



# **WEST LANCASHIRE BOROUGH COUNCIL PLANNING SERVICES**

## **PLANNING ENFORCEMENT POLICY 2023**

## **1.0 INTRODUCTION**

- 1.1 At the heart of the Council's vision for West Lancashire is the need for our citizens to feel safe and secure where they live and be proud of the Council that serves and supports them. A key instrument for sustaining a green and healthy community is our Local Plan which governs development in the Borough. A fundamental part of the Council's planning system is the authority to control and enforce the development and use of land in the public interest. This includes any new proposals for the development of land and the existing use of developed land.
- 1.2 This document outlines the Council's approach to enforcement within the context of government policy on planning enforcement contained in the National Planning Policy Framework. It sets out our procedures for delivering the Planning Enforcement Service for West Lancashire. This Policy is not part of the Statutory Local Plan but has been agreed by the Council in line with the provisions of the National Planning Policy Framework (NPPF).
- 1.3 This Policy is written in accordance with other relevant corporate documents such as the Council's Enforcement Policy and has direct links to other services such as building control and environmental health, but this document solely relates to planning control.
- 1.4 The Council's priorities for investigation are detailed in this document in addition to an explanation of what will be investigated and what will not, in the context of the Council's general discretionary powers. It also sets out the priorities for responses to complaints and details how we will respond to reports of non-compliance.
- 1.5 The planning enforcement system does not exist to simply punish those responsible for breaches of planning control. It should be noted that formal planning enforcement is a discretionary power and should only be used if and when absolutely necessary, after negotiation and any other potential remedies have not succeeded. This means the Council does not have a duty to enforce, rather it can choose to do so where appropriate and to maintain public confidence in the planning system.
- 1.6 Accordingly, the Council will investigate and act in a proportionate manner to suggested breaches of planning control, free from bias and founded on reasonableness and sound evidence. Should any Officer have an interest which is personal, financial or of any other nature likely to be prejudicial then that officer will take no part in the investigation and will immediately refer the matter and interest to the Planning Services Manager.

### *Staff Safety*

- 1.7 Our Enforcement Officers will always aim to resolve breaches of planning control in an amicable way with the responsible person and other parties, preferably through negotiation. We do know that many of the issues that we deal with can be emotive, however we expect our Officers to be treated with respect. The Council will not tolerate any of its Officers being threatened with

or subjected to written, physical or verbal abuse while carrying out their official duties and the Council will take appropriate action where necessary.

### *Equal Opportunities and Human Rights*

1.8 When undertaking duties, officers will have regard to the Council's Equal Opportunity Policy to ensure that investigations are carried out in a consistent and fair manner, free from discrimination on any grounds.

1.9 As part of the enforcement process, Human Rights are also an important consideration that will be taken into account and balanced with any action taken. The relevant elements of the Human Rights Act (1998) are:

- Article 1 of the First Protocol – Protection of Property
- Article 6 – Right to a fair trial
- Article 8 – Right to respect for private and family life.

### *How We Will Handle Your Data*

1.10 Enforcement duties will be always undertaken in line with the Council's Corporate Privacy Notice.

1.11 If you have any queries, concerns or complaints about the way we process your personal data, including the way we handle information requests, you can contact our Data Protection Officer via [dpo@westlancs.gov.uk](mailto:dpo@westlancs.gov.uk)

1.12 If you are not satisfied with our response or believe we are not processing your personal data in accordance with the law you have the right to contact the Information Commissioner's Office (ICO). For more information visit [www.ico.org](http://www.ico.org)

## **2.0 WHAT WE CAN INVESTIGATE**

2.1 This includes:

- Development (either operational, engineering or a material change in the use of land or a building) has taken place without planning permission;
- Development that has not been carried out in accordance with an approved planning permission;
- Failure to comply with a condition or legal agreement attached to a permission; and;
- Other matters which also fall under the scope of planning control including but not limited to the enforcement of advertisements and untidy land.

