

PLANNING and BUILDING CONTROL

A GUIDE TO PLANNING ENFORCEMENT

FOREWORD

This Guide has been prepared to explain the Council's Planning Enforcement Policy and what this means for complaint investigation and development monitoring in the Borough of Pendle. We are committed to carrying out our enforcement function in an equitable, practical and consistent manner. This Policy also takes full account of the Council's Strategic Plan.

The Planning process operates to its full potential when development taking place on the ground is properly monitored and uncoordinated or unauthorised development is quickly and appropriately dealt with.

This guide reflects the emphasis for Council Policy to be more pro-active in its approach, working more closely with the public to monitor development and resolve potential breaches of Planning Control at an early stage.

The guide sets out our policy as a framework for action together with a practical guide on how this will operate in practice on a daily basis.

To be successful the co-operation of multi-disciplinary staff in a team approach is essential. Only through partnership between officers and Members can we provide the best service possible within limited resources.

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Leader of the Council

John David _____
Executive Member Environment



Neil Watson
Planning Manger

A LARGE PRINT VERSION OF THIS GUIDE IS AVAILABLE IF REQUESTED

Planning Enforcement Policy

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1. INTRODUCTION

This Planning Enforcement Guide describes the way in which information on alleged breaches is received and processed. It is the Policy of Pendle Borough Council to as far as practical, monitor development in progress and to initiate enforcement investigations without waiting for written complaints of possible breaches of Planning Control to arrive in the post. It must however be stated clearly that the responsibility to develop in accordance with an approved scheme is entirely that of the developer. Wherever possible, compliance will be sought through informal advice. Our aim is to resolve conflict with the development plan and approved plans. Punishment of non-compliance of planning law is not an end in itself. Pendle Borough Council believes that this more pro-active stance to dealing with enforcement is the way forward.

This Guide is available in the Planning section of the Council Internet site at www.pendle.gov.uk .

2. A NEW DIRECTION

Planning enforcement has, in the past, often been seen as a distinct and separate activity from the rest of development control. However, in the face of increased environmental awareness there has been a resurgence of interest in this aspect of planning. The emphasis of these changes has been to create an effective planning enforcement regime which is not only well integrated with the Building Control and Environmental Health services, but operates within a wider enforcement framework so that it is best placed to meet the changing demands upon it. To do this, and to service the widely differing needs of the Borough's citizens, an enforcement code has been drawn up to define the service, within finite resources, and taking account of the increasing demands upon employees. The result is a flexible approach to the planning enforcement activity. Our aim is to more closely integrate planning enforcement is also being co-ordinated with the enforcement responsibilities of others.

"Enforcing Planning Control: Good Practice Guide for Local Planning Authorities" (July 1997) still provides the most recent Government statement on enforcement matters which, along with PPG Note 18 and Circular 10/97 "Enforcing Planning Control: Legislative Provisions and Procedural Requirements" provides the framework for the enforcement function.

Whilst enforcement cannot be separated out from the Government's modernising agenda, and in particular the all embracing requirement to demonstrate best value in service delivery, it remains a discretionary activity. Attempts at introducing a general duty upon Local Planning Authorities to ensure compliance with planning control have thus far been avoided. Unlawful development is not a criminal activity in itself. However, it is commonly recognised that the integrity of the planning development control process depends upon an Authority's commitment to take effective action against unauthorised development. Such action must, however, be shown to be in the public interest. The rapid initiation of enforcement action is seen as being vital to this process when it is considered expedient to do so.

A reasonable balance needs to be achieved, however, between protecting amenity and other interests of acknowledged importance and enabling acceptable

development to take place, even though it may initially have been unauthorised. Action should always be commensurate with the offence.

3. SCOPE OF THE PLANNING ENFORCEMENT FUNCTION

In exercising its discretion Pendle Borough Council will have regard to the following:-

1. Whether the breach of control is unacceptable and harmful to public amenity or interests and therefore whether there is need or not to take action in the public interest.
2. The level of action followed by the Council should always be commensurate with the nature of the breach.
3. Where initial attempts to resolve matters informally fail, appropriate action should not be delayed.
4. Failure to take effective action where this is plainly necessary may be considered to be maladministration.

Above all, Officers and Members charged with enforcement responsibilities will be even-handed, dispassionate and fair in all their dealings to ensure a consistency of approach and to ensure confidence in the public and business community is maintained. The Development Plan which consists of the Joint Lancashire Structure Plan 2005, Regional Spatial Strategy for the North West and the adopted Replacement Pendle Local Plan 2006 forms the starting point for the consideration of planning matters including planning enforcement in the District.

