

The Local Planning Enforcement Plan

IMAGE TO FOLLOW

**Development Management
Planning and Climate Change Service
Approved Date: (TO FOLLOW)**

Introduction

Lancaster City Council's Local Planning Enforcement Plan sets out the processes for how the local planning authority will handle alleged breaches of planning control.

National Planning Practice Guidance advises that local planning authorities *"have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan"*.¹

Local planning authorities are directed to act proportionately in responding to suspected breaches of planning control.² This Local Planning Enforcement Plan explains how it will make decisions on whether to take action, and what type of action may be considered. The Plan also identifies the priorities for enforcement action, which ensures that the Council's resources are focused upon the breaches of planning control that are causing greater harm.

Whilst planning matters can often be emotive and subjective, Planning Enforcement Officers will often try to work closely with land and property owners where a breach of planning control has occurred and negotiate how to resolve the breach. Where negotiation is unsuccessful, the local planning authority will consider taking formal enforcement action, through the courts if necessary.

The Plan also explains how Planning Enforcement Officers will communicate with residents, town and parish councils and other stakeholders.

Note: Lancaster City Council first adopted a 'Planning Enforcement Charter' in December 2011. It revised the Charter in January 2017. This new edition, in the form of a Local Planning Enforcement Plan, was approved by the Council's Planning Regulatory Committee on XXXX. For the avoidance of doubt, the Local Planning Enforcement Plan is not part of the district's development plan.

¹ Paragraph 003, Reference ID: 17b-003-20140306, National Planning Practice Guidance, 6 March 2014

² Paragraph 59, National Planning Policy Framework, 20 July 2021

What is planning enforcement?

Planning legislation controls and manages the development or use of land and buildings in the public interest. Legislation is not meant to protect the private interests of one person against the activities of another. This means that the planning enforcement system aims to achieve a balance between competing demands. The local planning authority will remain impartial in all cases.

A breach of planning control is defined as:

- *The carrying out of development without the required planning permission (or other similar consenting regime); or,*
- *Failing to comply with any condition or limitation subject to which planning permission has been granted.*³

Breaches of planning control are rarely a criminal offence. The only exceptions to this are:

- Works to a listed building without first obtaining Listed Building Consent;
- Works to protected trees and protected hedgerows, without first obtaining consent;
- The display of advertisements without first obtaining Advertisement Consent; and,
- Non-compliance within a formal Enforcement Notice (or similar Notice) within the specified timescale.

Enforcement action taken by the local planning authority can be the subject of challenge, either on appeal or through the courts. For this reason, the local planning authority must be confident that the proposed enforcement action is commensurate to the alleged breach of planning control.

In making this judgement, the local planning authority will consider whether it is expedient to pursue enforcement action. It does this by having regard to the Council's Local Plan, and any other material considerations, including having regards to its duties under the Equality Act 2010, and in particular the Public Sector Equality Duty⁴

³ Section 171A, Town and Country Planning Act 1990

⁴ Section 149, Equality Act 2010

Expediency

The use of planning enforcement powers is discretionary. Not all breaches cause harm to warrant enforcement action. The local planning authority considers the expediency of each enforcement case based upon its own merits.