2.2 A number of other breaches of planning control which may be investigated also constitute a criminal offence under planning legislation until and unless there is a failure to comply, by the due date, with a formal notice that the Council has issued, and it is in the public interest to do so. These include but are not limited to the following:

- Unauthorised demolition of a building (excluding specified categories) in a conservation area;
- Unauthorised works carried out to a listed building which affect its historic character;
- Unauthorised removal of, or works carried out, to protected trees without consent being granted or proper notification given
- Advertisements, which require consent under the advertisement regulations, which are displayed without express consent.
- Failure to comply with the requirements of a planning notice, e.g., enforcement, discontinuance, stop notice, breach of condition notice, or other statutory notice.

### **3.0 HOW TO MAKE A COMPLAINT**

3.1 The Council will require as much information as possible to carry out an effective investigation, and to help keep individuals informed of what action it is taking. It is highly unlikely that enforcement action will prove successful if complaints are founded on speculation and a lack of cogent evidence.

3.2 All complaints must be received in writing only via the Planning Enforcement webpage  
[www.westlincs.gov.uk/planning/planning-applications-enforcement/breaches-of-planning-control-and-enforcement-notice.aspx](http://www.westlincs.gov.uk/planning/planning-applications-enforcement/breaches-of-planning-control-and-enforcement-notice.aspx)

3.3 All complaints should include the following information:

- Your name, address and telephone number;
- Details of the alleged breach including when the problems started;
- The location of the problem;
- The name and address of the alleged contravener, if known;
- An explanation of the harm that the problem is causing; and
- You may also be required to provide evidence of the alleged breach.

3.4 Complainant details are kept confidential, however if the Council is pursuing a prosecution, a complainant may be asked to cooperate by way of providing witness statements to strengthen any case made to the Courts and would be disclosable to relevant parties. Complainants are therefore asked to consider this before making a complaint as the absence of such information is likely to prevent the Council from taking further action.

3.5 We will therefore not process anonymous complaints unless it relates to unauthorised works to a Listed Building or protected tree. An overview of the complaints process is provided in Appendix 1.

#### **4.0 HOW WE WILL INVESTIGATE**

4.1 The Council's aim is to support responsible development. In common with all planning authorities and national guidelines, the Council's approach is always to seek to resolve an issue without having to take formal action if possible. Where necessary, this may involve lengthy negotiations and correspondence which become part of a process that demonstrates that when the Council does opt for prosecution it is indeed the last resort. In many cases, this will also involve working with colleagues responsible for dealing with other regulations e.g., Building Control, Environmental Protection and Landlord Licensing.

4.2 Sometimes, an issue may best be resolved through using different legislative powers available to the Council other than planning enforcement tools. In other cases, a co-ordinated effort from several agencies may be required.

4.3 We will investigate all enforcement complaints in accordance with their priority rating.

4.4 Reports of breaches of planning control will be assessed and prioritised by the Planning Enforcement team. The following steps will be taken:

- There will be an initial assessment, to determine if the enquiry is a planning related matter and to identify any cases that need an immediate response.
- A priority rating will be assigned (A-D) and the enquiry will be acknowledged.
- A desk-top investigation will then be undertaken to establish initial facts (e.g., if planning permission has been granted).
- Following this, either a site visit will be undertaken, or initial contact made with the developer or landowner.

4.5 We will keep individuals up to date with progress, when there is anything significant to report, or otherwise periodically to reassure them that the matter remains under investigation and advise what we are doing.

4.6 We will only seek or take action where a breach is proven, demonstrable harm is caused, and where it is expedient and legally possible to do so.

4.7 Any actions sought or taken will be reasonable and proportionate to the proven breach, in accordance with government advice. We will seek the co-operation of responsible persons through negotiation. We will, however, take a firm line where co-operation is not forthcoming, and where the nature of the breach merits it, consider prosecution if it is in the public interest to do so. Consideration will be given to the nature of the breach, whether it is

continuing, the harm caused and the cost of pursuing a prosecution against the benefit to be gained.