In considering the taking of enforcement action, the Council must now take into account the Human Rights Act 1998 and the Articles contained therein with particular reference to the Right to a Fair Trial (Article 6), the Right to a private family life (Article 8) and the protection of property (Article 1 of the First Protocol).

Planning Policy Guidance Note 18 makes it clear that a breach of planning control is not an offence (except in respect of the unauthorised display of advertisements and works to listed buildings). Applications can be made retrospectively and where such development appears to be acceptable in planning terms it is appropriate to seek a retrospective planning application in an attempt to regularise the situation. Likewise the views of other public authorities should be sought to see if they are better placed to take remedial action and in some cases it is necessary for both officers and Members to bring pressure to bear at an appropriate level to facilitate effective inter-authority/agency co-operation.

Should the person responsible for carrying out the development be unwilling to submit an application an enforcement notice should not be served where the development is acceptable in planning terms simply to regularise the development. This would be considered to be 'unreasonable' behaviour and authorities which act in this way are at risk of an award of costs against them in any subsequent enforcement appeal. It is however, quite appropriate to take remedial enforcement action as a means of imposing conditions which legitimately seek to limit the extent of the unauthorised activity to make it acceptable in planning terms. Applications must not and will not be elicited simply as a means of increasing potential income to the Council nor as a merely punitive measure.

A balance between economic development, particularly small firms, and the prevailing or anticipated harm to local amenity has to be struck. Where an investigation involves a business operation, the enforcement team will liaise with economic development colleagues who may be able to give advice about alternative premises. Likewise in respect of unauthorised development by private householders the expediency of taking action to remedy minor breaches in excess of the normal permitted development rights should be carefully considered. In other words each case shall be judged on its individual merits to practically and appropriately resolve problems when they arise by the use of tact and diplomacy, employing discretion in the discharge of the Council's responsibilities to protect the public interest against inappropriate development. Decisions on the appropriate course of action remain the proper function of Officers and Members charged with enforcement responsibilities. Great care is needed in balancing the scales to ensure that inappropriate action is not taken, and that where action is taken it is commensurate with the breach and it is speedily and effectively discharged.

4. WHEN CAN ENFORCEMENT ACTION BE TAKEN?

Enforcement action can only be taken against development that has taken place. If no development has occurred then there is no legal basis for pursuing action. Development is defined under Section 55 of the Act as the carrying out of:

“Building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of any buildings or other land”

There are limitations placed on Local Planning Authorities for the time limits within which enforcement action can be taken. These limitations are within:

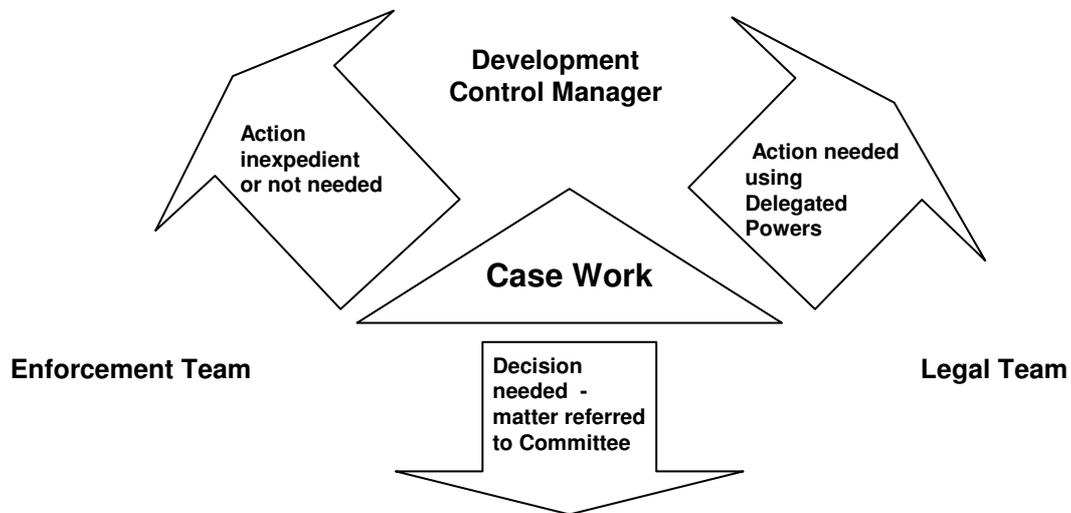
- i) 4 years for operational development (building, mining, engineering)
- ii) 10 years of change of use (except as per iii) below)
- iii) 4 years for the change of use of a building to a dwelling.
- iv) 10 years for a breach of condition.

