

PUBLIC INTEREST REPORT

Award of Planning
Permissions at 295 – 297
Camberwell New Road and
299 Camberwell New Road,
Southwark

**Southwark London
Borough Council**

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INTEREST REPORT

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Reference:	Southwark LBC Public Interest Report 2003/2004 – Final Version
Date:	February 2004

Introduction

I am the auditor appointed by the Audit Commission to audit the accounts of the London Borough of Southwark (the Council). Section 5 of the Audit Commission Act 1998 requires me to satisfy myself that the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. Section 8 of the Act requires me to consider whether, in the public interest, I should make an immediate report on any matter coming to my notice during the course of my audit in order for it to be considered by the body concerned or brought to the attention of the public.

Mr Raymond Stevenson and Ms Lucia Hinton (the Complainants) who are associates in a business concern called the Imperial Gardens nightclub, which operates from 299 Camberwell New Road, raised concerns and complaints in relation to the Council's handling of two specific planning issues and following discussions with the Council I undertook an investigation into these complaints. I have undertaken detailed enquiries and believe that there are significant concerns about aspects of the management of the planning process which go beyond these specific cases.

My investigations have revealed serious deficiencies in the planning processes and procedures of the Council which have not been satisfactorily explained. I believe that urgent action is required by the Council to ensure that there is openness, honesty, transparency and public confidence in all planning-related matters and to prevent similar failings in the future. This issue may also yet have a significant financial and reputational consequence for the Council. I have therefore exercised my discretion to issue this Public Interest Report.

I consider below:

- the background;
- my key findings;
- my recommendations for action by the Council.

Appended to this Report are my more detailed factual findings.

Background

The Council is a planning authority. It is responsible for producing a Unitary Development Plan (UDP), validating, processing and deciding planning applications and taking enforcement action as necessary.

In October 2001 the Council granted planning permission for a residential development at 295-297 Camberwell New Road (Fairview New Homes (Camberwell) Limited site). At the time of the grant of the permission the use of the adjacent premises at 299 Camberwell New Road (Imperial Gardens nightclub) as a nightclub with an all-night music and dance licence was not taken into account by the Development Control Committee which granted the planning permission for the Fairview New Homes (Camberwell) Limited's residential development.

My investigations have addressed the concerns that:

- proper planning processes were not followed and statutory requirements were not observed;
- there was an apparent failure to consult the occupiers of Imperial Gardens nightclub and possibly other interested parties who may potentially have raised objections in regard to the residential development on the Fairview New Homes (Camberwell) Limited site;
- a delay of four years occurred in processing an application for permanent planning consent in respect of the Imperial Gardens nightclub.

My investigation comprised a review of documentation and interviews with members, officers and third parties. I have made such enquiries as necessary and possible, including enquiries of third parties, to obtain audit evidence where documentation retained by the Council was incomplete. Issues in regard to other planning processes and procedures have been brought to my attention during the course of my investigation into these two sites. These are not considered in detail in this Report but I believe that a number of the concerns which I express in this Report specifically concerned with the planning applications which have been the subject of this investigation also have wider application.

My more detailed factual findings have been supplied in draft to the members and officers named in this Report. In finalising my Report and the detailed factual findings which accompany it, I have considered and, as appropriate, taken into account their comments.

The Complainants have also referred this matter to the Local Government Ombudsman.

Key Findings

I have identified serious weaknesses in many aspects of the Council's planning processes and procedures undertaken in regard to the planning applications in respect of the Fairview New Homes (Camberwell) Limited site and the Imperial Gardens nightclub. I believe that these are not the only examples of poor processes and procedures and that the Council is exposed to the financial and reputational risks of:

- litigation by complainants;
- compensation payments to third parties;
- a reduction in public confidence in the integrity of officers, members and the Council's own planning function.

I have not received nor obtained corroborated evidence of corrupt practices on the part of members or officers of the Council. However, in instances, the conduct of some officers and some members has not met the standards expected of public servants. Moreover, weaknesses in processes and procedures combined with poor record keeping mean that members and officers are not in a position to rebut conclusively allegations of corrupt or improper practices.

There were failings in the decision-making processes in relation to the planning applications in respect of the Fairview New Homes (Camberwell) Limited site and the Imperial Gardens nightclub. In particular:

- consultation in respect of the residential development was fundamentally flawed in that it did not extend to the adjacent Imperial Gardens nightclub despite both its proximity and a seemingly incompatible use and despite the fact that the Imperial Gardens nightclub had been previously consulted on planning issues relating to the same adjoining site, as well as other adjacent ones;
- reports prepared by officers for consideration by members were inaccurate, inadequate and incomplete;
- the Committee considering the planning application for the Fairview New Homes (Camberwell) Limited Site failed to make further enquiries when questions were raised regarding the proximity of the Imperial Gardens nightclub. In my view, these questions should have alerted the officers and members to deficiencies in the Recommendation Report put before them.

In addition, I have further significant concerns about general procedural weaknesses, in that:

- procedures for ensuring that members have an adequate understanding of the processes involved in making planning decisions were not always followed;
- training for members in planning issues was inadequate and some members with no training participated in planning decisions;
- in some instances the results of consultation were not reported fully to members;
- mechanisms for performance management of planning staff were inadequate;
- documentation of meetings and discussions were inadequate and in some instances files were incomplete;
- there were no mechanisms for ensuring that the Council's policy on consultation was consistently followed;
- there were no mechanisms for ensuring that officers dealing with applications which are in any way connected consult with one another;
- arrangements for ensuring compliance with planning decisions were poor.

I am also concerned that the evidence of members and officers, on whose recollections I have sought to rely in the absence of complete records has, in instances, been inconsistent and contradictory. In particular the evidence of the Acting Manager of the West Area Planning Team, Mr Mark Dennett, has been unsatisfactory and contradicted by both oral and written evidence from multiple sources. It is therefore in my view wholly unreliable. Furthermore, from the evidence before me, I believe that the Development and Building Control Manager, Mr Andrew Cook, has displayed very poor managerial skills and judgement in the exercise of his role as a senior manager.