- 4.8 We will inform individuals of the outcome of any investigation, explaining our reasons for the chosen course of action. Equally, where the subject of any enforcement complaint is aware of the investigation, we will inform them of the outcome, explaining our reasons for the course of action that has been taken.
- 4.9 Where the enforcement complaint does not relate to a planning related matter, either wholly or in part, we will refer the matter to the relevant department with your details, asking them to keep you updated. We will retain and investigate any part of the enquiry relating only to planning.

*Priority Schedule*

- 4.10 All complaints will be prioritised in accordance with the tables below. The information is for general guidance and is not exhaustive:

<b>CATEGORY A: Top Priority – Site Visit and Initial Investigations within 2 working days</b>	
Unauthorised demolition, partial demolition or significant alterations of the building, which is essential to retain (e.g., a listed building or building within a conservation area) or any other development that causes irreversible demonstrable harm.	Unauthorised works to trees covered by tree preservation orders (TPO) or in a conservation area.
Unauthorised development within a Site of Special Scientific Interest (SSSI) or other national or local designation of nature conservation.	All reports of unauthorised development which represent a serious danger to members of the public.

<b>CATEGORY B: High Priority – Site Visit and Initial Investigations within 15 working days</b>	
Breaches of conditions which result in serious visual harm or result in serious demonstrable harm to the amenity of the neighbourhood.	Breaches of either listed building, Article 4 Direction or conservation area controls not coming into Category A above.
Breaches of the requirements of an Enforcement Notice or a Breach of Condition Notice	Any unauthorised development/activity which causes clear, immediate, and continuous harm or danger to the locality including the living conditions of adjoining residents.
Unauthorised development which, without intervention, would otherwise be nearing immunity from enforcement	

action by virtue of either the 4 or 10 year immunity rules.	
---	--

<b>CATEGORY C: Medium Priority – Site Visit and Initial Investigations within 25 working days</b>
Technical Breaches of Planning Control, including breaches of conditions, not resulting in serious visual harm or not resulting in serious demonstrable harm to the amenity of the neighbourhood.

<b>CATEGORY D: Lowest Priority Cases – Site Visit and Initial Investigations within 40 working days</b>	
Unauthorised development which, if retrospective planning permission were to be applied for, would comply with local and national planning policies and which is not about to become immune from enforcement action.	Disputes between neighbours or complaints about neighbour's property not resulting in harm to wider residential amenity.

4.11 Once an investigation commences, an assessment will be made as to whether a site visit or initial contact made with the developer or landowner is first necessary. If a site is conducted or further information is received its priority may change following the initial site visit or on receipt of addition information.

4.12 Whilst the initial site visit will be made relatively quickly in accordance with the above prioritisation schedule, further investigations and site visits may be required before a conclusion is made. This may take time and therefore reporters of alleged breaches of planning control should be aware that there may be some delay before the Council confirms the outcome of these investigations.

4.13 A complaint will be deemed to have been resolved in the event of one of the following occurrences:

- It has been determined that a breach of planning control has not occurred;
- It has been determined that it is not expedient to pursue enforcement action;
- The matter has been resolved through negotiation;
- It has been concluded that the breach of planning control has ceased; or
- That a retrospective planning application has been submitted (where requested).

4.14 A list of possible enforcement actions are provided at Appendix 2.

## 5.0 WHAT WE WILL NOT INVESTIGATE

5.1 Planning laws are designed to control development and uses of land and buildings in the public interest. They are not meant to protect the private interests of one person against the activities of another. The Council often receives reports regarding matters that are not breaches of planning control. The following are examples (but not limited to) of matters that the planning enforcement service will not consider:

