



Rush Common Commission

March 2010

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Chair's Foreword and Summary:

Rush Common (henceforth 'the Common') is a much valued and historic area of land whose open spaces and character provides a valuable amenity for Brixton Town Centre and the area to the south of it.

During discussions on enforcement of the Act, it became clear that the Planning and then Legal departments had responsibility for enforcing the Act and that there were several ambiguities around the current and previous guidance, as well as several legal issues, that made enforcing the Act problematic.

We were informed that because some of the Rush Common land is in private ownership, the Council has to use the powers granted to it under legislation to be able to have some control over the use of the Common.

The Commission therefore focussed on clarifying the legal position. Much of our discussions focussed on how the issuing of a Policy and Guidance Note in 2007 affected the action the Council could take. The Note provided a new guidance based on Counsels advice of the Rush Common Act. This provided a new definition of what constituted a breach of the Act. The Commission were informed that the Council was not able to take retrospective action on breaches that had occurred beyond the 6 years by reason of the Limitations Act 1980 or the publication of the 2007 guidance note.

The council's hands, we were told, are effectively tied. However the commission do not accept this position and do not consider it to be adequate, not least because it has not been explored in the courts. As a result a number of our recommendations call for a re-assessment of the council's legal position including the construction of a test case.

It also became apparent to us that it was important for the council to communicate the meaning of the Rush Common Act to residents and Landlords and ensure appropriate evidence gathering took place in order to ascertain the full extent of breaches. This would help the council establish and communicate what, if any, action could be taken. We accordingly make a number of other recommendations that, if enacted, will see the council communicate better with residents and landlords and work with them to correct previous breaches and establish preventative measures.

Acknowledgments

Members of the commission would like to thank the many residents who contributed evidence, their views and suggestions to the commission during its public meeting and in written submissions.

The commission would also like to thank officers from the planning and legal teams for their provision of advice and information to the commission.

Finally the commission would like to thank Joanne Tutt and Tom Barrett from the Scrutiny Team for their support in the course of the commission's work.

Scope and terms of reference

The scope of the commission was to examine the issue of the erosion of Rush Common land and establish how the council could ensure that the Rush Common Act was enforced, who was responsible for enforcing the Act and how the council could restore and prevent further erosion of the land.

The commission set the following terms of reference:

- To review and advise on the enforcement of Rush Common requirements.
- To establish if the list of enforcement cases is complete and prioritise the necessary action.
- To make recommendations to Environment & Community Safety Scrutiny Sub-Committee
- To limit this enquiry to two sessions.

Reason for investigation

1. A summary leaflet (see Appendix A) detailing the policy and controls over Rush Common was distributed to all affected households and businesses in March 2008. However, concerns had been expressed to members that despite the issuing of the guidance note, action did not appear to be being taken where encroachments were occurring. Instances were occurring of land being concreted over and segregated either by private developers or home owners.
2. The issue of infringements occurring on the common was raised between residents and local ward members at Brixton Area Committee in March 2007¹, where it was agreed that action was needed to back up the welcomed development of the guidance note. The issue was taken forward at the

¹ See <http://www.lambeth.gov.uk/moderngov/ieListDocuments.aspx?CId=119&MIId=348&Ver=4> (accessed 12 November 2009)

Environment and Community Safety Scrutiny Committee (ECS)². At the committee, a ward member noted that the council should be fighting the loss of residential amenity. A proposal was made that a working group be established involving ward councillors, ECS members and appropriate officers from relevant departments. This was referred to Cabinet on 8 September 2008³, which suggested that a scrutiny commission would be an appropriate way forward.