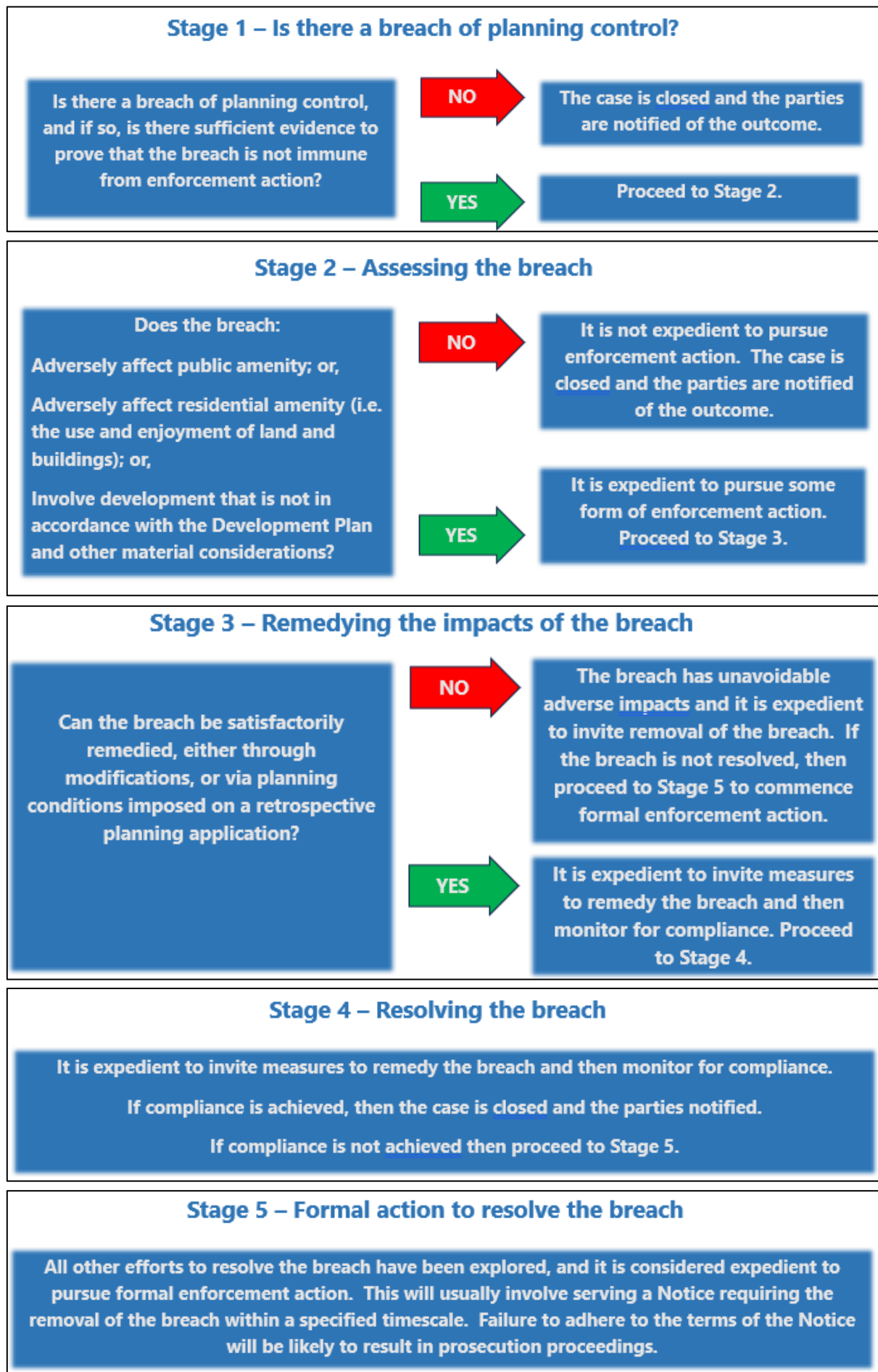
In considering enforcement action, the decisive issue is whether the breach of planning control would unacceptably affect public amenity or would unacceptably affect the existing use of land/buildings which merit protection in the public interest.

Where the breach of planning control is minor or it involves a technical breach of planning control that would be likely to benefit from retrospective permission, pursuing enforcement action would usually not be expedient. This is not to condone any breach of planning control, nor does it provide the landowner with a formal permission. Serious problems can still occur when the landowner tries to sell a property (or land) where the appropriate planning permissions have not been secured and where this is revealed on any land search. Landowners are advised to either regularise the position by applying for retrospective planning permission, or by applying for an Existing Lawful Development Certificate.

Breaches of planning control can be deliberate, accidental, or based upon inaccurate advice. Neither the explanation of how the breach came to occur, nor the personal circumstances of the person responsible for the breach have any influence on the outcome of the local planning authority's approach to its' investigation.

When making decisions regarding expediency, Lancaster's local planning authority uses an *Expediency Test*. This ensures consistency in approach, and that all enforcement decision-making is transparent.

The Expediency Test



Many breaches of planning control are resolved informally through discussion and negotiation. Remedying the breach, as referred to in the Expediency Test diagram on page 5, means that the person responsible for the breach of planning control has taken action to remove the breach, or has remedied or altered it to ensure that it no longer breaches planning control, or that it has been made acceptable in planning terms.

