

London Borough of Lambeth – February 2008



RUSH COMMON POLICY AND GUIDANCE NOTE

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Rush Common Policy and Guidance Note – September 2007

Policy and Objectives for Rush Common Land

- 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.

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.

Purpose and Role of the Policy and Guidance Note

1. This guidance note provides advice to enable property owners, business and others including the Council and statutory undertakers to understand the controls and how they can ensure that the open character of this unique area of land is maintained for the future. The policy and guidance note applies to Rush Common Land to the south of Coldharbour Lane only, as this is the part of Rush Common Land that is subject to Rush Common consent.
2. Over the years a number of issues and concerns have been raised and in particular what restrictions or works can be carried out on Rush Common Land in respect of Rush Common Legislation. The following sets out the restrictions on works on Rush Common Land, advice on complying with this and other relevant legislation and enforcement procedures.

Introduction and Historic Background

3. 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.
4. 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 and Section 17 of the Act prevented building on the proscribed land. Subsequent legislation amended the Act, providing powers to take enforcement action. The relevant legislation is:
 - Rush Common Act 1821 (1-2 Geo. IV) amended the 1806 Act to facilitate the erection of St Matthews Church
 - London County Council (General Powers) Act 1947. This Act gave the LCC powers to take enforcement action or consent to buildings on land south of Coldharbour Lane.
 - Local Government Act 1985
 - Local Government Reorganisation (Miscellaneous Provisions) Order 1988 Statutory Instrument 1988 No. 1955

The powers of applying this legislation passed to Lambeth Council in 1988. The map showing the extent of Rush Common is based on previous maps from the LCC.

5. There are buildings or parts of buildings on parts of Rush Common Land, which were constructed before planning controls, were introduced. A large proportion of Rush Common Land is in Council ownership and used as public open space or housing land as part of residents amenity space. The remainder is in numerous private ownerships and made up of residential and commercial properties with distinctive deep frontages.
6. Rush Common is not registered under the Commons Registration Act 1965. There is no right of access onto the land that is in private ownership, however, a large proportion of the land is owned by the Council and is used as Public Open Space. The rest is used as private residential amenity space or forecourts for commercial use.

7. In 1997 the Rush Common and Brixton Hill Conservation Area was designated which incorporated the majority of land designated as Rush Common Land. Part of Effra Road was already within the Brixton Water Lane Conservation Area and the northern part of Rush Common was already within the Brixton Conservation Area. However, not all Rush Common Land is within a conservation area and this includes parts of Effra Road, Brixton Water Lane, Tulse Hill and Brixton Hill.

Controls

8. In addition to the ordinary planning controls over development, this land is also subject to the Rush Common Act 1806. The purpose of Section 17 of this Act is to maintain the open character of Rush Common land by preventing building on Rush Common land. The LCC (General Powers) Act 1947 that gave the Council the powers to take enforcement action in its own right and to agree to permit buildings or structures on any part of Rush Common Land dependant on the nature of the application and the terms and conditions imposed. Therefore any “erections or buildings above the surface of the earth” will require consent from Lambeth Council even if planning permission is not required.
9. Examples of works requiring Rush Common consent may include extensions, freestanding buildings, new building, replacement buildings, garages, temporary structures, play equipment, garages, fencing, walls, railings, garden structures (such as pergolas and dustbin stores), hardstandings / paving and lighting columns.
10. This means that works that would not normally require planning permission or would be permitted development under the Town and Country Planning (General Permitted Development) Order 1995 may still require Rush Common Consent as would the majority of works which do require planning permission. Other works, which may not require Rush Common Consent may, however, require permission under other legislation because of the Conservation Area status of most of the Rush Common Land, or for other reasons, for example works to trees, or alterations or extensions above ground level to existing buildings. Proposals for change of use would need planning permission but will not require Rush Common Consent if there are no building operations involving erections above the surface of the earth.

