

Appendix 1 – Rush Common Commission Action Plan response by Planning, Transport & Development, November 2019

	Original Response	Update September 2011	Update January 2017	Update September 2018	Update November 2019	Milestones & target dates	Resource implications	Lead Officer
A	<p>That the council’s legal officers and planning officers be instructed to identify and pursue at the earliest possible opportunity a test case that would provide definitive rather than speculative case-law in relation to the enforcement of the Rush Common Act. Officers to advise on the issuing of conservation area directions on Rush Common as part of their response.</p>							
	<p>A test case has already been identified, a shed on paving slabs described as hardstanding. Only a definitive court decision would address the Commissions views. However in view of the potential costs (£10,000 to £15,000) for the initial high court hearing, Cabinet and Corporate Committee should decide whether to proceed.</p> <p>It was further noted that the potential costs would not include the costs of any adjournments or appeals</p> <p>Article 4 Directions are part of planning legislation and control development that would otherwise not require planning permission. Most of the proposals that the</p>	<p>Cabinet and Corporate Committee agreed a recommendation that the request of a test case should be referred to the Services and Financial Planning process for 2011/12 as the funding necessary to take court action would constitute a growth bid.</p> <p>On review the Director of Governance and Democracy advised that the test case proposed is not considered strong enough to provide a basis for and justify action to be taken to the High Court and a growth bid has not been submitted.</p> <p>Article 4 Direction - no further response required</p>	No change	No change	No change	Not applicable.	Not applicable.	Greg Carson, Governance & Democracy
			No change	No change	No change	Not applicable.		

Commission objected to could not be refused or stopped on planning grounds.								
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B	That clarification be provided as to the reasons why the absence of specific reference to, for example, hardstanding in early guidance appeared to legitimise the use of hardstanding on Rush Common Land despite the original Act specifying that all 'erections above the surface of the earth' were in breach. In addition that members be provided with as clear a definition as possible of what 'erections' are deemed to be enforceable against and when they will need to have been originally built in order to be enforceable.							
	Hardstandings were not included in the previous guidance because previous legal advice did not indicate that hard standings required Rush Common consent. Enforcement action cannot be taken after the expiration of 6 years as set out in the Limitation Act 1980. Further clarification is given in the report paras. 2.12 – 2.15. If agreed to proceed the outcome of the test case should provide a definitive interpretation.	No further action required	No change	No change	No change	Not applicable	Not applicable	Greg Carson, Governance & Democracy

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C	That a Rush Common 'hub' be established on the Council's website providing information on the Common, the Act, a plain English summary of the Act's implications, links to the guidance document and a dedicated e-mail address for residents to either find out more or report suggested breaches of the Act.							
	The appropriate location and form of a dedicated	No further action required.	A number of actions are required in order	Ongoing/September 2018	Ongoing/November 2019	Update Rush Common	Officer time covered under	Robert O'Sullivan

<p>page for Rush Common on the Council's website has been reviewed and a link has been set up on the information section of the Planning page to a Rush Common page containing explanatory text and links to all the relevant documents:</p> <p>Rush Common Policy and Guidance Note; Rush Common leaflet; protocol for Rush Common Maps; Rush Common Act 1806</p> <p>There is already a dedicated email address in the Planning Division. It has not been possible to provide a link from the home page.</p>		<p>to update the Planning website content and make it more legible and fit for purpose. These are detailed in Table 1 of the accompanying report along with a proposed timetable for implementation.</p>			<p>Policy and Guidance Note, FAQ document (to be included within guidance document) and update Rush Common 'Places' page on website – April 2020</p>	<p>Planning budget 2019/20</p>	<p>Head of Development Management</p>
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	Original Response	Update September 2011	Update January 2017	Update September 2018	Update November 2019	Milestones & target dates	Resource implications	Lead Officer
D	<p>That all residents of Rush Common be sent a copy of the current guidance including a brief one-page summary of their responsibilities in relation to both the Rush Common Act and the Rush Common Conservation Area. This summary should highlight the existence of the Rush Common info-‘hub’ outlined in C above.</p>							
	<p>Householders and businesses already received copies of a summary leaflet of the Policy and Guidance Note in March 2008 in addition; ward members and local stakeholders received the Guidance.</p>	<p>Re-distribution of the guidance leaflet would be carried out following the preparation of a Frequently Asked Questions document. This was suggested</p>	<p>Review and update the Rush Common Policy and Guidance Note to reflect changes to planning legislation and the Council’s Statement of Community Involvement, as</p>	<p>Ongoing/September 2018</p>	<p>Ongoing/November 2019</p>	<p>Send copy of current guidance notes and summary leaflet to all residents of Rush Common – April 2020</p>	<p>Cost of re-publishing document also potential rewriting and distribution costs. The costs of printing and</p>	<p>Robert O’Sullivan Head of Development Management</p>