A person who has breached planning control has only one opportunity to obtain planning permission after the event. This can be by means of a retrospective planning application⁵. The Expediency Test indicates where a retrospective planning application might be invited, if that is considered the most appropriate way forward to regularise the situation.

The local planning authority can decline to determine a retrospective planning application if an Enforcement Notice has already been issued.⁶

It cannot be assumed that retrospective planning permission will be granted.

If a planning application for a retrospective development or activity is refused, then under planning law the applicant may have a right to appeal against the decision of the local planning authority. That appeal is heard by the Government's Planning Inspectorate.

If the Planning Inspector upholds the local planning authority's decision, and dismisses the appeal, then enforcement action can then continue. If the appeal is allowed, then the Inspector will explain the reasons for allowing the appeal and will also list any planning conditions that should accompany the grant of permission.

⁵ Section 73A, Town and Country Planning Act, 1990

⁶ Section 70C, Town and Country Planning Act, 1990

If enforcement action is considered appropriate, what type of action might be taken?

There will be cases where a breach of planning control is unacceptable in planning terms and cannot possibly be remedied without formal enforcement action.

To commence enforcement action, the local planning authority must establish which persons have an interest in the land or buildings that are the subject of the breach of planning control. Even where complainants may think that they know the full names and addresses of the persons responsible, the local planning authority must ensure that no other person has a land or property interest. It can do this via one of two methods:

- A **Section 330 Requisition for Information (s330)** – which requires those with a land or property interest to complete the s330 Notice and identify their names, addresses and extent of their land/property interest. Failure to respond is a prosecutable offence.
- A **Planning Contravention Notice (PCN)** – a PCN can include additional questions to those posed by the s330 Notice and may be used (for example) to establish dates when an unauthorised activity commenced, or to identify the future intentions of the owner/occupier. However a PCN can only be served if it appears that a breach of planning control has occurred. Non-return of a PCN is a prosecutable offence.

Once this information has been gathered, and where negotiation has failed to remedy the breach of planning control, the Development Management Enforcement Team can consider the use of one (or more) of the following methods:

- An **Enforcement Notice (EN)** – this is a Notice which imposes a legal duty on those with an interest in the land/building to ensure that the breach of planning control defined within the EN ceases within a specific period. The specific period can be no less than 28 days and will be set out in the EN. Recipients of the EN may appeal to the Planning Inspectorate, effectively suspending the provisions of the EN until the appeal is determined. ENs are entered onto the Land Charges Register and so they run with the land, thus remaining effective even after compliance has been achieved.
- A **Breach of Condition Notice (BCN)** – this notice is used where a planning applicant has failed to comply with planning conditions attached to a planning permission. The BCN will identify the conditions that the applicant has breached and set a timescale for compliance – in full – with those conditions. There is no right of appeal against a BCN. BCNs are not required to be entered onto the Land Charges Register.
- An **Untidy Land** or **Section 215 Notice (s215)** – a s215 Notice seeks to remedy untidy land or buildings. It relates to Section 215 of the Town and Country Planning Act 1990, it will specify the area of land/building that is untidy, and identify the precise measures that are required to remedy the condition of the land/building. The Council must demonstrate that the land or buildings are not just untidy, but that its condition adversely affects amenity because of its untidiness. A s215 Notice can be appealed by the recipient.

Failure to comply with Notices can lead to summary prosecution in the Magistrates' Court. These are called non-immediate prosecution cases.

- A **Listed Building Enforcement Notice (LBEN)** – the Council can serve a LBEN specifying the works that have occurred and specifying the steps to be taken to remedy the matter. Those steps may include restoring the Listed Building to its former state; or where this is not practicable or desirable, to execute further works to remedy the works that were carried out without the benefit of Listed Building Consent.

A LBEN does not remove the possibility of prosecution (because works to a Listed Building without first obtaining Listed Building Consent is an offence).