11. There is a presumption in the Rush Common Acts against building on Rush Common Land. However, under the LCC (General Powers) 1947 the Council has the power to grant consent for requests for “buildings or erections above the surface of the earth” if it does not affect the open character of Rush Common. In addition to the need to seek consent under the Rush Common Act legislation it is necessary to determine whether there is a need to apply for planning permission or conservation area consent.
12. Because of the complexities of legislation that applies to Rush Common Land, advice should be sought from the Planning Service **before** any works are undertaken.
13. For works on both private and Council owned land that only require Rush Common consent, consideration should be given to the enhancement of the conservation area. The Councils Conservation and Urban Design Team should be consulted at the same time as seeking planning advice.

The Council has Bylaws that cover areas of Rush Common land that are Public Open Space and the Directorate of Environment Culture and Community Safety, Parks should be contacted if any works are proposed.

Procedure for applying for Rush Common Consent and Planning Permission

14. Where proposals involving building work are proposed that require planning permission, approval under the Rush Common Act legislation will also be required if they include “buildings or erections above the surface of the earth”. Where Rush Common Consent and planning permission is required applicants are advised to obtain Rush Common Consent before an application for planning permission is submitted.
15. Rush Common applications are decided by the Council’s Corporate Committee, and it generally meets every 2 months. Currently only applications recommended for approval go to committee – officers have delegated powers to refuse applications. If the application is approved conditions may be attached. These would normally be agreed with the applicant prior to the recommendation and decision being made. There is no right of appeal against the Council’s decision under Rush Common Consent. However, an aggrieved party can challenge it in the High Court as unreasonable by way of judicial review. The Court would not however, take over the Council’s decision making power.
16. Rush Common applications should be submitted by letter together with 6 copies of relevant plans and drawings. There is no fee.

17. Planning applications should be made in the normal way. Detailed advice and forms can be found online on the planning pages of the Council's web site or obtained from the Town Planning Advice Centre, Phoenix House, 10 Wandsworth Road, London, SW8 2LL. Planning applications are considered and decided in relation to the policies in the Lambeth Unitary Development Plan.

Proposals may be acceptable in planning terms and receive planning permission but applications for Rush Common consent can be refused consent on Rush Common grounds.

General Approach for applications for Rush Common consent

18. There is a presumption against buildings or erections above the surface on Rush Common Land. When considering applications for Rush Common Consent proposals will be tested against the purpose of the Act, which is to maintain its open character.
19. When assessing an application under the Rush Common Acts, only the effect on this open character can be taken into account. 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.

Policy and Guidance on Specific Issues

New Buildings, Extensions or Structures

20. When considering applications for Rush Common Consent proposals will be tested against the purpose of the Act, which is to keep its open character. Generally the Council will prohibit new buildings, extensions or structures although there maybe 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 a period of 6 months of the completion.
21. There are a considerable number of buildings at least partly on Rush Common Land and redevelopment will be sympathetically considered on Rush Common grounds, as long as the open space and character would not be adversely affected.

Boundary Enclosures

- 22.** The provision of all new boundary enclosures (such as walls, fences, and other means of enclosure) requires Rush Common Consent. Proposals should take the opportunity of opening up of Rush Common, reflect the need to retain the 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 it would not affect views and open character of the Common.
- 23.** There may be an exception for temporary hoardings to enclose building sites although each application would be treated on its merit. Conditions may be attached to temporary structures.

Parking Areas

- 24.** Over a number of years, many of the frontages of residential properties have been landscaped and parking areas for residents incorporated into an overall scheme. There is pressure for off-street parking for both commercial and residential properties as there is limited parking in the area. Works for the purpose of providing parking space in gardens, where they require Rush Common Consent will not be given Rush Common consent. This includes the demolition of boundaries creating vehicle entrances, pavement crossovers / driveways and hard surfaces for the parking of vehicles. These all involve erections above the surface of the earth and therefore require Rush Common consent.
- 25.** The Council considers that such proposals have an unacceptable affect on the character and open nature of Rush Common Land where it is in residential garden use. The parking of cars in gardens reduces the openness of gardens individually, and cumulatively this would have a harmful effect, contrary to the purpose of the Rush Common Acts. Parking on land that does not involve any works for this to take place is discouraged but would not require Rush Common consent (unprepared land). New parking on commercial land should be set back from Rush Common with appropriate landscaping to the Rush Common.