- Boundary and land ownership disputes, private rights of way, and covenants/easements on deeds. These are civil matters upon which we respectfully request that you seek independent legal advice;
- Use of/or development on the highway, footway or verge that is covered by highway legislation. Further advice can be obtained from the Local Highway Authority at Lancashire County Council [www.lancashire.gov.uk/roads-parking-and-travel/roads](http://www.lancashire.gov.uk/roads-parking-and-travel/roads);
- Dangerous structures. Please contact the Borough Council's Building Control team [www.westlancs.gov.uk/planning/building-regulations.aspx](http://www.westlancs.gov.uk/planning/building-regulations.aspx);
- Unsafe working practices for more information please contact the Health and Safety Executive ([www.HSE.gov.uk](http://www.HSE.gov.uk)) or the Council's own health and safety enforcement team [www.westlancs.gov.uk/business/business-services/business-regulation/health-and-safety.aspx](http://www.westlancs.gov.uk/business/business-services/business-regulation/health-and-safety.aspx)
- Fly tipping and any other matters covered by other environmental legislation such as noise and smell. In such cases, please contact the Council's Environmental Protection team [www.westlancs.gov.uk/environment/noise.aspx](http://www.westlancs.gov.uk/environment/noise.aspx);
- Uses operating without the necessary licence. Please contact the Borough Council's licensing team [www.westlancs.gov.uk/business/business-services/licensing.aspx](http://www.westlancs.gov.uk/business/business-services/licensing.aspx)
- Internal alterations (unless to a listed building, or result in the installation of a mezzanine floor in a retail premises)
- External security lights fixed to houses.
- Fences and walls in rear gardens unless they exceed 2m in height.
- Where the reported issue is purely about trade and competition.
- Complaints of a vague and imprecise nature that offer no specifics about the breach of planning control being alleged.
- Anonymous complaints or complaints where the information required in Section 3 has not been provided.
- Speculative requests for officers to check whether or not conditions have been complied with when there is no direct evidence of a breach of planning control.

## 6.0 WHEN IS IT TOO LATE TO TAKE ACTION?



- 6.1 Planning legislation sets out time limits for taking enforcement action. The Council cannot serve a notice after four years where a breach of planning control involves building operations, or the change of use of any building to a single dwelling house. Other unauthorised changes of use and breaches of condition are subject to a ten year time limit. After these periods the Council cannot take action and the use becomes lawful. The landowner can apply for a Certificate of Lawful Existing Use or Development (CLEUD) after this period.
- 6.2 Serving an enforcement notice in respect of a particular development stops the clock in relation to these time limits. Therefore, where the Council feel a breach may be close to the relevant time limit it may seek to take urgent enforcement action to prevent the unauthorised development becoming lawful.
- 6.3 The Localism Act (2011) has introduced a new enforcement power in relation to time limits. This affords possibility to take enforcement action against breaches of planning control where the actions have been deliberately concealed outside of the above time limits.

## **7.0 IF YOU ARE THE SUBJECT OF AN ALLEGED BREACH**

- 7.1 The Council appreciates that this area can be complex, influenced by neighbourhood relations, a lack of knowledge by the complainant of the approved planning application, or of rights available to carry out certain activities without planning permission being required. We also understand that the receipt of letters alleging a breach of planning control can be distressing. We will inform you of the nature of any allegation and if substantiated, what remedies may be available in order to avoid the need for formal action.
- 7.2 We encourage you and / or your company to work with us and for example provide as much evidence as possible including photos and drawings. This will assist enforcement officers to carry out their initial assessment as quickly as the evidence permits. We encourage negotiation and if we conclude a breach has occurred, you will be advised of the details of the breach and how to put it right. Our first approach is to try and resolve any breaches through negotiation and discussion. On occasion, where matters relating to the alleged breach are more complex, you may wish to consider taking independent professional advice.
- 7.3 If you are served with a formal notice, you will be given the details of the breach, the reasons for the action, the steps required to resolve the matter and a time period for compliance. In most cases you will have the right of appeal.