Methodology

3. Members were keen to ensure the commission was outcomes focussed. Appropriate information gathering and open discussions with officers were therefore an important part of the process.
4. Equally as important was ensuring the involvement of residents and encouraging them to provide information to the commission. Commission members recognised that local residents are an under used resource in terms of accessing information about an area.
5. The commission received reports from both officers and residents relating to infringements occurring on the Common. They were also provided with legal advice and documentation relating to the legislation governing the administration of the Act and its history. Some of this information cannot be contained in this commission report due to the Data Protection Act. However, members were provided with a large amount of detail, including photographic evidence, of where alleged encroachments had occurred.
6. Members held a public meeting in order to provide residents with an opportunity to express their concerns. At the meeting, council officers from Legal Services, Planning and Parks were in attendance to provide advice and information to members and residents. Commission members also met separately with officers to discuss technical issues relating to the enforcement of the Act.
7. It was clear from the public engagement with the commission that residents value Rush Common and are very concerned that it is maintained as an open area of land. The commission has tried to ensure its recommendations will enable the council to prevent the open nature of the land being further diminished.
8. On completion of the commission's work, the constitution requires departmental officers to draw up an action plan in response to the report's recommendations and report to Cabinet. This will be monitored at regular intervals by the Environment and Community Safety Scrutiny Sub-Committee.

² See <http://www.lambeth.gov.uk/moderngov/ieListDocuments.aspx?CIId=111&MID=6216#AI5252> (accessed 12 November 2009)

³ See <http://www.lambeth.gov.uk/moderngov/ieListDocuments.aspx?CIId=225&MID=6233#AI6080> (accessed 12 November 2009)

Background and legislative framework

9. Rush Common land is a unique area, a linear, green, largely open space with some commercial and residential properties, most of which is located to the south of Brixton Town Centre. It provides an important amenity space and green corridor. Most of the Rush Common Land is within conservation areas. Coldharbour, Herne Hill, Tulse Hill and Brixton Hill wards all contain some Rush Common land. The Council's aim is to ensure that the open character of Rush Common is maintained and enhanced.
10. The Rush Common Act 1806 was an Enclosure Act, which enclosed and divided certain common lands into private ownership to allow for their better use. Section 17 of the Act prevented building on the proscribed land stating that consent was required for "erections above the surface of the earth". This was prior to the existence of planning permission as we know it. S.17 applies even if planning permission would not be required.
11. Subsequent legislation amended the Act, providing powers to take enforcement action. In 1947 the London County Council (General Powers) Act gave the LCC powers to take enforcement action or consent to buildings on land south of Coldharbour Lane.
12. The powers of applying legislation passed to Lambeth Council, in 1988, under the Local Government Reorganisation (Miscellaneous Provisions) Order.
13. In September 2007 the Corporate Committee approved a document – Rush Common Policy and Guidance Note (henceforth the 2007 Guidance Note). The Note sets out the Council's policy and controls that apply to Rush Common Land.
14. The commission were informed that building works or new structures above the surface of the earth require Rush Common consent (this is in addition, and separate to normal planning controls). It was explained that this meant that works requiring Rush Common consent included: new buildings, extensions, walls, railings, lighting columns, paving, and hardstandings for car parking and other purposes⁴. The commission were informed that all applications are tested against the purpose of the Act, which is to maintain the open character of Rush Common land.
15. The commission were informed that where there is a breach of the Act, in a case where consent would not be granted, the Council can apply to the High Court for an injunction requiring the removal of the structure. However the commission were informed that there are two limitations on the ability to take legal action. Firstly, that where a breach took place 6 or more years ago it would be too late to take enforcement action due to the Limitations Act 1980. Secondly, that it would not be possible to bring legal action against breaches which took place before the recent guidance and which would not have been considered a breach under the old guidance. In addition to this the commission were informed that where the Council is the landowner it cannot bring a legal action against itself.