Recommendations

The Council's senior officers have recognised the seriousness of the weaknesses identified in this Report and the need to institute corrective action. Whilst, my enquiries have focused on the two specific cases, during the course of my investigations other evidence from unrelated planning applications has been brought to my attention. My recommendations should therefore be seen in the context of the planning service as a whole.

The Council should:

- consider whether to institute disciplinary action against individuals who have failed to meet the standards expected of them;
- take urgent action to improve the quality of reports presented to Development Control Committees;
- 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;
- ensure that consultation procedures in relation to planning applications are rigorously followed;
- provide training to ensure staff involved with the processing of planning applications are fully aware of their responsibilities, including the need to maintain detailed records of meetings and full copies of all documentation on files;
- introduce and maintain a Register of Interests for all staff involved in dealing with planning applications to complete and declare any conflict of interest or potential association with applicants for planning permissions;
- introduce a robust system of tracking planning applications including any potential conflict between applications for adjoining or nearby sites.



Derek Elliott
District Auditor

4th February 2004

APPENDIX - Detailed Findings**Introduction**

1. In November 2002 the Chief Executive of the London Borough of Southwark (the Council), together with the Leader of the Council, requested the District Auditor to attend a meeting with Mr Raymond Stevenson and Ms Lucia Hinton (the Complainants) who are associates in a business concern called Imperial Gardens nightclub, which operates from 299 Camberwell New Road.
2. The purpose of the meeting was to consider complaints and allegations made in respect of a planning application for a residential development granted to Fairview New Homes (Camberwell) Limited in respect of 295–297 Camberwell New Road which is adjacent to and within 3 metres of the boundary of the Imperial Gardens nightclub. Allegedly no notice was ever served or consultation entered into with the Imperial Gardens nightclub in regard to the development of the Fairview New Homes (Camberwell) Limited site.
3. The Complainants were also concerned and aggrieved that their own planning application for the Imperial Gardens nightclub, which was first applied for in 1995 and was originally granted only on a temporary basis, encountered excessive delays in being processed. The Complainants contend that the delays, sequence of events and the granting of seemingly conflicting planning permissions has had a severe financial impact on their business and will give rise to a claim for compensation from the Council. The Complainants have also referred these matters to the Local Government Ombudsman.
4. Enquiries into the facts and circumstances as to how seemingly conflicting planning permissions were granted for two adjoining premises have been undertaken and have addressed the following specific issues: -
 - was there a failure to consult the owners and occupiers of Imperial Gardens nightclub in regard to the residential development by Fairview New Homes (Camberwell) Limited? If so, how did this happen?
 - was there an inordinate delay in the processing of the application for the permanent planning consent for the Imperial Gardens nightclub which was applied for on 13 April 1999 and ultimately heard and granted on 22 July 2002? If so, how did this arise?
5. The Complainants have made serious allegations regarding their beliefs as to the motives, both personal and corporate, behind the problems surrounding the planning applications in question. The methods used by the Complainants to obtain information and to build up their picture of events and motives cannot be condoned as these would not be available to any public servant. These methods have included aggressive access to Council premises and, by their own admission, the use of misrepresentations in order to elicit responses and reactions and to unsettle or alarm individual officers, members or the Council itself.
6. Information received during this investigation, including statements from individuals and members, give cause for concern that deficiencies surrounding these planning applications are not isolated failings. This is a serious situation and demonstrates the reputational, financial and operational risks that the Council faces if the problems identified are not addressed as a matter of urgency to prevent such a situation from ever happening again.

7. Without conclusive evidence, motive cannot be ascribed to the actions of individuals or public bodies. To take the issues identified in the planning decisions in question further would need powers beyond those available to the District Auditor as the Council's external auditor.

Background

8. The Fairview New Homes (Camberwell) Limited site at 295 – 297 Camberwell New Road is a triangular shaped piece of land which has Medlar Street and an alleyway along the overhead railway line forming the two other boundaries. The Imperial Gardens nightclub premises at 299 Camberwell New Road comprises an entrance in Camberwell New Road and arches under the mainline railway line with exits from them into the aforementioned alleyway which abuts the Fairview New Homes (Camberwell) Limited site. Immediately adjacent to the southern side of the Imperial Gardens nightclub premises is the site of the former Walworth Bus Garage in regard to which there were formal re-development discussions underway between the Council and Sainsbury plc during the period 1998 to 2003, aspects of which are relevant to the substantive issues being considered in these Detailed Findings.
9. In 1996 the Imperial Gardens nightclub premises were let to the Complainants, trading as THK Entertainments Limited, for use as a nightclub. The freehold of the premises was and continues to be owned by Railtrack (Spacia). Following an application by the Imperial Gardens nightclub, the Council granted on 1 August 1996 a temporary planning consent for the use of the premises as a nightclub.
10. The Imperial Gardens nightclub subsequently was also granted an entertainment licensing permission enabling the premises to be used as a music and dance venue permitting the sale of alcohol up to 2:00 a.m. and music up to 6:00 a.m.
11. On 13 April 1999 Imperial Gardens nightclub applied to the Council for permanent planning consent for continued use as a nightclub following the temporary permission granted in 1996. However, this application was not heard by the Development Control Committee until 22 July 2002 when it was resolved to grant full planning permission to the Imperial Gardens nightclub.
12. The Council's Unitary Development Plan (UDP) adopted by the Council on 19 July 1995 identified the requirement for a railway station on or around Camberwell New Road and extensive negotiations and feasibility studies were entered into by the Council with Railtrack to evaluate the options for a new station. The relevance of these facts is that the evidence clearly substantiates that the proposals for a railway station were well known and a key factor in the negotiations being conducted with potential developers of the adjoining sites to the Imperial Gardens nightclub, thus making the denial of knowledge of the existence of the Imperial Gardens nightclub by certain officers untenable.
13. Between the period 1996 to March 2001 the site at 295 – 297 Camberwell New Road that was subsequently purchased by Fairview New Homes (Camberwell) Limited was occupied and used as a petrol filling station and subsequently a car showroom. This site was designated in the UDP as zoned for light industrial and employment use. On 8 March 2001 the site was sold by the then owners, Pendragon Motor Group Limited, by a private treaty sale agreed unconditionally and not subject to any Option to Purchase with the then existing planning and UDP use to Fairview New Homes (Camberwell) Limited for the sum of £2,197,500.