- A **Stop Notice (SN)** – A SN can only be used in exceptional cases where it is considered essential to safeguard public amenity or to prevent serious or irreversible harm to the surrounding environment. There are restrictions on what a SN can prohibit⁷. There is no right of appeal against a SN. Before serving a SN, the local planning authority must be satisfied that there are no alternative enforcement actions that would resolve the identified issues. A SN can prohibit any or all of the activities which comprise the alleged breach of planning control specified in a subsequent Enforcement Notice. It can require these activities to cease ahead of the date for compliance set out in an Enforcement Notice.
- A **Temporary Stop Notice (TSN)** – A TSN is effective immediately and does not require the serving of an EN. However it expires after a maximum period of 28 days, and it cannot be renewed. Therefore, its purpose is to require an unauthorised activity to cease or to require a reduction in the level of an unauthorised activity for a temporary period of time, whilst other enforcement remedies are considered. There are restrictions on what a TSN can prohibit⁸.

Failure to adhere to a SN or a TSN is an offence, and a person found guilty is liable on conviction to an unlimited fine. When setting the fine, the Courts will have regard to any financial benefit which has accrued, or is likely to accrue, as a consequence of the offence.

- An **Injunction** – this is where the Council consider that they need to apply to Court for an Injunction to restrain a serious breach of planning control. Injunctions are the most serious enforcement action that a Council can pursue, because if a person fails to comply with an Injunction, then they can be committed to prison for contempt of court.
- A **Planning Enforcement Order (PEO)** – There are rare cases where a person deliberately conceals unauthorised development, and the deception comes to light after the time limits for pursuing action have expired. In these cases, a PEO allows a Council to take action within a set period of time. A PEO application must be made by the Council within 6 months from the date when the breach came to the Council's knowledge. This application is made to the Magistrates' Court and a copy served upon the landowner/occupier and on any other person with an interest in the land.

⁷ Section 183, Town and Country Planning Act, 1990

⁸ Section 171F, Town and Country Planning Act, 1990

In some circumstances the Council may decide not to require action be taken against all of the breach, but instead identifies lesser steps which will remedy matters. This is called 'under-enforcement'.

- **Immediate Prosecution** – immediate prosecution proceedings can only be brought in relation to those activities which, by themselves, are *criminal offences*, and where there is sufficient evidence to warrant prosecution. These are limited and only include unauthorised works to Listed Buildings; unauthorised work involving protected trees; and the display of unauthorised advertisements.

In investigating enforcement cases, named Officers are authorised to enter land specifically for enforcement purposes. This is often referred to as **Rights of Entry**.⁹ There must be reasonable grounds for entering the land for enforcement purposes. This is interpreted to mean:

- To ascertain whether there is or has been any breach of planning control on the land or any other land;
- To determine whether any of the local planning authority's enforcement powers should be exercised in relation to the land, or any other land;
- To determine how any such power should be exercised; and
- To ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.

It is an offence to wilfully obstruct an authorised person acting in exercise of a right of entry¹⁰. If entry to land or buildings is refused and it is reasonably necessary to gain entry to the site, Officers may apply to the Magistrates' Court for a Warrant.

Entry to a building used as a dwelling cannot be demanded as of right unless 24 hours advanced notice of intended entry to the occupier has been provided.

Whilst on site, Officers may ask questions of any present occupiers, and may take photographs or measurements. Any information gathered will be used to ascertain whether a breach of planning control has taken place. If a breach has occurred, this information will be used to assess the most appropriate course of action to resolve the matter.

In cases where the appropriate tests are satisfied, the Council may also pursue action via the **Proceeds of Crime Act (POCA) 2002**, to recover funds which are proven to have been obtained illegally as a result of a breach of planning control. Breaches of planning control are not, by themselves, illegal (except for those listed on Page 3 of this Plan), but the failure to comply with a Notice served by the Council that has not been appealed or has been upheld at appeal is a criminal offence. In qualifying cases, POCA may be used to obtain a confiscation order at the same time as a prosecution.

⁹ Sections 196A, 196A(1), 196B, 196C and 324 of the Town and Country Planning Act, 1990; and Sections 88A and 88B of the Planning (Listed Buildings and Conservation Areas) Act 1990

¹⁰ Section 196C(2), Town and Country Planning Act, 1990

What matters are not breaches of planning control?

