Camberwell New Road and 299 Camberwell New Road
Appendix 2	Report of Special Scrutiny Sub-Committee – Award of Planning Permission at 295-297 Camberwell New Road and 299 Camberwell New Road.
Appendix 3	Nabarro Nathanson – Legal advice to Southwark Overview and Scrutiny Committee.

AUDIT TRAIL

Lead Officer	Deborah Holmes, Borough Solicitor & Secretary	
Report Author	Deborah Holmes, Borough Solicitor & Secretary	
Version	Final	
Dated	13.07.2004	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Chief Finance Officer	Yes	Yes
Executive Member	No	No
Date final report sent to Constitutional Team		16.07.2004

APPENDIX 1

**DISTRICT AUDITOR'S PUBLIC INTEREST REPORT –
AWARD OF PLANNING PERMISSIONS AT 295-297
CAMBERWELL NEW ROAD AND 299 CAMBERWELL NEW
ROAD**