14. On 14 May 2001 Fairview New Homes (Camberwell) Limited made two separate identical applications for planning permissions to develop their site for residential use. It is not unusual, and considered by some to be customary for developers to make duplicate applications to protect their interests against excessive delay in the granting of any planning permission. This is because an appeal can be lodged with the Inspectorate on one of the submitted applications to expedite the process should that be considered necessary whilst negotiations continue on the other.
15. The Council sent a Notice of the Fairview New Homes (Camberwell) Limited site applications to Railtrack as freeholders of the adjoining properties which included the premises occupied by the Imperial Gardens nightclub but Railtrack neither notified their tenants nor responded formally to the Council until 13 December 2001, almost two months after the planning application for the Fairview New Homes (Camberwell) Limited site was granted. The Council failed to issue any notice of consultation to the Imperial Gardens nightclub notwithstanding that notices had been sent previously on other more minor applications relating to adjoining premises. Therefore, the Imperial Gardens nightclub was not afforded an opportunity to object or make representations regarding the Fairview New Homes (Camberwell) Limited site applications.
16. On 24 October 2001 the Development Control Committee Agenda included the application for the Fairview New Homes (Camberwell) Limited site and the Committee resolved to grant planning permission subject to certain conditions which included an agreement to be made pursuant to section 106 of the Town and Country Planning Act 1990 requiring that affordable housing units be provided on the site on a rental basis and under the control of a registered social landlord. The section 106 Agreement was completed on 20 February 2002.

Investigation and Review Approach

17. The circumstances surrounding the planning applications in question are complicated and have already been the subject of much publicity in the local media. Serious allegations regarding the motives of Council members and officers have been made. In order to build up a picture of events, the following documents were reviewed:
 - planning applications and planning permissions granted;
 - Committee reports and minutes (where available);
 - correspondence;
 - reports from planning and sound insulation consultants retained to advise the Council on the Fairview New Homes (Camberwell) Limited site development;
 - files and reports of the Council in relation to a number of planning applications;
 - the Government Office for London (GOL) decision regarding the change of use of the Fairview Site from employment to residential;
 - the detailed findings of the Local Government Ombudsman.
18. A series of interviews have been conducted with officers and members of the Council, employees and representatives of Fairview New Homes (Camberwell) Limited and the Complainants and other members of the public who have been involved with other planning applications.

19. During the course of this investigation, allegations were made that one member of the Council requested the Complainants to print leaflets on behalf of one of the black ethnic candidates for the election being held in May 2002 in exchange for support of the Complainants' application for a permanent planning permission. When questioned regarding this matter, the member denied any such approach was made and counter-claimed that it was the Complainants' own suggestion. In the absence of any corroborative evidence, it has not been possible to substantiate either of these claims.

Findings

General

20. The Council has a statutory duty to give publicity to planning applications so that adjoining occupiers and neighbours, the local community, other Council departments, organisations such as the Greater London Authority and English Heritage and other government bodies can comment on them. After an application has been received, the Council identifies owners and occupiers of nearby properties in order to notify those who are in a designated criteria as being in close proximity to the proposed development and should therefore be consulted on the application; consultees are given 21 days to send in their comments, although all relevant comments received up to the time of the planning decision should be considered.
21. The Planning and Development Control Department has confirmed in writing to the Complainants that it failed to consult the Imperial Gardens nightclub in relation to the Fairview New Homes (Camberwell) Limited site application. The Council under its own procedural processes had a duty to do so and its failure to undertake this consultation has exposed it to a potential risk of challenge. The Council has further accepted that the Imperial Gardens nightclub was not mentioned in the Recommendation Report submitted to the Development Control Committee hearing the Fairview New Homes (Camberwell) Limited site application on 24 October 2001.

Imperial Gardens

22. The first planning application made by the Imperial Gardens nightclub was submitted to the Planning and Development Control Department of the Council on 3 November 1995 but was amended by revisions and additional plans which were received by the Council on 30 November 1995 and 30 May 1996. Mr Phillip Chambers was the case officer dealing with this application and the recommendation to the Development Control Committee was that the application should be refused. The application was determined on 1 August 1996 when temporary planning permission was granted for a term of one year with several conditions attached, one of which was that 'the use permitted shall be until the 31 August 1997 on or before which date the use shall be discontinued to enable the Council to monitor the use and running of the Imperial Gardens nightclub'. The condition was imposed to allow the Council to monitor the use of the premises, in particular the impact on local residents in terms of noise, smells, fumes, traffic generation and parking.