Trees

26. Trees form an important visual amenity on Rush Common and in some places still define historic boundaries. The Rush Common legislation does not have control over the trees on Rush Common Land. However, works to trees covered by Tree Preservation Orders are subject to approval by the Council. In addition Section 211 of the Town and Country Planning Act 1990 makes special provision for trees that are not covered by a Tree Preservation Order in conservation areas.
27. If you wish to cut down or carry out works to a tree in a conservation area you are required to give the Council 6 weeks prior notice.
28. The Council has 6 weeks to consider whether to agree that the works can go ahead as proposed or in an amended form, or to make a tree preservation order on amenity grounds. Works must be completed within 2 years.
29. To serve notice details of the proposed works and sufficient particulars to identify the tree should be provided. The Council's Arboroculturist can provide advice on works to trees.
30. An exemption applies to trees situated on land that is in the ownership of the Council. Maintenance and works to these trees is carried out by the Council and the serving of a notice is not required. The effect on and the importance trees have on the character and enhancement of Rush Common and the conservation area will need to be considered before any works are carried out.

Signs / Advert Hoardings / Lighting Columns / Street Furniture and Utility Undertakings

31. Consent under the Advertisement Regulations as well as Rush Common Consent would be required for temporary advert hoardings to enclose building sites. Signs, lighting columns street furniture and play equipment fall into the category "erection above the surface of the earth" and therefore will require Rush Common Consent. Advertisement consent may also be required depending on the nature of the sign. It should also be noted that only a single estate agents board or two joined together may be displayed on the premises under the Town and Country Planning (Control of Advertisements) Regulations 1992.

- 32. 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.
- 33. Reinstatement of the land will be required within six months of the completion of the works
- 34. Thames Water has legal exemption from the need to apply for Rush Common consent. However, the Council will seek to establish a protocol to deal with any proposals on Rush Common land.

Temporary Works required for events

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

Enforcement

- 36. The Council is responsible for the enforcement of the Rush Common Act under the London County Council (General Powers) Act 1947. It is important to note that the relevant Acts are distinctly separate from planning legislation and the two should not be confused. Under Planning legislation the Council has a general discretion to take enforcement action where considered expedient, and is the responsibility of the Planning Division. This is not the case for works carried out without Rush Common consent.
- 37. Building or other works carried out without Rush Common Consent are immediately liable to injunctive action by the Council and, where it is considered appropriate to pursue. This will normally be in cases where the works are contrary to the Rush Common Policy.
- 38. Injunctive relief is the application to the High Court for an order preventing a breach of the Act or, if it has already happened ordering the removal of the breach. For example if a building was erected on Rush Common without consent, the court could order an injunction requiring its demolition and removal. If an injunction is not complied with, the person to whom it is addressed will be in contempt of court and liable to a fine or imprisonment at the court's discretion. There is no maximum penalty.

- 39.** There is no time limit for enforcement action specified within the 1947 LCC (General Powers) Act. However, the Council has been advised that legal action should be considered under the Limitation Act 1980 and that any such action should be taken within 6 years of the building or erection being built or constructed. In order for action to be taken in respect of an existing breach retrospectively, those persons who reported the breach would need to possess substantive evidence that the breach had occurred within six years of the date of the injunctive action.
- 40.** Where the Council has carried out works without Rush Common consent, and where it is contrary to Rush Common policy the relevant departments would be instructed to remove the works.

Enhancement and Maintenance

- 41.** The Council will consider ways in which the private and public land can be maintained and enhanced with the involvement of the local community. Council officers and ward members will seek to ensure that decisions that effect Rush Common land ensure better use to the benefit of the whole community.