5. PLANNING ENFORCEMENT ARRANGEMENTS AT PENDLE BOROUGH COUNCIL

Overall responsibility for planning enforcement rests in the first instance with the Development Control Manager who can provide an overview and ensure integration between Planning, other disciplines and the enforcement team. The Council adopts a development team approach and Planning Enforcement relies heavily upon the services of its Legal Officers. Enforcement Officers lead on enforcement matters co-ordinating this team approach.

In the majority of enforcement cases Officers will be able to investigate and process planning enforcement complaints against unauthorised development and to pursue appropriate enforcement action. Area Committees will decide on contentious cases or cases that a Councillor has asked to go to Committee. The Planning Manager has delegated powers to serve any notice under the Planning Acts.

Regular meetings are arranged by the Development Control Manager with enforcement and legal staff to discuss new cases and on going matters and to consider how best to proceed.



The 5 Area Committees of Pendle sit monthly to consider planning applications and difficult planning enforcement matters. The agenda deals with planning enforcement and is made up of 2 main components being:-

1. new cases,
2. progress made on existing cases.

This is an effective means of presenting information for deliberation in a way which is complementary to the officer team approach.

New enforcement cases are all treated in a consistent manner and on investigation are found: -

1. Not to be within the remit of planning legislation and therefore passed on to the appropriate agency, organisation or department to deal with, or
2. Not to be development, or
3. To be permitted development, or
4. To be development where an application is subsequently submitted retrospectively for determination, or
5. To be acceptable development where it would not be expedient to take formal action, or
6. To be development which requires appropriate enforcement action

6. SETTING PRIORITIES

Whilst Government guidance requires that all planning enforcement cases must be progressed quickly at every stage there is a clear recognition that not every case can be given top priority. This must remain a matter for each Local Planning Authority and ultimately the Development Control Manager who exercises discretion on a day to day basis. Planning enforcement investigations will be prioritised as follows:-

- i) unauthorised demolition or partial demolition of a building which it is essential to retain, such as a listed building;
- ii) any unauthorised development which causes immediate and irredeemable harm in the locality, such as works to a listed building or affecting a protected tree;
- ii) breach of a condition which results in serious harm to amenity in the neighbourhood, such as hours of operation;
- iv) unauthorised development in a Conservation Area where the amenity of the area may be harmed;
- v) any unauthorised development where the time limit for enforcement action will expire within the next 6 months;
- vi) enforcement matters not constrained by time.

Enforcement is effectively the process of attempting to regulate unauthorised development. The procedures are laid down in law with little opportunity for interpretation once it has been resolved to initiate enforcement proceedings.

The Enforcement process is therefore wholly re-active following the decision on the most appropriate action to take. This guide provides a useful framework for the Council to ensure that a sensible approach is taken at all stages of the planning process.

Being pro-active in respect of planning enforcement means being positive about complaint handling and development monitoring.

Such pro-active planning enforcement arrangements:-

1. are positive and flexible;
2. bring more cases of unauthorised development within the scope of planning control and where necessary before the Area Committee for consideration, and enable the Council to
 - (i) oversee the progress of development in certain cases as it is built on the ground to ensure compliance with planning approvals, and

- (ii) help to sustain the high quality of our built and natural environment.

7. COMPLAINT HANDLING AND DEVELOPMENT MONITORING

Complaints

The Council has a corporate complaints procedure within which complaints are dealt with in a consistent way. Complaints take three main forms:-

1. Complaints about staff
2. Complaints about service delivery, and
3. Complaints about a nuisance including unauthorised development

For the purpose of this guide we are concerned only with complaints about a nuisance/activity/building etc., which may require planning permission. All complaints will be treated as confidential, within the Authority. Complaints will in the first instance be treated as a request for a service, that service being the investigation of the alleged breach of planning control.

It can be argued that unless there is a complaint then there is no harm to interests of acknowledged importance. However, there are reasons why people do not complain which does not mean to say that there is not a legitimate planning interest in the matter and a pro-active regime takes account of this.

The planning enforcement complaints procedure accommodates both written and oral complaints equally within clearly defined parameters and performance targets (see Figure 1- page 9). It is hoped that it will become common practice for Councillors, Parish Council representatives and officers of the Council to pass on their observations on potential Breaches of Planning Control as a matter of routine, to supplement those complaints received from the public. Complaints taken by any officer of the Council will be passed quickly to the relevant Officer and dealt with effectively.

Development Monitoring

Development monitoring is a very positive activity. It can take a number of forms depending upon the degree of involvement considered necessary. The monitoring of development is not strictly an enforcement activity. Planning enforcement action will only be considered if the monitoring of authorised development reveals a breach of planning control by non-compliance with a planning condition or that the development deviates from the approved plans. The monitoring of development is a time consuming activity and will remain subordinate to the need to process applications speedily whilst reaching the "right" decisions, so long as resources remain scarce.