⁴ This is not a comprehensive list and advice should always be sought prior to commencing works

Findings

Enforcement

16. The commission initially met with officers from relevant departments to ascertain how improvements could be made in enforcing the Rush Common Act. Officers provided members with a report that had been compiled during a site visit, with members, to the Common. The report contained a list of infringements with commentary from officers.
17. The commission asked officers to confirm which department held responsibility for enforcement of the Rush Common Act. Officers explained that the initial responsibility lay with the planning department, who undertake an investigation and then pass to the Legal Services department for advice. A decision to seek an injunction would be made on legal advice with the prosecution being carried out by Legal Services.
18. The commission were informed that the reasons for action not being taken varied. In some cases, there was a conflict with other legislation, such as the Human Rights Act (in relation to the protection of property⁵) and Section 17 of the Crime and Disorder Act (which places a duty on the council to do all it can to reasonably prevent crime and disorder in its area). In other cases the commission were informed infringements had been committed before the Policy and Guidance Note had been issued. The commission were particularly keen to pursue this latter point and requested clarification on whether the Policy and Guidance note set out existing or new policy and why, despite the Act being clear that it referred to “erections above the surface of the earth”, it appeared that guidance was deferred to instead of the Act.
19. Officers explained that the Note provided a new interpretation of the Act, and had been produced following the receipt of independent advice from Counsel. The Note specified that ‘erections above the surface of the earth’ required consent. Any erections above the surface of the earth that have an effect on the open character of the common are prohibited. The commission were informed that this new definition meant that hardstandings were now clarified as a breach of the Act. Prior to the issuing of the Note, there had not been anything specifically stating that hardstandings were not allowed. The commission were informed that it was not possible to prosecute retrospectively for a breach where a legitimate expectation had previously been given that this was allowed, even if the subsequent guidance stated that it was not.
20. The commission do not accept nor understand why when the Act clearly refers to erections above the surface of the earth that subsequent guidance, or the silence of previous guidance, is deferred to in cases where there has

⁵ Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

been a clear breach of the Act. Furthermore the commission did not understand why, given the designation of Rush Common as a Conservation Area in August 1997⁶ the council was not exploring alternative legal routes such as the removal of permitted development rights through the issuing of conservation area directions.

21. The commission was also concerned that officers' advice raised issues around consistency and in particular that the interpretation appears to make previous breaches acceptable. Officers explained that court cases were needed to define legislation and there had been difficulty in finding judgements on which to define the Rush Common Act.
22. In response to the commission's questions officers advised that a test case would enable an interpretation to be used to take enforcement forward, but appropriate evidence such as dated images or a witness statement from a resident, would be needed in order to do so. Officers also advised that other difficulties could present including conflicts with the Human Rights Act, the 6 year statute of limitations ruling and the fact that many of the properties would have been sold on. In addition, any decision to enforce would be subject to judicial review.
23. Issues relating to the statute of limitations were raised with officers at the public meeting held by the commission and residents' frustration over the encroachment that was occurring on the land was expressed at this and through written submissions to the commission. The commission were informed that although the Act permitted the demolition of infringements there was a difficulty in knowing when structures were erected vis-à-vis the statute of limitations and other potential legal barriers.
24. The commission were exceedingly disappointed with and failed to understand the council's apparent unwillingness to pursue a test case and therefore draw a definitive line in the sand with regard to enforcement of the Act. This was despite the commission being provided with, and what appeared to meet the council's definition of, appropriate evidence by residents.

Recommendation

- A: 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.
- 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

⁶ See <http://www.lambeth.gov.uk/Services/HousingPlanning/Planning/BrixtonHillAndRushCommonConservationArea.htm> (accessed 12 November 2009)

deemed to be enforceable against and when they will need to have been originally built in order to be enforced against.