Some matters fall outside the remit of planning controls. The local planning authority cannot investigate the following:

- The parking of vehicles on the public highway
This is a matter for the highway authority, which is Lancashire County Council.
- The obstruction of the public highway
This is a matter for the Police.
- The obstruction of a Public Right of Way
This is a matter for Lancashire County Council's Footpaths Officer.
- Land ownership disputes including boundary disputes, or damage caused to neighbouring property during construction work
This is a civil matter, and we would advise that you seek your own legal advice.
- Covenants imposed on property deeds
This is a civil matter, and we would advise that you seek your own legal advice.
- Dangerous structures
This is a matter for the Council's Building Control Team and, where there is imminent danger of collapse, the emergency services.
- Unsafe construction practices
This is a matter for the Health and Safety Executive.
- Any work that is 'permitted development' as defined in national planning laws ¹¹
'Permitted development' means that the development does not require planning permission

¹¹ The Town and Country Planning (General Permitted Development) Order (England) Order 2015, as amended

Enforcement case management

A member of the Planning Enforcement Team (Development Management) will be allocated to the case. They will be the responsible officer for managing the case.

A planning enforcement complaint will be acknowledged once it has been received. After this, the first action will be to assess whether there is a breach of planning control. At this stage, a complainant will only be contacted if further information is required.

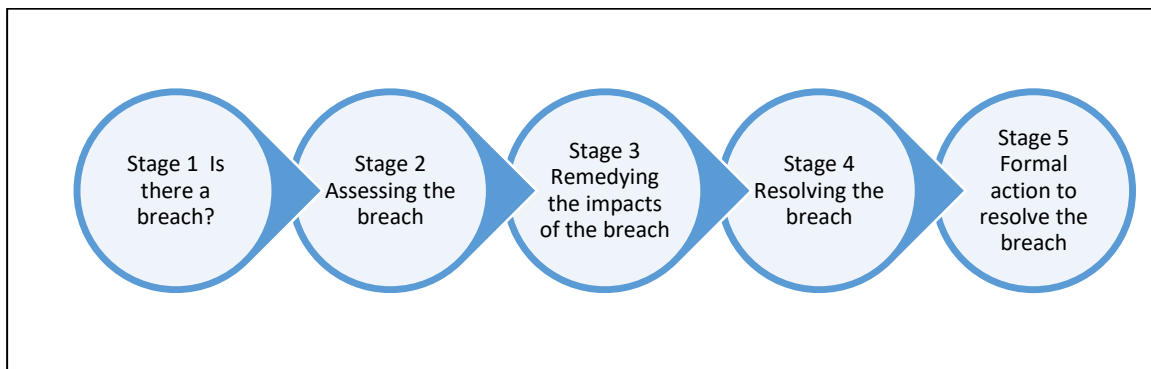
Where there is a breach of planning control, the local planning authority must ensure that the resources at its disposal are used in the most efficient way. Serious breaches of planning control will always take priority. As a guide, our priorities can be summarised as:

'Red' Cases	Cases that involve significant or irreparable harm. These include unauthorised works to a listed building, the felling of a protected tree, development likely to adversely impact public safety, or development likely to cause adverse impacts to sensitive habitats (e.g. Sites of Special Scientific Interest and similar designations).	The Planning Enforcement Officer will aim to visit these cases, or otherwise pursue appropriate action within 1 working day of receipt of the case.
'Amber' Cases	All other cases where there is a breach of planning control.	The Planning Enforcement Officer will aim to visit these cases, or otherwise pursue appropriate action within 15 working days of receipt of the case.
'Green' Cases	Cases where there is no breach of planning control, or where it is proven at Stage 1 and 2 of the Expediency Test that the breach does not warrant enforcement action.	These cases will not be investigated further .

The local planning authority will monitor performance against the site visit targets listed above and will report this on a quarterly basis to the Planning Regulatory Committee.

If a breach has occurred, then the local planning authority will consider the Expediency Test to determine what happens next. If the case does not warrant action, then the complainant will be informed of the reasons for this, and the case will be closed.