Further Information

Rush Common Act 1806

London County Council (General Powers) Act In 1947

Local Government Act 1985

Local Government Reorganisation (Miscellaneous Provisions) Order 1988

Town and Country Planning Act 1990

The above legislation is held by the Council in Legal Services

Town and Country Planning (General Permitted Development Order) 1995

Lambeth Unitary Development Plan 1998 www.communities.gov.uk

Replacement Lambeth Unitary Development Plan 2007 www.lambeth.gov.uk

Royal Horticultural Society - Gardening Matters Front Gardens RHS website-

Contacts

Planning Division Marian Girdler 020 7926 1195

Legal Services Peter Flockhart 020 7926 3051

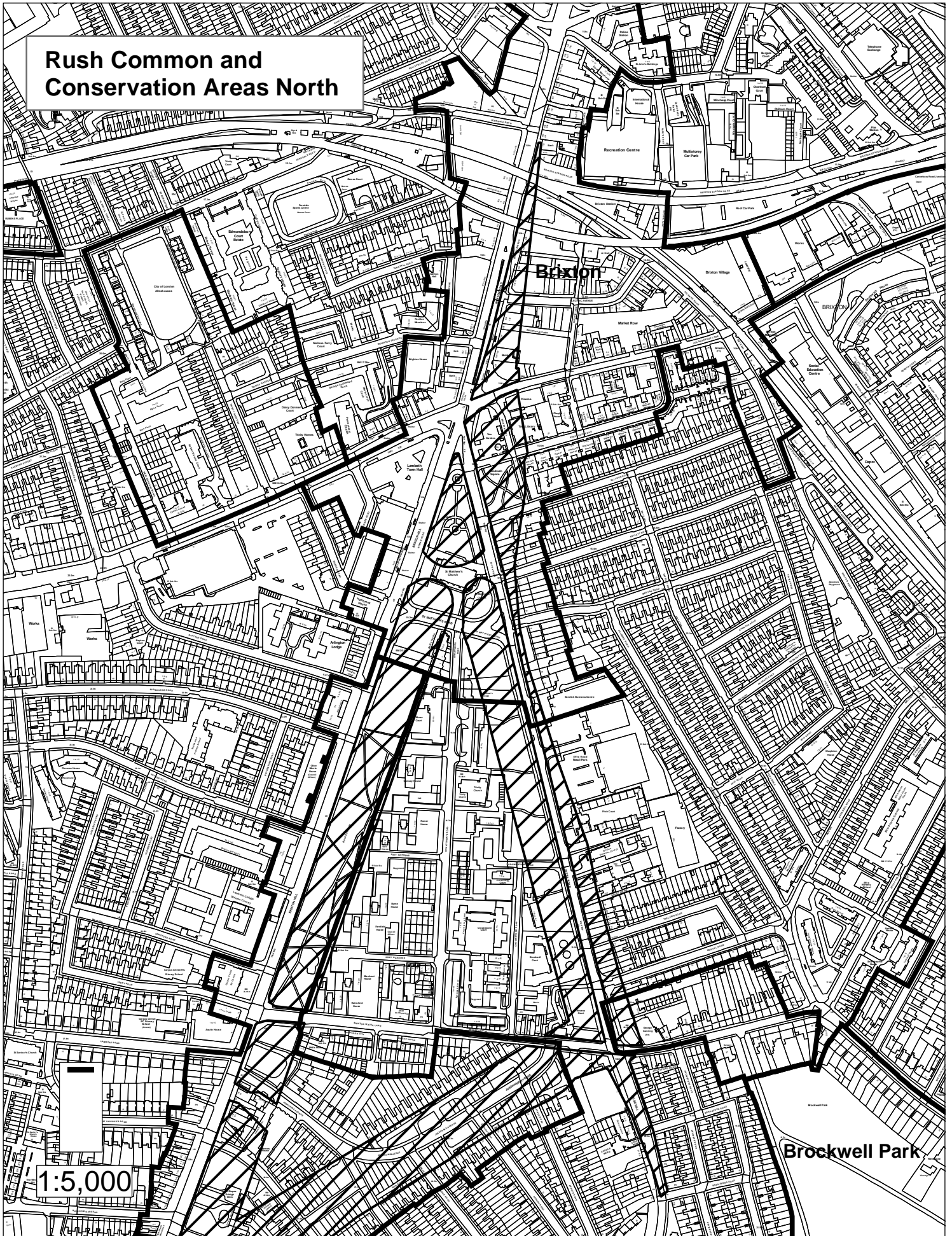
RUSH COMMON ADDRESSES


The following list of addresses include properties that are on Rush Common proscribed land south of Coldharbour Lane. It should be noted that in many cases only part of the buildings or land (forecourts, gardens or private open space) are on Rush Common land. For further details and maps of the area please consult the Council's website www.lambeth.gov.uk.

- Arodene Road – 2 -20, 7, Raleigh Park Baptist Church