23. There are several reasons why temporary planning permissions may be granted. In certain cases there may be future plans contemplated which have not been fully developed and therefore a temporary use is granted until the main development can be progressed. However, this was not the reason given by the Council in this case. In other instances, the purpose of time limited permissions may be to enable a trial run of the use in order that its impact can be evaluated and this was one of the reasons stipulated by the Council in granting the Imperial Gardens nightclub its temporary planning consent in 1995. At the end of a temporary permission, the use should cease unless a further permission is granted. A council when considering an application for any renewal should take into account all material considerations (many of which may be the same as when the temporary permission was granted). It would be unusual for a council to reach a different view on an issue that it was satisfied on before, but clearly the council can take into account the reasons why a temporary permission was granted in the first place.
24. The Council's Planning & Building Control Development Department does not appear to have carried out any formal monitoring of the use of the Imperial Gardens nightclub leaving this to other departments such as Environmental Health and furthermore did not appear to have any automatic process to activate a renewal reminder. It was not until 14 August 1998 that the Council informed the Imperial Gardens nightclub of the need to renew its planning consent and it is unclear what prompted this reminder.
25. The Planning & Building Control Enforcement Department sent reminders to the Imperial Gardens nightclub regarding the renewal of the temporary planning permission on 7 September, 29 September and 11 November 1998. The application for permanent planning permission was received by the Council on 13 April 1999.
26. The Case Officer originally allocated to deal with the application for the permanent planning permission resigned from the employment of the Council on 8 September 2000 and a new Case Officer, Mr Emmanuel Allanah, was allocated to deal with the application. Mr Allanah has been interviewed during the course of this investigation but has since resigned from the employment of the Council on 7 May 2003.
27. Mr Allanah confirmed that he took over the role of the Case Officer for the Imperial Gardens nightclub and his line manager was Mr Mark Dennett who had been appointed in or about July 2001 as Acting Area Manager for the South West Area Team, in place of Mr Phillip Chambers who had been moved to undertake other duties within the Development Control Department.
28. Mr Allanah stated that he was uncertain whether he was the Case Officer in charge of the Imperial Gardens nightclub application at the time that the Fairview New Homes (Camberwell) Limited site application was being heard. However, his predecessor left the Council on 8 September 2000, over eight months before the Fairview New Homes (Camberwell) Limited application was submitted and over a year before it was heard and he must have assumed the role of the Case Officer sometime during this period.
29. Furthermore, Mr Allanah stated that he was aware of the considerable delay that had ensued in relation to the Imperial Gardens nightclub application and that he tried to expedite it. He could not offer any rational explanations as to why it had taken so long for it to be put to the Development Control Committee and he felt that the matter was more appropriate to raise with Mr Dennett.

30. Mr Dennett stated that there were several reasons for the delay, most particularly that Mr Allanah's written English was very poor and that many of his reports had to be re-written. However, there has been very little evidence to support this contention. Mr Allanah had been employed by the Council since October 1989 and had therefore been undertaking his role for nearly 14 years, during which time he had dealt with almost 1,500 planning applications and had attained the grade of Senior Planner. No other evidence has been produced of his development needs in this regard.
31. During the period of the Imperial Gardens nightclub application for permanent planning permission, there is evidence of some on-going dialogue between various departments of the Council and Railtrack (the landlords of the Imperial Gardens nightclub). This dialogue appears to have included information being passed to the Council regarding the litigation then ensuing between Railtrack and the Imperial Gardens nightclub which may have given some officers of the Council the impression that the Imperial Gardens nightclub was facing eviction by its landlords.
32. The Complainants stated that they were advised by Mr Allanah that even when the Imperial Gardens nightclub application for permanent planning permission was finally ready to be progressed around about February 2002, the reason that it was further delayed was because Cllr Ritchie (who was one of their Ward Councillors and had many years' experience as a member who often sat on the Development Control Committee), had allegedly requested that it should be heard only after the forthcoming Local Elections in May 2002, the allegation being that it was considered to be "a political hot potato".
33. Cllr Ritchie, Mr Dennett and Mr Allanah appear to have conflicting recollections regarding these events. When asked about the reason for this further delay, Mr Allanah stated that he personally had not been asked to delay the application but that this issue should be raised with Mr Dennett. When asked regarding this allegation, Mr Dennett stated that no one had asked him to delay the application in this manner. However, Cllr Ritchie stated that he recalls that he had briefly spoken with Mr Dennett and had asked him when the application was likely to be heard. Cllr Ritchie recalls that Mr Dennett advised him that this was likely to be in April or May 2002. Cllr Ritchie recalls that he then asked Mr Dennett to delay the hearing of the application until after the May 2002 elections as he (Cllr Ritchie) wanted to afford the Imperial Gardens nightclub support and felt that he would be in a better position to do so if he was re-elected. Cllr Ritchie has subsequently clarified his statements further by advising that he felt that, as he would be involved in campaigning for the election, he considered that he would have been too busy to support the Imperial Gardens nightclub application before the election.
34. The contradictory recollection of these specific events between Cllr Ritchie and Mr Dennett is of concern. The actual time table of events demonstrates that whilst the Imperial Gardens nightclub application for permanent permission was ready to proceed in April 2002 and possibly even earlier, it nevertheless did not go to the Development and Planning Control Committee until the meeting of July 2002.

35. The Development Control Committee met on 22 July 2002 to consider the Imperial Gardens nightclub application and comprised Cllr David Hubber (Chair), Cllr Dermot McInerney, Cllr Jonathan Hunt, Cllr David Bradbury, Cllr Aubyn Graham, Cllr Paul Kyriacou and Cllr Graham Neale (reserve member).
36. The public meeting was apparently acrimonious due to the Complainants raising concerns and issues regarding the planning consent which had already been granted for the adjoining Fairview New Homes (Camberwell) Limited site and Cllr McInerney recalled that he requested that the Complainants be excluded from the meeting due to the disturbance being caused, but that Cllr Hubber refused to do so. Cllr Hunt recalls that in response to the Complainants, Cllr McInerney advised the Committee that he had not been aware of the existence of Imperial Gardens nightclub when he had sat on the committee which had heard the Fairview New Homes (Camberwell) Limited site planning application.
37. The Imperial Gardens nightclub Recommendation Report to the Development Control Committee on 22 July 2002 details the background to the application, the outcome of consultations and planning considerations. The section dealing with planning considerations in the Report considers the impact on adjacent properties of traffic and parking generation associated with such uses. The Report concludes by recommending the continued use of the premises for nightclub purposes be approved. The Report relies on a noise assessment which was submitted with the original application in 1996 and concludes that there would be no loss of amenity as a result of noise. However, the Report makes no reference to the Fairview New Homes (Camberwell) Limited site and the grant of residential planning permission which by then had taken place adjacent to the Imperial Gardens nightclub site.