<p>It is considered that the information already distributed provides sufficient guidance - Land charges advise if properties are on Rush Common land when a search is carried out. Land registry will also show land that is on all or part of Rush Common land.</p> <p>A repeat distribution of the leaflet providing a link to the Guidance could take place following the outcome of the high court injunction test case. Further copies of the summary leaflet have been provided to Brixton library and the Town Hall.</p>	<p>by the Josephine Avenue Group (JAG).</p> <p>A draft Frequently Asked Questions (FAQ) document was attached to the September 2011 Corporate Committee report. This had been prepared by officers and agreed by the Council's legal services.</p> <p>It was sent to Josephine Avenue Group (JAG) to ensure that it meets their needs.</p>	<p>well as the adoption of the Local Planning Applications Requirements document.</p> <p>The FAQ document to be reviewed again by the Council's Legal Services. The agreed document to be incorporated into the updated Rush Common Policy and Guidance Note</p>					<p>distribution of these document can be contained within the 2019/20 Planning budget but there is no provision for other matters associated with Rush Common in budgets for subsequent years</p>	
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	Original Response	Update September 2011	Update January 2017	Update September 2018	Update November 2019	Milestones & target dates	Resource implications	Lead Officer
E	That where reports of purported infringements are made to the council (through the 'hub' or by other means) the council undertakes to inform the resident of the action it is taken or the reasons for not taking any further action.							
	<p>Recommendation met.</p> <p>The council notifies complainants of the outcomes of investigations, as per the normal enforcement protocol.</p> <p>Complainants have been and will continue to be updated prior to a final</p>	<p>No further action required</p>	<p>No further action required</p>	<p>No further action required.</p>	<p>No further action required.</p>	<p>Dependant on when cases occur</p>	<p>At present can be contained within existing resources</p>	<p>Paul Wilford, Planning Enforcement</p>

outcome, but this is only done on request due to workload.								
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	Original Response	Update September 2011	Update January 2017	Update September 2018	Update November 2019	Milestones & target dates	Resource implications	Lead Officer
F	That planning officers maintain an up-to-date monitor of all current and potential breaches and the action being taken or reasons for not taking any action							
	<p>Recommendation met.</p> <p>The Planning Division's Enforcement Team record alleged breaches of planning control on their existing database and this includes complaints relating to breaches of the Act.</p> <p>As with a 'normal' enforcement investigation the case is acknowledged and complainant can then liaise with the investigating officer for updates etc.</p>	Being implemented no further action required.	Being implemented no further action required.	Being implemented no further action required.	Being implemented no further action required.	Dependant on when cases occur	At present can be contained within existing resources	Paul Wilford, Planning Enforcement

	Original Response	Update September 2011	Update January 2017	Update September 2018	Update November 2019	Milestones & target dates	Resource implications	Lead Officer
G	That the list of potential breaches of the Act presented to the commission be updated appropriately by officers using the submission made by the Josephine Avenue Group							
	Potential breaches were investigated with a 'walkabout' held with former Councillor Smith and officers prior to the setting up of the Commission and formed part of the original submission.	No new alleged breaches have been reported since the last update.	Any new alleged breaches are added to the enforcement database.	No further action required.	No further action required.	Dependant on when cases occur	At present can be contained within existing resources	Paul Wilford, Planning Enforcement

<p>The submission has been reviewed however the JAG submission only covers part of Rush Common.</p> <p>Where action against particular alleged breaches could be considered they have been earmarked for inclusion depending on the outcome of the test case.</p> <p>The JAG submission has been used to update the list of potential cases.</p> <p>The list of potential breaches will also be recorded in a summary spreadsheet.</p>								
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	Original Response	Update September 2011	Update January 2017	Update September 2018	Update November 2019	Milestones & target dates	Resource implications	Lead Officer
H	Planning officers to present to Corporate Committee an annual report on breaches or potential breaches of the Rush Common Act, the action or otherwise being taken by the council, and to include the identification of hot-spots or patterns of breaches.							
	The recommendation would need to be agreed by Corporate Committee but an annual report can be prepared and submitted.	An annual report was prepared and reported to Corporate Committee in Sept 2011.	An update report covering the period 2011-2017 was attached to the report presented to Corporate Committee in January 2017. The Head of Development Management (East) has taken	An update report covering the period 2017-2018 was attached to the report presented to Corporate Committee in September 2018.	The lead planning officer, has prepared a report outlining potential breaches of the Rush Common Act 1806 lodged/left unresolved since the last annual report to Corporate Committee in September 2018 (Appendix 2). The report was prepared with the assistance of	Ongoing as and when cases arise.	Additional staff time.	Robert O'Sullivan Head of Development Management Paul Wilford Planning Enforcement