Engagement with residents

25. Consideration of the legal framework led to discussions relating to the collation of evidence of infringements. There was little historical information. Prior to Lambeth Council taking responsibility for applying the Act in 1988, residents had to apply to the Greater London Council to undertake work. The commission were informed that the council does not have access to any of the old GLC records and that there are few council records available, partly because there have not been many applications and partly because most public records are only held for six years. It was noted that Brixton Library and the Minet Library have archives of information about the Common. Officers also invited members of the public to submit evidence to them relating to infringements.
26. Residents were keen to engage with officers in the submission of evidence. Among submissions received from the public by the commission was a particularly comprehensive appraisal of encroachments from the Josephine Avenue Group. During the commission's public meeting it also became clear that improved communications by the council with residents on Rush Common issues would be welcomed. Residents at the commission's public meeting were in favour of the council taking pro-active measures such as engaging in dialogue with residents in breach of the Act. Another suggestion was that the council could undertake annual information mail shots to households reminding them of what was and was not permissible on the land.
27. The commission noted that residents were in a position to alert officers to possible infringements, which could then be investigated. In particular, and with reference to the statute of limitations, evidence of how long structures had been in place could also sometimes be provided by local residents. Several residents groups, such as the Josephine Avenue Group, were active in the collation of information on infringements and the history of the area.
28. Given the high levels of resident concern at breaches of the Act, their willingness to provide information where infringements are occurring and the council's need to receive witness statements to consider enforcement action the commission considered it desirable that a dedicated Rush Common section be developed on the council's website. Such a section should provide information on the history and nature of Rush Common including what constitutes an infringement of the Act and links to the relevant guidance. It was also suggested that a dedicated e-mail address be set up through which residents could submit evidence of alleged breaches, witness statements and questions in relation to infringements.

Monitoring of infringements

29. Officers presented to the commission a report documenting potential breaches of the Act observed on a previous site visit made by officers and members. The report detailed where actions had been taken and reasons why in some instances, no action had been taken. A list of current cases that were being monitored was also presented by officers. The commission were advised that it would be a breach of the Data Protection Act 1998 to re-produce that information (as well as that supplied by the Josephine Avenue Group) as it would be possible to identify the occupants of houses.
30. However, this information did enable officers to demonstrate to the commission that where they have information on breaches committed, monitoring is taking place. The commission were of the view that where residents informed officers of potential breaches the resident should be informed of the council's response in order to provide re-assurance.
31. Despite the level of monitoring the commission were disappointed at the lack of action that was taken as a result.

Recommendations

- 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.
- D: 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.
- 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.
- 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.
- 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
- 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.

- 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.

Existing structures

32. A further area of concern to the commission was how to exercise 'damage limitation' in respect of previous and possible future infringements. The commission sought advice as to whether structures that fell foul of the current guidance, had been erected prior to it being issued in 2007 but had since deteriorated or become dilapidated, could be prevented from being replaced.
33. Officers advised the commission that council policy had been to treat renewal or repair as a continuation of a current structure, rather than as the erection of a new structure. The reason given for this was that it was preferable to have a smart looking structure than a dilapidated one. Replacement of structures that were in breach of the guidance had therefore been allowed and the commission were informed that there were additional complications associated with the process of disallowing a replacement structure.
34. The commission were particularly frustrated by the advice provided. They felt that it typified the council's lack of imagination and unwillingness to undertake enforcement action in relation to the Act and contributed to the mixed messages being sent to residents with regard to what was and wasn't permitted.

Recommendation

- 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.

Maintenance

35. Residents were keen to draw to the commission members' attention the issue of poor maintenance on parts of Rush Common, and the link to infringements of the Act. They felt this was a particular problem on privately owned areas.
36. The commission was informed that because some of the land on Rush Common was in private ownership, and there was no duty of care on freehold properties, officers could not interfere unless there was a public health risk. The commission was informed that the council could instead undertake measures to encourage residents to maintain the land, for example through information distributed to them.
37. However, the advice received by officers was questioned by the commission following consideration of efforts being undertaken by London Borough of Barking & Dagenham to penalise and take action against residents who kept untidy gardens⁷. Barking & Dagenham were using enforcement powers

⁷ LB Barking & Dagenham Press Release 11631: http://www.barking-dagenham.gov.uk/2-press-release/press-release-menu.cfm?item_code=3508 (accessed 30/10/09)

granted under the Environmental Protection Act 1990, Prevention of Damage by Pests Act 1949, Environment Protection Act 1990, Clean Neighbourhoods and Environment Act 2005 and the Town and Country Planning Act 1990.