## **8.0 REVIEW AND REPORTING PROCESS**

8.1 This Policy will be reviewed at least once every three years. To assist in the improvement of service delivery, a review of the following elements will also be undertaken and reported to the Council's Planning Committee annually. Information considered will include the following:

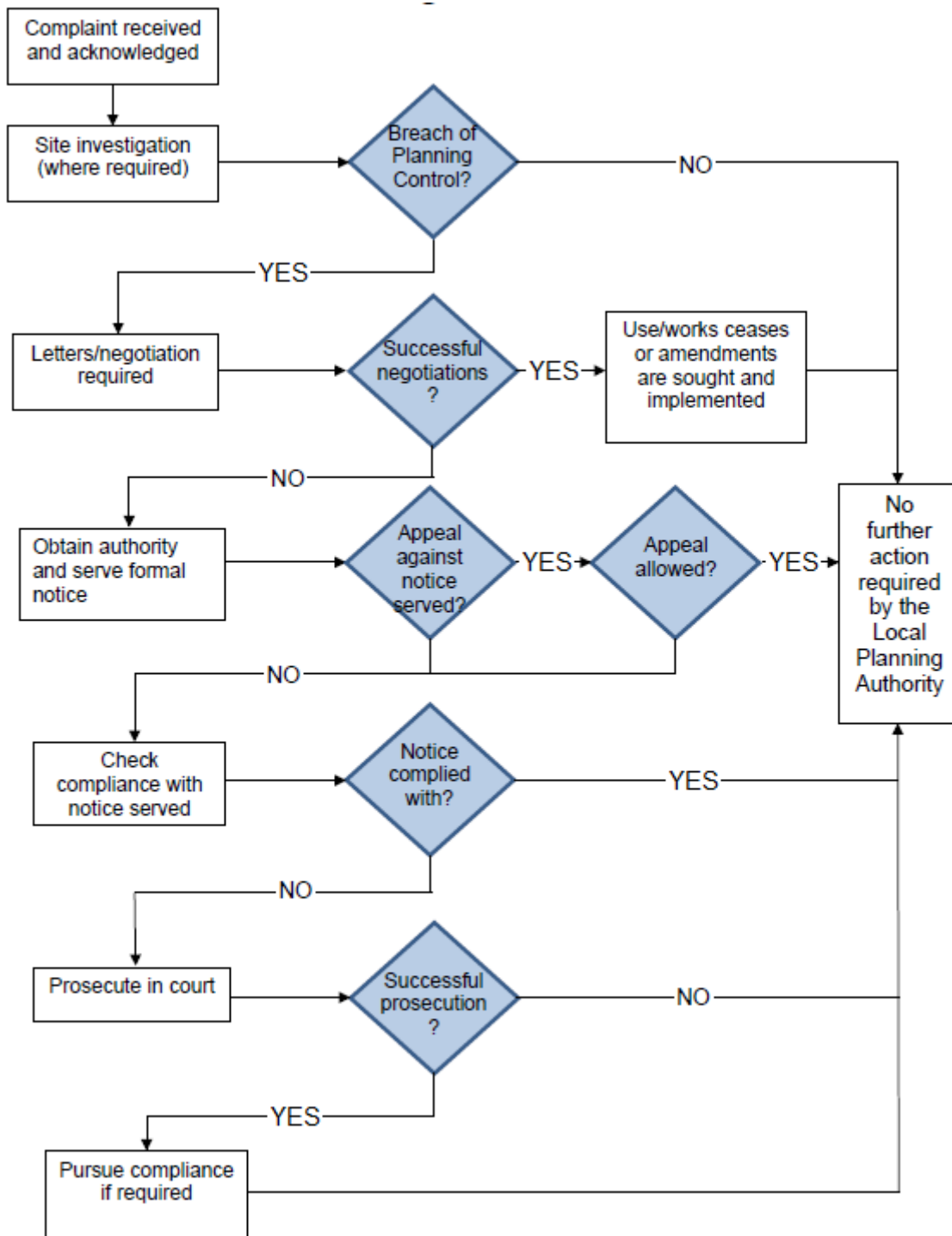
- The number of enforcement cases received and their profiling within Priority A, B,C and D.
- The number of cases identified as a breach of planning control;
- The number of cases resolved without the need for formal action;
- The number of cases resulting in the issue of a formal notice and the types of notices issued;
- The number of appeals made to notices and the outcome;
- The number of prosecutions initiated;
- The achievement of performance standards;
- Benchmarking the above with previous years; and
- Reviewing targets, standards and approaches where necessary.