Development monitoring can range from Council enforcement staff simply keeping their 'eyes and ears' open when travelling around the Borough on their normal duties, and thereafter pursuing suspected contraventions; either directly or through

the complaints system, to plan checking, on site inspections and the monitoring of compliance with conditions imposed on planning permissions.

The adopted approach to monitoring is dependent upon available staff and financial resources.

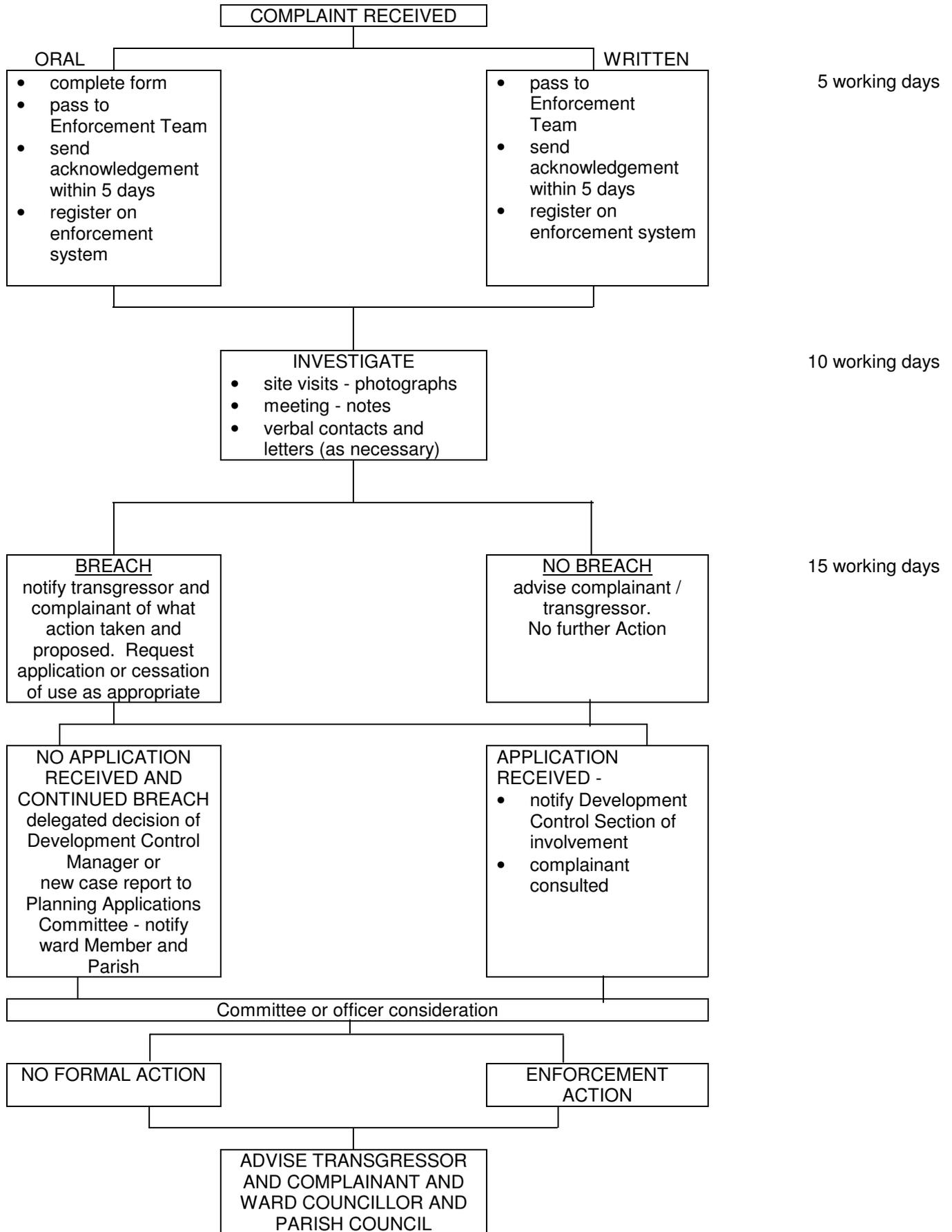
What Can You Expect?

Figure 1 gives a detailed account of the processes involved in the Enforcement process. All complaints will be investigated and an appropriate response given. Enforcement cases can on occasion take time to resolve, especially if a transgressor is not willing to comply with the requests that would be made to voluntarily remedy the breach. Those who complain will however be kept informed of progress on the matter and will be informed of the outcome of the process.