Fairview New Homes (Camberwell) Limited Site Planning Application

38. The planning application from Fairview New Homes (Camberwell) Limited was submitted to the Council on 14 May 2001. Mr Mark Dennett has confirmed that he dealt with the initial validation process for this application including the compilation of the initial consultation list and his immediate manager was Mr Phillip Chambers, Manager of the West Planning Area Team. The Case Officer was Ms Donna D'Alessandro although it is unclear precisely when she was appointed.
39. Interviews have been conducted with representatives of Fairview New Homes (Camberwell) Limited who were responsible for the planning aspects of their company's application to the Council. They advised that the site was first identified by Fairview New Homes (Camberwell) Limited in January 2001 following retained land buyers highlighting its availability as part of a portfolio being sold by the vendors, Pendragon Motor Group Limited. Preliminary discussions were held with Ms Janet Thomas, a planning officer at the Council, in regard to the possibilities of obtaining a change of use for residential purposes and the initial advice received by Fairview New Homes (Camberwell) Limited from Ms Thomas was apparently not favourable.

40. Fairview New Homes (Camberwell) Limited then wrote to Mr Phillip Chambers of the Planning and Development Control Department of the Council with draft proposals and sketches for the erection of residential accommodation incorporating a retail commercial ground floor element of approximately 10,000 square feet. The correspondence was dealt with by Mr Dennett and in a telephone conversation between them, Mr Dennett advised Fairview New Homes (Camberwell) Limited about the various issues concerning the site and specifically the Council's proposals for a new railway station and the proposed retail store by Sainsburys on the former Walworth Bus Garage site. The representatives for Fairview New Homes (Camberwell) Limited stated that Mr Dennett advised that they should apply for a residential scheme with no commercial element.
41. The representatives of Fairview New Homes (Camberwell) Limited advised that they then wrote on 8 February 2001 to Mr Dennett setting out the discussions which had taken place but the Council's files are incomplete as there is no copy of that letter. On 22 February 2001 a meeting between one of their representatives and Mr Dennett took place which the land buyers, architects and vendors agents also attended. The representatives of Fairview New Homes (Camberwell) Limited state that the following day notes of that meeting were sent to Mr Dennett, but again the Council's files have no copy of these minutes although they do contain a letter dated 11 May 2001 from Fairview New Homes (Camberwell) Limited to Mr Dennett referring to this meeting.
42. One of the representatives of Fairview New Homes (Camberwell) Limited has confirmed that he was aware that there were occupied premises under the adjacent arches of the railway viaduct, but that he had never actually seen them being used. He stated that as a developer, the presence of a nightclub would have been only one factor amongst many in the urban landscape and in his view would not have been a major factor in the decision to proceed.
43. On 2 March 2001 Fairview New Homes (Camberwell) Limited held an internal Board Meeting with formal reports on the proposed acquisition of the site including the presentation of a planning report by their own staff. The Board resolved to recommend the purchase of the site from Pendragon Motor Group Limited. Contracts were exchanged unconditionally and not subject to any planning consents being obtained and the purchase completed simultaneously on 8 March 2001 for the sum of £2,197,500.
44. The Fairview New Homes (Camberwell) Limited application was submitted on 14 May 2001 and was addressed to Mr Dennett. A second identical application was also submitted and this is considered customary in cases where applicants want to protect their position against delay which may take place in processing the application and should it then be necessary to refer the matter to the Inspectorate by way of an appeal on one of the applications.
45. In interviews with and correspondence from Mr Dennett, he has confirmed that the validation process was carried out by him personally which included the compilation of the original consultation list. Mr Dennett states that only after this initial procedure had been undertaken was the file passed to the Case Officer, Ms D'Alessandro. Mr Dennett has been interviewed on two separate occasions and on both occasions has categorically stated that neither when he dealt with the validation process and the consultation list nor at any stage of the application up to and including the Development Control Committee meeting of 24 October 2001 was he aware of the existence of the Imperial Gardens nightclub and its immediate proximity to the Fairview New Homes (Camberwell) Limited site.

46. Mr Dennett confirms that he met with representatives of Fairview New Homes (Camberwell) Limited on 22 February 2001 when there were discussions regarding the change of use of the site. Mr Dennett states that he was guided by the advice contained in Government Circulars PPG1, PPG12 and PPG24 in respect of noise from the busy highway and the adjacent railway line. However, as stated above, the Council's files do not contain any notes of meetings and telephone conversations which had been held between officers and the applicants.
47. The Council's planning procedures require every case officer physically to visit a site to familiarise themselves with it and to ensure that all the particulars relating to the application are correct. It would be at this stage that any parties who ought to be consulted but had been missed out from their original list should have been identified. As Ms D'Alessandro left the employment of the Council in May 2002 to return to her native country, Australia, it has not been possible to obtain her evidence in regard to this investigation and establish whether she actually visited this site and, if so, why her site visit did not highlight the existence of the Imperial Gardens nightclub.
48. Mr Dennett has stated categorically that the case officer must visit the site, not only to ascertain whether there are any other consultees that should be notified, but also to place the site notices regarding the proposed application on suitable places. In his letter dated 3 May 2002 to the Complainants, Mr Dennett states that Ms D'Alessandro "walked along the pedestrian access on the west side of the railway viaduct between Camberwell New Road and Medlar Street and noted that there were no accesses from the viaduct to the application site. On this basis she did not add to the consultation list. Had she been aware that you [Imperial Gardens nightclub] occupied the railway arches here I think it would have been appropriate to add you to the consultation list". However, it is very clear from a site visit that there are lockable exits from the Imperial Gardens nightclub premises into this alleyway which should have alerted any case officer to the occupation of these premises.
49. It is important to consider at this stage what, if any, previous consultation processes had been undertaken in regard to planning applications which involved the site at 295 – 297 Camberwell New Road. There is clear evidence that on 31 January 1996 a letter for consultation purposes was sent to "The Occupier" at 299 Camberwell New Road (the Imperial Gardens nightclub) regarding the proposed display of an internally illuminated advertising panel on the south facing abutment of the railway bridge adjacent to the former Walworth Bus Garage. The details given in that letter of the Case Officer dealing with the matter was Mr Mark Dennett.
50. On 25 March 1998 an application was received by the Council from the then owners and occupiers of the site at 295 – 297 Camberwell New Road, Pendragon Motor Group Limited, for the erection of 8 six-metre-high floodlight columns to the perimeter of that site. The consultees list for that application clearly included 299 Camberwell New Road the address of the Imperial Gardens nightclub. It is contradictory that when the more substantive application for a major housing development within three metres of its boundary was then received, that the same consultee was not contacted because officers state that they were unaware of their existence.