## **9. FEEDBACK AND COMPLAINTS**

9.1 Should you have any comments, compliments or complaints with regard to the handling of your complaint, or any aspect of the Council's Planning Service, you may wish to direct them to the Council's Customer Feedback page at the address below.

<https://www.westlancs.gov.uk/about-the-council/contact-us/customer-feedback.aspx>

## Appendix 1: Overview of complaint process



## **Appendix 2: Possible enforcement outcomes**

### **A1 No Breach**

A1.1 A significant number of investigations are closed as there is no breach of planning control established. This can occur for a number of reasons, for example:

- There is no evidence of the allegation;
- Development has taken place but planning permission is not required;
- The development already benefits from planning permission granted by the Council;
- A technical breach is evidenced but it is so minor that it has no or very little impact on amenity; or
- The time limits for taking enforcement action have been exceeded.

### **A2 Breach Identified**

A2.1 If a breach is identified, the person responsible will be told what wrong and what action is required immediately to remedy the breach. In most cases, unless there is serious and immediate ongoing harm to the environment, highway safety or neighbours, the person responsible will be given the opportunity to remedy the breach before the commencement of costly and protracted formal action.

A2.2 Where officers consider that planning permission is likely to be granted for an unauthorised development, or that the imposition of conditions could reduce the harm to amenity, a retrospective planning application will be requested for the development.

A2.3 In determining retrospective planning applications the Council cannot refuse an application simply because the development has already been carried out. Many breaches of planning control occur because the applicant simply did not know that permission was required. A retrospective application enables the Council to regularise acceptable development without arbitrarily penalising the applicant. Most enforcement complaints are subsequently regularised through retrospective applications.

A2.4 The Council will not invite a retrospective application if the development is likely to be acceptable. The Enforcement Officer may require further information to determine if a development is acceptable in planning terms, prior to making that decision. However, the Council cannot prevent the voluntary submission of retrospective applications, in which case we would be duty bound to determine the application in accordance with planning policy. Should no retrospective application be received, formal enforcement action is at the discretion of the Council; and will only be taken where harm can be attributed to the breach as set out below.

### **A3 Not Expedient to Pursue Formal Action**

A3.1 Enforcement action needs to be proportionate to the alleged breach and it is likely that the Council will not take formal enforcement action against a trivial or technical breach of planning control that causes no harm to amenity or the

environment, or the potential cost of action outweighs the gain to be achieved.

- A3.2 If a person decides to appeal against formal enforcement action this will add to the time taken to resolve the case. Therefore, it is not possible to give a standard time for dealing with planning enforcement cases.
- A3.3 In exceptional circumstances, contraventions may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community or environment, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community or environment.
- A3.4 A decision of no action may also be taken where formal planning enforcement is inappropriate in the circumstances, such as an unauthorised business has ceased to trade, or the offender is elderly or frail and formal action would seriously damage their well-being. A decision to take no action will be recorded in writing and must consider the health, safety, environmental and nuisance implications of the contravention i.e., it would not be in the public interest to take action.
- A3.5 If it is the intention to take no action, we will inform the complainant and let them know the reason why. The time taken to investigate and conclude on Planning Enforcement cases is unpredictable, so no guide as to how soon updates may be given can be provided.

#### **A4 Formal Enforcement Action**

- A4.1 Where it has not been possible to remedy a breach of planning control through negotiation, or the submission of a retrospective application, the Council has various formal enforcement options which are outlined below:

##### Planning Contravention Notice (PCN)

The main purpose of a PCN is to gather initial information so that the Council can establish whether there is a case for taking Enforcement Action. It is an offence if the recipient of the notice fails to provide the required information. If convicted of such an offence the offender would be liable on conviction to a fine currently not exceeding £2,500.