38. Another possible solution discussed by the commission was to set up working parties, such as that established on the St Matthews estate whereby the council could provide some sort of backing to help residents self-organise (e.g. the Freshview initiative) to address some of the issues of maintenance. The commission also highlighted the existence of the Ward Purse scheme and questioned whether restorative or community-based restorative work would be considered acceptable under the scheme.
39. The commission were eager to ensure that the council approached the issue in a reasonable and balanced manner using the full range of options from encouragement to enforcement/charging residents for works. It was suggested that a period of amnesty could be offered to residents whereby the council undertook remedial/restorative works for free during a defined period but that afterwards the costs of restorative would be charged to residents/landlords and/or enforcement action taken.

Recommendation

- 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.

Relationship with Landlords

40. The commission learnt from residents that some of the properties that appeared to be in breach of the Act were owned by the London and Quadrant (L&Q) Housing Association. When questioned, officers were not able to inform the commission exactly how many properties on Rush Common were owned by London and Quadrant.
41. The commission learnt that levels of engagement between council officers and L&Q did not appear very high. Residents informed the commission that L&Q had not appeared to be aware of the Act or its implications. Councillor Smith informed the commission that when the council had previously approached L&Q in relation to the maintenance of trees on their land it had been informed that, under their tenancy arrangements, tree maintenance was the responsibility of tenants.
42. The commission did not consider L&Q's expectations of their tenants to be realistic and were eager to see the council open dialogue with the Association to ensure that current infringements were addressed and future infringements avoided. Such dialogue would provide the council with an opportunity to remind L&Q of their responsibilities as landlords with a view to seeking L&Q's co-operation in addressing infringements. Should co-operation not be forthcoming the commission were of the view that the council should explore the legal options available to it (identified as part of recommendation A of this report) as well as consider its future relationship with the Association.

43. The commission were conscious that L&Q were not the only landlord with properties on Rush Common land and accordingly, in making its recommendation, sought to extend the provisions to all medium-to-large landlords with properties on the Common (those with 5 or more units).

Recommendation

- L: That officers enter into formal dialogue with London and Quadrant Housing Association, as well as any other identified Landlord with 5 or more units 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.

Design guide

44. The commission noted during its discussions that some residents may have committed breaches of the Act through a lack of knowledge about what was permitted. Although the commission were of the view that this did not excuse breaches, it was noted that it would be beneficial to provide residents with further information about how Rush Common land should be treated.
45. The commission suggested that the council could provide residents with a 'design guide', which could make suggestions for how residents could lay out their gardens within the restrictions of the law. Such a visual aid should be clearer and more accessible than the written guidance, but should be distributed alongside the written guidance rather than instead of it as well as made available on the Rush Common information 'hub' on the council's website.

Recommendation

- M: That a user-friendly 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.

Conditions survey

46. The commission were of the view that overall the collation of information on the present state of Rush Common appeared inconsistent. The commission felt that if a general conditions survey of the Common was undertaken officers would have a dated and comprehensive survey of the state of the land. This would be useful in terms of future applications under, or notification of breaches of, the Rush Common Act.

Recommendation

- 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.