51. There are other major concerns regarding the sequence of events which took place around this time. Firstly, Mr Phillip Chambers, West Area Manager (whose position Mr Dennett assumed in July 2001 in an acting role) had been with the Council since 1974 and had dealt with the application in 1995 from Imperial Gardens. Mr Chambers' own evidence is that it would be virtually inconceivable for anyone dealing with the applications at 295 – 297 Camberwell New Road not to be aware of the existence of the nightclub. Indeed, Mr Chambers further stated that due to events and major occurrences at the nightclub prior to the date of the planning applications in question, including a fire arms incident, the Council had issued a directive stating that any site visits to the Imperial Gardens nightclub must be undertaken by two people. It is therefore difficult to believe that long serving members of staff such as Mr Dennett would not have been aware of the existence of the nightclub when the Fairview New Homes (Camberwell) Limited application was submitted. Secondly, Mr Chambers has also advised that normal practice would be to import consultees from any previous planning applications, which was clearly not done on this occasion.
52. The evidence regarding the case management of the Fairview New Homes (Camberwell) Limited site application is inconsistent and illogical. Mr Dennett admits to having dealt with the pre-application issues direct with Fairview New Homes (Camberwell) Limited and furthermore has confirmed that he personally undertook the validation process for the application, including the compilation of the original list for consultation purposes but states that he was not the Case Officer for the application. However, Mr Dennett did not assume his role of Acting Manager for the West Area Team until July 2001, some two months after the Fairview New Homes (Camberwell) Limited application was lodged. Mr Dennett was assuming and undertaking elements of the role of the Case Officer and Mr Chambers was at that time his line manager during this significant early period of the application. It is not clear from the Council's files as to precisely when Ms D'Alessandro was appointed as the Case Officer.
53. There are significant errors, omissions and inconsistencies in the Council's files in regard to this application. The Fairview New Homes (Camberwell) Limited application was received on 14 May 2001. The letter of acknowledgement sent out to Fairview New Homes (Camberwell) Limited from the Council, however, is dated 11 October 2002, nearly a year after the planning hearing on 24 October 2001, stating that the Case Officer was Ms D'Alessandro. This letter is erroneously dated and a more plausible explanation may be that it was printed at a much later date and placed on the file.
54. The Council sent a consultation letter to Railtrack, the landlords of the Imperial Gardens nightclub premises, at the same time as the others on the original consultation list, but Railtrack only responded formally on 13 December 2001, some two months after the determination of the Fairview New Homes (Camberwell) Limited application. The Council's officers have sought to argue that by serving the notice on the landlords, the onus would have been on Railtrack to notify their tenants, but this does not follow the Council's own policy and guidance whereby if the occupants of premises are known then they should also be served a notice direct.

55. In a letter dated 7 July 2001, another consultee, Mr Martin Huckerby of 272 Camberwell New Road, wrote to the Council in response to the letter of notification which he had received of the Fairview New Homes (Camberwell) Limited application and made some general comments and observations in regard to the proposals. Most significantly, Mr Huckerby concluded his letter by stating that "I was intrigued to note that the noise studies make no mention of the fact that the nearest neighbour to the development is a sizeable nightclub". It would appear that not only the Case Officer but also those involved in preparing the Recommendation Report to the Development Control Committee, which would have included Mr Dennett, either failed to note or ignored Mr Huckerby's comments relating to the presence of the nightclub.
56. It should also be noted that on 10 December 2001 the Council wrote to the Imperial Gardens nightclub regarding the proposed development by Sainsbury plc on the adjacent former Walworth Bus Garage site. The line manager of the Case Officer dealing with the Sainsbury application was Mr Dennett. Whilst by now the planning application of Fairview New Homes (Camberwell) Limited had been determined, it was nevertheless subject to the conclusion of a Section 106 agreement (when dealing with major developments, it is common practice for planning authorities to negotiate with developers to conclude agreements, where relevant, under Section 106 of the Town and Country Planning Act 1990 known as section 106 agreements). Such agreements are used by planning authorities to help them exercise control over proposed developments. As will be detailed further below, the existence of the Imperial Gardens nightclub was a factor mentioned to Sainsbury in meetings which were held by officers of the Council with them.
57. The Fairview New Homes (Camberwell) Limited Recommendation Report to the Development Control Committee on 24 October 2001 details the background to the application, the outcome of consultations and planning considerations. The planning consideration section of the Report considers the change in use of the site from employment to residential, the proposed design, standards for the accommodation, access and parking and environmental conditions for occupiers. The Report considers noise from the railway and road and recommends acoustic protection is secured by planning conditions but makes no reference to the impact of noise from the Imperial Gardens nightclub. The Report seeks to rely upon the acoustic reports and information received from the proposed developers produced by their consultants, Enviros, rather than the Council's own surveys and investigations which subsequently is a significant issue in itself as detailed later in these findings.
58. The Recommendation Report to the Development Control Committee makes no mention whatsoever of the adjacent Imperial Gardens nightclub despite its local high profile. The Report recommends that planning permission be granted subject to a legal agreement to be made under the aforementioned section 106 of the Town and Country Planning Act 1990 to secure affordable housing.