At any point in time, the Planning Enforcement Officer will be able to explain to the complainant and other interested parties (i.e. the contravener, Councillors, statutory bodies and agencies) what stage the case investigation is at. The five stages are set out in the Expediency Test, and are:



The local planning authority will contact complainants only when there is a material change of circumstances in the case. These circumstances will include:

- When the breach has been assessed, to advise of the outcome of that assessment;
- When measures to reduce or otherwise remedy the breach have been agreed (which may include inviting a retrospective planning application);
- Where a retrospective planning application has been received;
- Where a retrospective planning application has been determined;
- Where a Notice has been served in respect of the breach of planning control;
- Where court dates have been set, or the matter has been considered by the courts; and,
- When a planning enforcement case is about to be closed.

Due to workload demands, Planning Enforcement Officers **will not** contact complainants outside of these key events.

Planning enforcement cases can be lengthy and complex. Sometimes this may be because a person has decided to appeal against a Notice that has been served by the local planning authority; or that a case requires specific legal advice before determining what course of action to take. For these reasons it is rarely possible to give a standard time for resolving enforcement cases.

All local planning authorities are required to maintain an Enforcement Register¹². This Register is a record of any Enforcement Notices, Breach of Condition Notices, Untidy Land Notices, Temporary Stop Notices and Stop Notices that have been served by the local planning authority. The Enforcement Register is available online via the Council's Planning Enforcement webpages: <https://www.lancaster.gov.uk/planning/planning-enforcement>

¹² Section 188, Town and Country Planning Act 1990

What happens if a complaint is made about my property?

Finding out that someone has made a complaint about property or land that you own can be an anxious time. The local planning authority will always approach an investigation in the same manner, treating you fairly and reasonably.

The local planning authority's main task will be to establish whether a breach of planning control has occurred. If a breach has occurred, then it will follow the process set out in the Expediency Test on page 5.

When receiving a letter or a visit from a Planning Enforcement Officer, the local planning authority would advise not to ignore the issue and to respond promptly to any communication. The law provides a series of tools and powers that enable officers to carry out their investigations. The matter will not simply go away if there is no response. Failure to respond might even result in formal enforcement action being taken without further warning.

Standards of service

Public confidence in the enforcement system is paramount, which is why the local planning authority will always strive to investigate cases in accordance with the procedures set out in this Local Planning Enforcement Plan.

Local planning authority officers involved in the planning enforcement process will conduct themselves impartially and courteously at all times and will act in the wider public interest, within the legislative boundaries of planning control.

Officers will apply the principles of openness, helpfulness, proportionality, and consistency when discharging their duties.

Whilst the local planning authority will insist on high standards of service and courtesy from its Officers, it also expects a similar level of communication from those involved in any enforcement investigation. The Council will not tolerate threats, including verbal or physical abuse, to any of its Officers. Any person making such threats or abusive behaviour will be reported to the Police.

The local planning authority will also not tolerate unreasonable behaviour by any party. This may include unreasonably persistent complaints; pursuing a 'scattergun' approach to your complaint by copying multiple officers or organisations into correspondence; or making unnecessary and excessive demands on officer time. In these circumstances, officers may have regard to the 'persistent or otherwise unreasonable complainant' section of the Council's Complaints Policy, which can be found via:

<https://www.lancaster.gov.uk/assets/attach/187/Complaints-Policy-Sept-2019.pdf>

How to report a planning enforcement issue

The fastest method to report a complaint is via the Online Enforcement Report Form, which is available via <https://www.lancaster.gov.uk/planning/planning-enforcement>

When making a complaint the following information will be requested:

- A contact name and address, email and/or telephone number;
- The address of the property or land where the alleged breach of planning control has occurred;
- The nature of your complaint; and,
- The reason that the complaint is being made (i.e. how does the alleged breach affects the complainant).

Photographs may also be provided with the Online Enforcement Report Form.

For those residents who do not have access to the internet, then complaints can be made in writing to:

Planning Enforcement Team (Development Management), Lancaster City Council, PO Box 4, Town Hall, Lancaster, LA1 1QR.

Whilst the local planning authority will try to ensure that a complainant's identity remains confidential, it cannot guarantee that this will remain the case if matters progress to legal proceedings, where a successful outcome may depend upon the willingness of complainants to appear as a witness in court. Some information can also occasionally be subject to the Freedom of Information Act 2000 and therefore may exceptionally have to be disclosed.