The main elements of the level of service a complainant will be given are:

- A written acknowledgement in 5 working days.
- 80% of sites to be visited by the Enforcement Team in 10 working days.
- Transgressor to be contacted in 15 working days (if applicable).
- Progress letter to complainant in 15 working days.
- Letter advising of the date the matter will be considered by Committee.
- Letter advising of the outcome of the case when the case is complete.
- 90% of complaints to be resolved in 6 months (resolved means either case closed or formal action taken)

Figure 1 – Enforcement Flowchart



TERMINOLOGY OF ENFORCEMENT POWERS

Set out below is a brief list of the various powers that are available to the Council in discharging its Enforcement function:

Planning Contravention Notices (PCN)

This notice enables the Council to require detailed information about activities on land where it has reasonable grounds to suspect that a breach of planning control may be involved. This can include details of operations being carried out or uses taking place on the land; matters relating to conditions or limitations attached to planning permissions; names and addresses of persons involved in operations or uses or having a legal interest in the land.

The recipient of a PCN has 21 days to respond. Failure to respond is a legal offence liable to prosecution.

There are also other similar Requisitions for Information notices that the Council can use to obtain further information which carry the same legal requirement to respond within a set time period, otherwise an offence is committed.

Enforcement Notices

This is the principal form of Notice used to remedy breaches. There are various types of notice depending on whether the unauthorised development relates to buildings and operations, changes of use, listed buildings or demolition in a Conservation Area.

The Council has to be satisfied that a breach has occurred, that there is sufficient evidence to support formal action being taken and that it is expedient to serve an enforcement notice. Notices must have a time to take effect (during which appeals can be lodged), specify what steps are required to remedy the breach and give a time period for compliance. (The planning inspectorate has recently issued a guide for third parties who wish to take part in enforcement appeals). The Council is liable to an award of costs against it should on Appeal be lodged against an unnecessarily served Enforcement Notice.

Stop Notices

In certain circumstances, where the Council consider it expedient for an activity to cease before the expiry of the compliance period on an Enforcement Notice, a stop notice can be served to prohibit the carrying out of that activity. The notice can only be served where an enforcement notice HAS BEEN issued. There are, however, limitations on the service of a Stop Notice and compensation can be payable in some circumstances. The fact that it may be considered expedient to issue an Enforcement Notice does not, therefore, mean that it is automatically expedient to issue a stop notice. Such notices come into effect immediately they are served and

must be complied with even if an appeal has been lodged against the Enforcement Notice.

Stop Notices are an extreme measure and are therefore rarely used. They should only be used when the damage caused is serious and irredeemable unless the activities cease immediately.

Temporary Stop Notices

These are new additions to the enforcement powers available. There are 3 basic differences to a permanent Stop Notice. First they can be served without an Enforcement Notice having been served first. Secondly they can last for a maximum of 28 days. The third element is that only one may be served. These Notices should only be used in circumstances where there is an absolute need to stop development occurring immediately.

Breach of Condition Notice (BCN)

This Notice applies where planning permission has been granted subject to conditions. If any conditions have not been complied with, a BCN can be served to require compliance with the condition(s). The notice will specify what steps are required to comply and give a time period for compliance.

As an applicant already has a right of appeal against any conditions attached to planning permissions, there is no right of appeal against a BCN. If the steps required are not complied with within the specified period, then an offence occurs and the offender is liable to prosecution.

Prosecution

With unauthorised work to a Listed Building, demolition in a Conservation Area without consent or the unauthorised display of an advertisement, prosecution can be commenced in addition to or as an alternative to serving notices. Prosecution can be used to punish the offender and act as a deterrent to others or as a means to compel early remedy of the breach or both.

Injunctions

Where the Council consider it necessary to restrain any actual or anticipated breach of planning control, an application can be made to the Court for an injunction. Such action would normally only be taken where the breach was serious. Injunctions are usually last resort measures. Failure to comply with the terms of an Injunction can lead to imprisonment.

Section 215 (Untidy Land) Notice

The Council can serve a notice on the owner or occupier of any land which is in an unreasonably untidy condition, requiring them to remedy the matter.
N.B. 215 Notices are not normally appropriate for untidy domestic gardens.

Trees

With unauthorised work carried out to trees covered by a Tree Preservation Order or in a Conservation Area, prosecution proceedings can be taken. When trees have been felled, replanting can also be required.

Fly-Posting

This is when posters are displayed without consent in a planning area on shop fronts, lamp and telegraph poles etc. Planning Authorities have the power to prosecute and remove the posters.