59. There are serious concerns regarding the accuracy of some of the statements and the information contained in this report and the manner in which it has been written and presented. The Report refers to three-storey housing in the immediate vicinity of the proposed development site but the nearest residential houses in Medlar Street are only two-storey, with the three-storey housing some considerable further distance away in Camberwell New Road. Photographs taken of the proposed development site do not highlight the existence of the alleyway to which the fire doors from the Imperial Gardens nightclub exit into and appear almost exclusively to show only close up pictures of the north facing elevations. Those which include south facing aspects are from some considerable distance away from the site, not disclosing any evidence of the existence of the Imperial Gardens nightclub.
60. The Fairview New Homes (Camberwell) Limited application was heard by the Council's Development Control Committee on 24 October 2001. Present were Cllr Dermot McInerney (Chair), Cllr Neil Watson, Cllr Tony Ritchie and Cllr Dora Dixon-Fyle. The decision of this Committee to grant planning permission was subject to confirmation by the Government Office for London (which was received on 14 November 2001) and to the conclusion of a Section 106 agreement (which was concluded on 20 February 2002).
61. The two officers who were present at that meeting were Mr Andrew Cook, Development and Control Officer, and Mr Dennett. Both when first interviewed stated that they did not recall anything being directly or indirectly mentioned at any time regarding the existence of the Imperial Gardens nightclub. Mr Dennett has stated that he was "100% certain" that no reference was made, but had there been one then the Fairview New Homes (Camberwell) Limited application would have to have been deferred to allow consultation to take place. Mr Cook concurred with this. However, this evidence is contrary to the hand-written notes taken by the Clerk to the Committee, which in annotated format state that there were two questions from Cllr Ritchie, one of which was in relation to the "issue of nite (sic) Club near site / (would) this not affect affordable hsg".
62. Cllr Dixon-Fyle, also a Ward Councillor, recalls that despite the fact that she had received no formal training to attend Planning Committee Meetings, she was asked at short notice (of no more than 24 hours) to sit as a reserve member of the Development Control Committee on 24 October 2001. Cllr Dixon-Fyle could not remember who had asked her to attend, but does recall that the Chair of the Committee, Cllr McInerney, advised her that the call to her was made by Cllr Tony Ritchie. Cllr Dixon-Fyle has stated that she understood that without her presence the meeting would have been inquorate and it would otherwise have had to be cancelled.
63. Cllr Dixon-Fyle also recalls that the voting in favour of the Fairview New Homes (Camberwell) Limited application was 3 votes in favour and 1 abstention by Cllr Tony Ritchie. Cllr Dixon-Fyle recalls that Cllr Ritchie subsequently stated to her that the reason he had decided to abstain from the vote was because he was a Councillor in the same Ward as the application being made. A member should abstain from voting where they have spoken in favour of any application or where they have declared an interest in it. The reason given by Cllr Ritchie would not be an essential reason for abstaining and had it been justifiable then Cllr Dixon-Fyle should also then have been advised to abstain as she was a Councillor in the same Ward.

64. Cllr Ritchie when interviewed stated that he abstained when the vote was taken on the grounds that he was not satisfied with the traffic arrangements in respect of Medlar Street, but his objection was not sufficiently strong enough to warrant him voting against the application. Had the application been refused or deferred to resolve any problems regarding the impact of traffic, then the potential effect may have been to bring it into the public domain, with the result that further publicity would possibly highlight the fact that there had indeed been a lack of full consultation particularly with the Imperial Gardens nightclub.
65. Cllr McInerney recalls that at the date of the meeting he personally did not have any detailed knowledge of the Fairview New Homes (Camberwell) Limited site or the existence of the Imperial Gardens nightclub. His recollection of the meeting was that nothing specific was mentioned about any failure to consult the Imperial Gardens nightclub, but his view was that had this been raised, the application would have had to be deferred. However, Cllr McInerney did recall that Cllr Ritchie asked some specific questions of the officers present (Mr Dennett and Mr Cook) regarding the impact of the close proximity of the Imperial Gardens nightclub and replies were received which appeared to satisfy Cllr Ritchie. Cllr McInerney also recalls that Cllr Ritchie abstained from the vote to grant planning permission.
66. Cllr Dixon-Fyle cannot recall the existence of the Imperial Gardens nightclub being raised at the meeting although she does remember that the issue of the affordable housing component on the Fairview New Homes (Camberwell) Limited site was mentioned. Cllr David Bradbury was also present at the meeting. He could not recall the existence of the Imperial Gardens nightclub being mentioned and he has stated that there was no representation from the nightclub, but in his view he would be very surprised if members were not aware of the existence of the nightclub and particularly Cllr Dixon-Fyle and Cllr Ritchie as the nightclub was such a "high profile" venue in their Ward.
67. Cllr Ritchie has stated that he took the decision to sit on the Development Control Committee hearing the Fairview New Homes (Camberwell) Limited application "to see this one through" as he wished to get more involved in matters which affected St. Giles Ward. Cllr Ritchie also recalled that he specifically raised the existence of the Imperial Gardens nightclub and queried with the officers present (Mr Dennett and Mr Cook) whether it would affect the planning application being considered. Cllr Ritchie recalls that he received a reply from the officers that they were aware that there were windows overlooking the alleyway into which the Imperial Gardens nightclub had doorways, but the design was such that this would have no negative impact. However, at no time even at this stage did the officers advise the Committee that the Imperial Gardens nightclub had not been consulted in regard to the application. In an interview given by Cllr Ritchie with the Local Government Ombudsman prior to the date of our interview with him, Cllr Ritchie is recorded in the Ombudsman's Statement of Facts as advising that he did not recall "any mention of the nightclub during the Committee meeting". However, when subsequently provided with documentary evidence (copies of the Minutes taken by the Clerk to the meeting), Cllr Ritchie admitted that he did then recollect mentioning concerns regarding the close proximity of the Imperial Gardens nightclub.