Conclusion

47. In the course of its investigations the commission discovered what seemed to be a certain element of organisational inertia with regard to the enforcement of the Rush Common Act. Neither the planning nor the legal departments appeared to share members' enthusiasm for pursuing either soft or hard enforcement of the Act – a conclusion that was borne out by the lack of conditions survey, apparently inconsistent monitoring of breaches and lack of enforcement action. The commission felt that this was most likely as a result of the previous advice given by Counsel as well as the historic failures of the council to undertake enforcement action or pursue a test case. For this reason a lot of the commission's recommendations relate to the further pursuit and clarification of the council's legal position in relation to enforcement.
48. The commission were also concerned by the mix of messages that residents appeared to receive regarding the Act. Whilst the 2007 guidance and the clarity it provided was welcomed it was felt that this still did not match what residents would see out of their windows, for example in relation to the permitted replacement of structures known to be in breach of the Act. For this reason the majority of the commission's other recommendations refer to steps the council should take to improve its communication of the implications of the Act and the facilitation of contributions from residents on the Act.

List of recommendations

- A: 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.
- 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 enforced against.
- 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.
- D: 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.
- 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.
- 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.
- 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
- 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.
- 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.
- 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.

- 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.
- L: That officers enter into formal dialogue with London and Quadrant Housing Association, as well as any other identified Landlord with 5 or more units 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.
- M: That a user-friendly 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.
- 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.

Background documents

LB Barking & Dagenham, Press Release 11631, URL: http://www.barking-dagenham.gov.uk/2-press-release/press-release-menu.cfm?item_code=3508 [accessed 30th October 2009]

LB Lambeth, Brixton Area Committee agenda and minutes, 28th March 2007, URL: <http://www.lambeth.gov.uk/moderngov/ieListDocuments.aspx?CId=119&MId=348&Ver=4> [accessed 12 November 2009]

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LB Lambeth, *Rush Common and Brixton Hill Conservation Area*, URL: <http://www.lambeth.gov.uk/Services/HousingPlanning/Planning/BrixtonHillAndRushCommonConservationArea.htm> [accessed 12 November 2009]

LB Lambeth, *Rush Common (summary) Policy and Guidance Note*, March 2008.

LB Lambeth, *Rush Common Policy and Guidance Note*, February 2008

Westminster City Council, *London Local Authorities Legislation*, URL: <http://www.westminster.gov.uk/services/councilgovernmentanddemocracy/councils/decisionmaking/legislation/> [27 January 2010]

Rush Common Policy and Guidance Note

Appendix A

- Lambeth Council is committed to preserving and improving Rush Common Land
- In order to support this, the Council has produced a Policy and Guidance Note. This was approved by the Corporate Committee in September 2007
- This will promote the importance and value of this land and provide guidance for works which require Rush Common consent



This leaflet sets out the main areas of guidance to help you understand what it means to be an owner or occupier of a property or land on Rush Common.

Historic background

- The Rush Common Act 1806 prevented building on Rush Common Land.
- The laying out of roads, building of St Matthews Church and various shops and commercial development north of Coldharbour Lane on Rush Common land was allowed by specific legislation.
- The 1947 London County Council (General Powers) Act gave powers to take enforcement action against or to grant consent for buildings or structures on Rush Common Land south of Coldharbour Lane for buildings or erections above the surface of the earth.
- These powers subsequently passed to Lambeth Council.

Lambeth's Policy for Rush Common

- Rush Common land is a much valued unique and historic area of land.
- Its open space and open character provide a valuable amenity for Brixton Town Centre and the area to the south of it.
- The Council is committed to maintaining the open character and nature of Rush Common Land.
- The Council will promote the awareness of the importance and value of Rush Common Land as well as the associated responsibilities for landowners.
- The Council will protect the open character against inappropriate development through the application and enforcement of the Rush Common Acts.
- The Council will seek opportunities to maximise the openness of Rush Common including the creation of Brixton Central Square.
- The Council will promote and encourage proposals to enhance the open character of Rush Common Land as well as to improve the quality of both privately owned land and public open space where the opportunities arise.

Circumstances where Rush Common consent is required

- Building works or new structures above the surface of the earth require Rush Common consent (this is in addition, and separate to normal planning controls).
- In general this means that works requiring Rush Common consent include: new buildings, extensions, walls, railings, lighting columns, paving and hardstandings for car parking and other purposes (this is not a comprehensive list and advice should always be sought prior to commencing works).
- All applications will be tested against the purpose of the Act, which is to maintain the open character of Rush Common land.