			responsibility for the preparation and reporting of this annual report in consultation with Planning Enforcement colleagues. It is proposed to be present this annual report to the first Corporate Committee in the calendar year.		Planning Enforcement Colleagues, and relates to enforcement investigations during the 2018/2019 period. This report is to be updated and presented to Corporate Committee on an annual basis.			
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	Original Response	Update September 2011	Update January 2017	Update September 2018	Update November 2019	Milestones & target dates	Resource implications	Lead Officer
I	That where Rush Common consent is requested or the council takes enforcement action in relation to the Rush Common Act the relevant ward members be notified.							
	The Protocol for Rush Common Applications and Enforcement requires all ward members to be consulted and lists the other local groups and associations that should be consulted for applications for Rush Common consent. It is agreed that ward members will be notified of enforcement action in respect of Rush Common.	Ongoing	Ongoing It is accepted that consultation has not always been carried out in line with the agreed protocol. In order to address these consultation failings, it is proposed to carry out a number of actions to ensure that all officers in the Planning Service are fully appraised of the Rush Common Act and the adopted protocols for Rush	Complete	No change	Notification is ongoing as and when cases arise. Staff training to be carried out in April 2020 and on an ongoing basis thereafter.	Additional staff time.	Robert O'Sullivan Head of Development Management Paul Wilford Planning Enforcement

			Common applications					
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	Original Response	Update September 2011	Update January 2017	Update September 2018	Update November 2019	Milestones & target dates	Resource implications	Lead Officer
J	That officers further investigate, including the receipt of independent legal advice, the powers available to the council to enable the removal of and prevent the replacement of dilapidated structures in breach of the Rush Common Act under current guidance.							
	Legal advice already given is clear on the period of time in which enforcement action can be taken. With regard to the replacement of structures that have been in place for more than 6 years and could not be enforced against, legal services have advised, following advice from Counsel that it would be difficult to refuse consent for the replacement of structures that have been in existence for more than 6 years and could breach the owner's human rights	No further action proposed	No change	No change	No change	Not applicable	Not applicable	Not applicable

	Original Response	Update September 2011	Update January 2017	Update September 2018	Update November 2019	Milestones & target dates	Resource implications	Lead Officer
K	That a full costed appraisal of the full range of options available to the council to encourage (or force if necessary) residents of Rush Common to maintain their properties and land, along with an action plan, be presented to the appropriate scrutiny (sub-) committee and then to the relevant decision-maker by no later than September 2010.							

	This will require legal advice on what ways this could be pursued – there are no existing provisions in the Rush Common Act for this and therefore it is not within the remit of the Planning Service. Any action stemming from this recommendation should precede recommendation N to ensure abortive work does not take place with financial consequences.	Scope for further action to be defined by a conditions survey to be carried out by residents and local groups and organisations.	No further action required	No change	No change	Not applicable	Not applicable	Not applicable
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	Original Response	Update September 2011	Update January 2017	Update September 2018	Update November 2019	Milestones & target dates	Resource implications	Lead Officer
L	That officers enter into formal dialogue with London and Quadrant Housing Association, as well as any other identified Landlord with 5 or more properties within the Common, with a view to making-good current infringements and preventing future infringements of the Rush Common Act, reminding them of their responsibilities as Landlords in relation to the Act, proposing joint working to resolve existing infringements and, if appropriate, reminding them of the council's powers to take action in relation to breaches.							
	In respect of London and Quadrant owned properties they have been asked what properties they own on Rush Common and the Policy and Guidance Note has been resent out. Information has been received from the Josephine Avenue Group on ownership. Capita has provided some information on ownership however the Council Tax database	Information has been obtained from L and Q as to their property ownership on Rush Common land. A meeting is to be set up with L and Q to discuss Rush Common issues in September.	A meeting was held between officers and L&Q on 20 th October 2011. In a written correspondence dated 8 th November 2011, L&Q committed to working alongside the borough and local residents in helping deliver the outcomes within the action plan, including engagement with local groups.	No further action required.	No further action required.	Ongoing as and when cases arise.	Additional staff time.	Paul Wilford Planning Enforcement