- Brixton Hill – St Matthews Gardens and part of Church, 75 – 85, 87 – 89, 97 - 111, Raleigh Gardens 1a, 1 – 24 consec, 131, Brixton Hill Methodist Church, Tudor Close, Hyperion House, 219 – 233, 235 United Reform Church,
- Brixton Oval – Ritzy Cinema, Tate Library, Tate Gardens
- Brixton Water Lane – Wells House, Rainsford House, 22a, 53
- Crownstone Road east side - Flats 1 – 107, 109 - 141
- Deepdene Gardens - Outwood House, Dunsfold House
- Dray Gardens – Farnfield House, Marchant House
- Endymion Road - Calidore Close
- Effra Road –
 - East side – Windrush Square, 7 - 93, including Eurolink Business Centre, Effra Retail Park, Fitch Court, Brixton Unitarian Church, Bailey Mews, George Canning Public House.
 - West side – Novena Court, Brockwell Court
- Fairmount Road – 2, 5
- Helix Gardens - 2 – 14, 1- 39
- Josephine Avenue - Hermes House, - 2 – 60, 5 – 39
- Kett Gardens – Byrne House
- Redlands Way – Witley House, Tanhurst House,
- Rushcroft Road – Norfolk House

- Saltoun Road – 2A
- St Matthews Road –
 - east side 1 – 5, Trinity Church, 7 – 97
 - west side Baltic House, 7 – 9, Manor Court, Camsey House
- Tulse Hill east side – 1- 45, (pavements) 2 - 4
- Upper Tulse Hill - Deepdene Lodge