Criteria for deciding applications for Rush Common consent

- The Council will resist all development proposals that could have a detrimental effect on the open character of Rush Common including the use of gardens for car parking and in accordance with the policy and guidance on specific issues set out in this document.

Enforcement

- The Council will ensure that the Rush Common Act is enforced and is committed taking enforcement action through legal procedures once the policy is in place.

Summary of main guidance on specific issues

Boundary enclosures

- Any new walls, fences, and other means of enclosure require Rush Common consent.
- Proposals should take the opportunity of opening up of Rush Common, reflect the need to retain its open character, maintain and enhance views.
- In general, solid boundaries should be a maximum of 1 metre high, a higher means of enclosure with railings or combination of brick and railings to a maximum height of 2 metres may be allowed.
- Other means of enclosure may be allowed on areas of Rush Common so long as views and the open character of the Common are not adversely affected.
- Exception may be made for temporary hoardings to enclose building sites although each application would be treated on its merits in respect of impact and proposed duration.

Signs / advert hoardings / lighting columns / street furniture and utility undertakings

- Rush Common consent is required for temporary advert hoardings to enclose building sites.
- Signs, lighting columns street furniture and play equipment fall into the category of “structures above the surface of the earth” and therefore require Rush Common consent.
- Signs and advert hoardings may also require separate consent under the Town and Country Planning (Control of Advertisement) Regulations 2007.
- Utility and other similar infrastructure works which involve erections above the surface of the earth will require Rush Common consent and will be assessed on the basis of the policy in relation to the scale and context of the proposal.
- Reinstatement of temporary works is required within 6 months of completion of the works.

New buildings, extensions or structures

- New buildings, extensions or structures will not be approved although there may be some exceptions where the open character is not compromised.
- Temporary structures in connection with site works such as portakabins and site hoardings will only be allowed for the duration of the works where there is no alternative option. Reinstatement of the land will generally be required within 6 months.
- The redevelopment or rebuilding of buildings at least partly on Rush Common Land will be sympathetically considered as long as the open space and character would not be adversely affected.

Parking areas

- The demolition of boundaries creating vehicle entrances, pavement crossovers / driveways and hard surfaces for the parking of vehicles all involve erections above the surface of the earth and therefore require Rush Common consent.
- The parking of cars in gardens reduces the openness of gardens individually, and cumulatively. This has a harmful effect, contrary to the purpose of the Rush Common Act. Therefore the Council will not grant Rush Common consent for the laying of surfaces for the purposes of providing a parking surface in gardens.

Temporary Works for Events

- Events held on Rush Common having temporary structures or installations will only require Rush Common consent if they are in place for over 28 days.

Trees

- Tree works are not subject to Rush Common consent but are covered by planning controls.



How to obtain further information

Copies of the Guidance Note and a detailed map showing the extent of Rush Common proscribed land, can be seen on the Council's website www.lambeth.gov.uk or at The Tate Library, Brixton or the Town Planning Advice Centre, Phoenix House, 10 Wandsworth Road, Vauxhall, London, SW8 2LL

Contacts

Please address all correspondence to:

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Translations

If you would like this information in large print, Braille, audio tape or another language please contact us on 020 7926 1195

Si desea información en otra idioma rogamos nos llame al 020 7926 1195

Si vous souhaitez ces informations dans une autre langue, veuillez nous contacter au 020 7926 1195

Se desejar esta informação noutro idioma, é favor telefonar para 020 7926 1195

Haddii aad jeceshahay inaad warbixintan ku heshid luqad kale, fadlan la xiriiir 020 7926 1195

Key:
 Greyed area represents the extent of Rush Common, south of Coldharbour Lane where consent is required.