##### Enforcement Notice / Listed Building Enforcement Notice

This is served on the owner and/or occupier of the land. The notice will set out what the Council expects the owner to do within specified timescales for this action. An Enforcement Notice takes 28 days to become effective. Within this time, there is a right of appeal to the Planning Inspectorate. Following this initial 28 days, the Council must give a 'reasonable' timescale in which the requirements of the Notice have to be met. An Enforcement Notice is a land charge and will be declared when a property is sold. Even if the Notice is complied with, it will still remain as a land charge on that property. If the Enforcement Notice is not complied with, the Council can decide whether or not to prosecute, which if successful, can incur significant fines or imprisonment.

### Breach of Condition Notice

Where development has taken place without compliance with a condition or conditions of the planning permission. As above, if a notice is not complied with, the Council may bring a prosecution in the Courts. There is no right of appeal against such a notice. The Council can prosecute after 28 days if the requirements of the Notice are not met.

### Section 215 Notice / Community Protection Notice

The condition of certain buildings or land may cause serious harm to the visual amenity of an area. Should the Council consider it appropriate to do so they may serve on the owner and occupier a Notice under Section 215 of the Town and Country Planning Act, 1990. Such a notice would require steps for remedying the condition of the land or buildings and specify a period of time for complying but in any event not less than 28 days. This Notice can be appealed via a magistrates' hearing. If any person is subsequently found guilty of an offence of not complying with the requirements of a 215 Notice, they shall be liable on conviction to a fine.

### Conservation Area Notice

This may be served where unauthorised demolition has taken place within a designated conservation area.

### Temporary Stop Notice

Where the Council consider that there has been a breach of planning control and it is necessary in order to safeguard the amenity of the area that the activity that amounts to the breach should stop immediately, Section 171E of the Town and Country Planning Act 1990 enables the Council to issue a temporary stop notice which takes effect immediately.

### Stop Notice

In the most serious of cases, the Council may consider serving a Stop Notice alongside an Enforcement Notice or may apply to the Courts for an Injunction to prevent further harm being caused. This action requires the people responsible to stop specified activities.

This is used for the most serious breaches of planning control in which there is a clear and identifiable serious risk to human health and /or serious effect on the physical environment. An example may include a residential development taking place on land with known, serious pollutants that could have an impact on the health of future occupiers or people near-by. Such a notice can only follow the service of an Enforcement Notice.

**It should also be noted that where the associated enforcement notice is quashed, varied or withdrawn, or the stop notice is withdrawn, compensation may be payable in certain circumstances and subject to various limitations.**

### Signage and advertisements

In practice, most signs are displayed on the adopted highway or verge so the matter will be referred to Lancashire County Council as landowner. Only where this is not the case and where an advertisement is not lawfully displayed and causes harm to the amenity or public safety, and it is considered that express consent would not be granted, the owner/ occupier shall be requested to remove the offending sign. If the sign is not removed by agreement the Council does have the power to prosecute.

If a person is found guilty of an offence under The Control of Advertisement Regulations, he or she could be liable to a fine per advert. The Council also has the power to serve a Notice requiring the discontinuance of a lawfully displayed advertisement if it is satisfied that it is necessary to do so to remedy a substantial injury to the amenity of the locality or a danger to members of the public. Recipients of a Discontinuance Notice do have a right of appeal.

A4.2 In addition to the above notices, prosecution proceedings can take place for the following breaches:

- Unauthorised works to a protected tree, or removal of a protected hedgerow
- Unauthorised works to a listed building
- Demolition within a conservation area, or
- Works to an ancient monument
- High hedges

A4.3 Direct Action and Injunctions are further steps available where the circumstances require such intervention. Additionally, where a prosecution is undertaken, an Order for Proceeds of Crime (POCA) can in relevant circumstances also be made.