	<p>does not contain the owner details for all properties. Where multiple owners are identified similar action will be undertaken as above.</p> <p>Land registry services currently cost £8 (copy of the register and title plan) per search, providing that there is only one title on each property. Where a property has been divided into flats each leasehold interest would need to be searched</p>		<p>Contact details have been provided and officers will liaise with L&Q if any potential infringements are reported to the Planning Enforcement team.</p>					
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	Original Response	Update September 2011	Update January 2017	Update September 2018	Update November 2019	Milestones & target dates	Resource implications	Lead Officer
M	That a design guide be produced, issued to residents and published on the council's website, providing advice on the works that would be considered acceptable and those which would not be under the Rush Common Act.							
	<p>Advice is already provided in the form of the Rush Common Policy and Guidance Note, a summary leaflet which lists the types of works that will require consent and Protocol for Rush Common Applications and Enforcement.</p> <p>It is considered that these documents together with officer</p>	<p>It was decided that it would be more appropriate to prepare a FAQs document with the most common questions relating to development on Rush Common land.</p> <p>JAG were asked for further guidance on relevant questions that could be used. Officers</p>	<p>Officers proposed to review and update the Rush Common Policy and Guidance Note to reflect changes to planning legislation and the Council's Statement of Community Involvement, as well as the adoption of the Local Planning Applications Requirements document.</p> <p>FAQ document to</p>	<p>Ongoing/September 2018</p>	<p>Ongoing/November 2019</p>	<p>Review and update of Rush Common Policy and Guidance Note (incorporating FAQ section) by April 2020.</p>	<p>Cost of re-publishing document also potential rewriting and distribution costs.</p> <p>The costs of printing and distribution of these document can be contained within the 2019/20 Planning budget but there is no provision for other matters</p>	<p>Robert O'Sullivan Head of Development Management</p>

advice provide sufficient guidance to residents. Clarification was sought by officers about what should precisely be illustrated and what would be considered as good examples. However, this has not been received	subsequently prepared an FAQ document with advice from legal services. It was suggested that this could be added to the Rush Common page of the Lambeth website.	be incorporated into the updated Rush Common Policy and Guidance Note					associated with Rush Common in budgets for subsequent years	
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	Original Response	Update September 2011	Update January 2017	Update September 2018	Update November 2019	Milestones & target dates	Resource implications	Lead Officer
N	That a full dated conditions survey of Rush Common land be undertaken and the Environment and Community Safety Scrutiny Sub-Committee be consulted on the terms of reference and timetable for the conduct of the survey.							
	<p>Subject to Cabinet and Corporate Committee approval this matter could be taken to the scrutiny sub-committee but this should only take place if there was clarification about the definition of the measures for assessment, who would have the responsibility for commissioning/carrying out the survey and how this would be financed.</p> <p>Adult and Community Services (Parks) have been consulted as that department has responsibility for the maintenance and upkeep of public open</p>	<p>A draft condition survey has been prepared in consultation with JAG and Parks and was attached as Appendix 2 to the September 2011 Corporate Committee report.</p> <p>The final form was agreed by the ECSS subcommittee.</p>	<p>It is officer recommendation that this action is no longer pursued in view of the Council's financial circumstances and priorities.</p> <p>It is proposed that an annual photographic survey be undertaken of all Rush Common to provide an evidential basis for investigation of potential future infringements of the Rush Common Act 1806. It is important to stress that this would be a monitoring exercise only and would not be an exercise to identify potential infringements.</p>	<p>A Photographic survey of properties within Rush Common was undertaken in July/August 2018, and was scheduled to be complied in to a document following the Corporate Committee meeting in September 2018. A completed survey cannot be located.</p>	<p>A photographic survey of properties within Rush Common was undertaken in October 2019. Results of this photographic survey are provided within Appendix 3.</p>	<p>Photographic survey completed for 2019. A new survey is to be undertake thereafter on an annual basis.</p>	<p>Additional staff time.</p>	<p>Paul Wilford Planning Enforcement</p>

	space in the borough and most of Rush Common land is owned by the Council.		Officers would continue to respond to any potential infringements that are notified to them by local residents, amenity and residents groups and other interested stakeholders.					
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