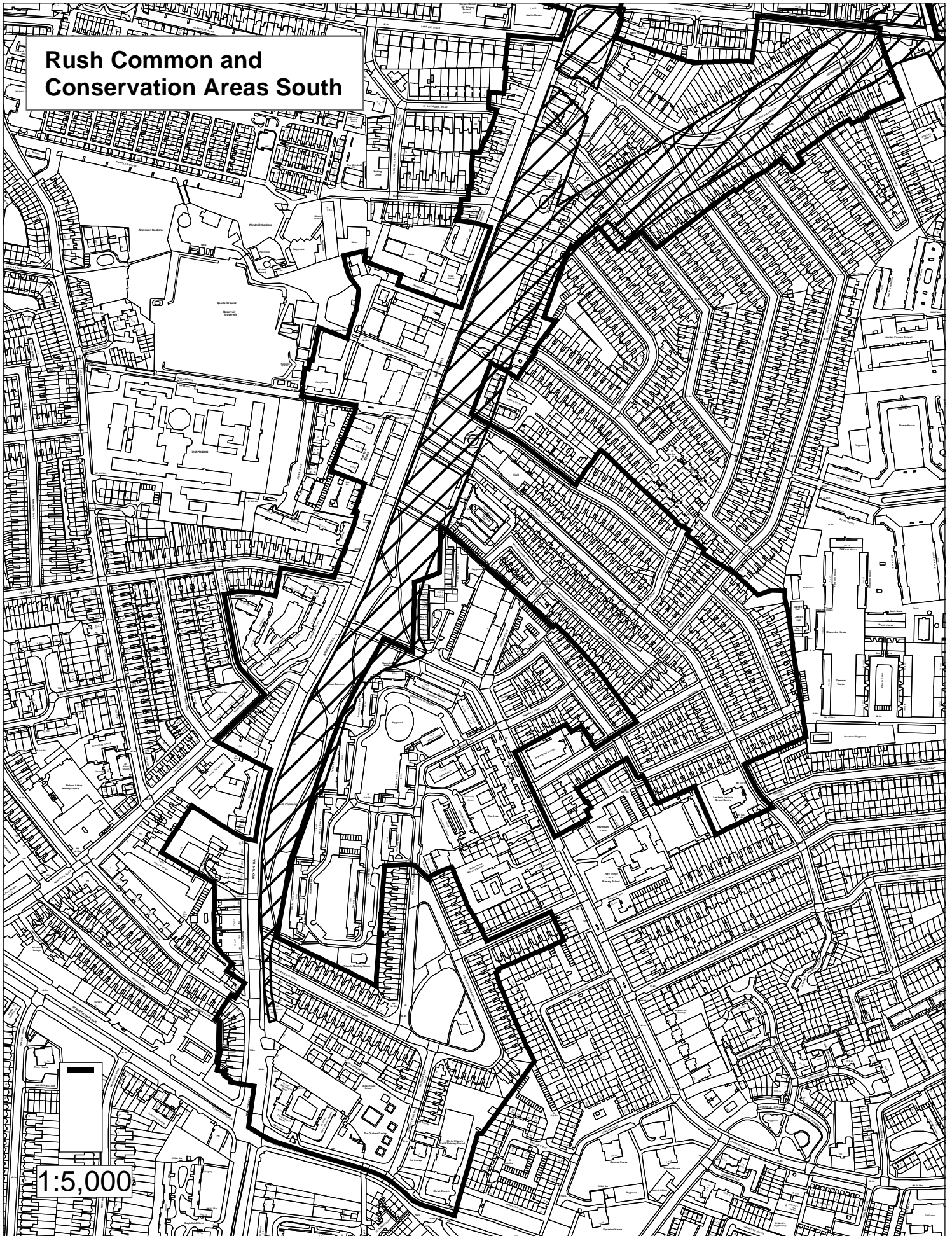
Rush Common and Conservation Areas North





-  Rush Common
-  Conservation Areas

0 115 230 460 Meters

Rush Common and Conservation Areas South



1:5,000

-  Rush Common
-  Conservation Areas

0 115 230 460 Meters

**For further information contact:
Lambeth Council Planning Service**

Phoenix House
10 Wandsworth Road
London
SW8 2LL

Email : PlanningImplementation@lambeth.gov.uk
Web : www.lambeth.gov.uk/Planning

Spanish

Si desea esta información en otro idioma,
rogamos nos llame al **020 7926 1180**

Portuguese

Se desejar esta informação noutro idioma
é favor telefonar para **020 7926 1180**

French

Si vous souhaitez ces informations dans une
autre langue veuillez nous contacter au **020 7926 1180**

If you would like this information in large print, Braille, audio tape or another
language, please contact us on **020 7926 1180**

Bengali

এই তথ্য অন্য কোনো ভাষায় আপনার প্রয়োজন
হলে অনুগ্রহ করে ফোন করুন **020 7926 1180**

Twi

Se wope saa nkaeboy yi wo kasa foforo
mu a fre **020 7926 1180**

Yoruba

Tí ẹ ba fẹ ìmoràn yìí, ní èdè Òmíràn, ẹjọ,
ẹ kàn wà l'ágogo **020 7926 1180**