68. Some of the officers who have been interviewed have agreed that the decision to place a housing development immediately adjacent to a nightclub is incongruous and that complaints from residents may well lead to the revocation of the Imperial Gardens nightclub's operating license, the grant and renewal of which is a completely separate matter from any planning consent.
69. The initial Enviro noise report commissioned by Fairview New Homes (Camberwell) Limited on which the Council appear to have wholly relied upon made no specific reference to the Imperial Gardens nightclub, but only alludes to the presence of "commercial premises" within the railway arches. However, in the Final Report from Enviro, which is dated February 2003, there is a specific comment that the only dwellings in the proposed new development with potential to be significantly affected "by music noise breakout from the club are those at the southern most corner of the development".
70. The Council commissioned an independent report regarding the impact of noise on the residential development site and on 28 April 2003, Casella Stanger, noise and acoustic consultants, reported in writing to the Council. This report highlights defects in the original Enviro report prepared on behalf of Fairview New Homes (Camberwell) Limited and accepted by the Council and also concludes that "this case would have been a good candidate for a section 106 planning agreement whereby the developer of the housing agreed to an initial single payment to resource and fund the upgrading of the fire exit doors and seals, and the nightclub agreed to keep them in good order thereafter".
71. Because matters relating to noise emission and acoustic levels are technical and possibly beyond the general knowledge of planning and environmental officers, the Council ought to have had the issues more thoroughly and fully investigated by experts in this field and reported back prior to the grant of any planning permission.
72. It is also appropriate and relevant to consider other issues which may have had an impact and affected the processes and decisions relating to the grant of the planning consent to Fairview New Homes (Camberwell) Limited and the full planning permission to Imperial Gardens nightclub.

Other Issues Relevant to the Investigation

73. The Council's UDP of 1995 clearly identifies the area at and around the Imperial Gardens nightclub premises as a potential site for a new railway station for the area of Camberwell. 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.

74. 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 progressed.
75. During 1998 and 2003 significant discussions were taking place between officers of the Council, members and Sainsbury plc regarding a proposed retail and housing development on the site of the former Walworth Bus Garage, immediately adjacent to the Imperial Gardens nightclub. Mr Dennett was involved in the discussions and personally attended meetings with the developers and their agents. Furthermore, copies of Minutes of meetings held with Sainsbury plc that have been obtained state that Mr Dennett supplied copies of the Railway Feasibility Study to representatives for Sainsbury plc.
76. Following interviews which have been held with them, there has been clear evidence from two former employees of advisers acting on behalf of Sainsbury plc that during the course of these discussions and preliminary negotiations, the existence of the Imperial Gardens nightclub was mentioned at meetings attended by Mr Dennett. This evidence contradicts Mr Dennett's own statements that he was unaware of the existence of a nightclub at this location prior to 2002 (when the proprietors of the Imperial Gardens nightclub made their objections known regarding the Fairview New Homes (Camberwell) Limited development) and is a further instance which casts doubt on the credibility of the evidence of Mr Dennett.
77. The initial investigations of the complaints received by the Council from the Imperial Gardens nightclub in March 2002 in respect of the failure to be consulted in respect of the Fairview New Homes (Camberwell) Limited application and also the lengthy delay in the grant of permanent planning permission for the Imperial Gardens nightclub, were passed by the Director of Regeneration, Mr Paul Evans, to the temporary Head of Planning, Mr Chris Berry, to investigate and respond. Mr Berry has advised that in regard to the delay in granting permanent consent to the Imperial Gardens nightclub, the case is unique within the Council and there have been no other instances of this level of delay in the processing and granting of a planning permission.
78. Mr Berry has confirmed that prior to his appointment at the Council he has had associations and dealings with the Fairview Group of Companies and knows personally one of their Directors and employees, Mr Chris Walker, who was the land buying Director for the Fairview New Homes (Camberwell) Limited site. When first questioned about these connections by the Complainants, Mr Berry denied they existed but subsequently admitted that he did socialise with Mr Walker. Although Mr Berry was not appointed to his role until after the Fairview New Homes (Camberwell) Limited site application had been determined, in view of these connections, the appropriateness of his acceptance of the remit to review the issues raised by the Imperial Gardens nightclub is questionable.

- 79. There are other unsatisfactory elements regarding the manner in which the Complainants' written complaints were initially handled and subsequently dealt with. The Complainants wrote to the Council in a letter dated 7 March 2002 stating their concerns and setting out the fact that they had failed to be consulted. However, Mr Dennett did not respond to this letter until 3 May 2002 stating the reason for the delay was the absence on leave and then illness of the case officer, Ms D'Alessandro. However, the evidence from the staff records obtained from the Council does not support this contention. Had the Complainants wished to exercise their right to have the decision of the Development Control Committee subjected to a Judicial Review, they would have had to apply for this as soon as possible and in any event, within three months of the decision. By the time Mr Dennett replied, this period had already elapsed.
- 80. The initial objections by officers to the original planning application for the Imperial Gardens nightclub in 1995 were based on amenity issues and particularly the potential objections that residents in the nearby vicinity (the nearest occupied homes in 1995 and 1996 were at least 25 metres away) may make to the use of the Imperial Gardens nightclub. Therefore, there appears to be no credible reason and it is somewhat illogical that the application for the permanent permission which was then made and heard in July 2002 should be forwarded with a Recommendation Report from officers advising the grant of the planning permission should be forthcoming notwithstanding that permission had by then been granted for the residential development by Fairview New Homes (Camberwell) Limited within 3 metres of the boundary of the Imperial Gardens nightclub.

Status of our Reports to the Council

Our Reports are prepared in the context of the Statement of Responsibilities of Auditors and Audited Bodies issued by the Audit Commission. Reports are prepared by appointed auditors and addressed to members or officers. No responsibility is taken by auditors to any member or officer in their individual capacity, or to any third party.