

Draft Planning Enforcement Charter



Regeneration and Policy (Development Management)

Draft Edition (2011)

Enforcement and the Planning System

The national planning system incorporates legislation which explains what type of development, use of land or other activity requires formal approval from the local planning authority. This formal approval takes a variety of forms. It includes:

- Planning Permission (for buildings, engineering operations, changes of use and other operations);
- Listed Building Consent (for works to, or affecting a Listed Building);
- Conservation Area Consent (for works involving demolition within a Conservation Area);
- Advertisement Consent (for the display of advertisements);
- Prior Approval (a process where the local planning authority requires prior notification of certain proposals, including some demolition projects, telecommunication-related development and some agricultural development)

For the purposes of this document only, the use of the term 'permission' refers to all of the above regimes.

The power to take enforcement action against those who undertake development without the appropriate permissions is guided by a clear policy statement from the Government (Circular 10/97, and National Planning Policy Guidance Note 18 'Enforcing Planning Control').

However the main principle in law is that planning enforcement action is a discretionary power, and one that must be fully justified. In order to avoid judicial intervention, Government guidance states that local planning authorities must not pursue enforcement action simply to regularise a breach of planning control.

Carrying out development or activity without obtaining planning permission is not usually a criminal offence. People do make the mistake of constructing buildings or using land without first obtaining the relevant permission.

It is however an offence to fail to comply with a Notice served by the local planning authority which requires the breach of planning control to cease, or to be remedied. It is also a criminal offence if works are undertaken to protected trees without first obtaining the relevant permission; or where unauthorised works are carried out to a Listed Building without obtaining Listed Building Consent; or where an advertisement is displayed without obtaining Advertisement Consent.

The planning system aims to achieve a balance between competing demands in the wider public interest, and so the local planning authority remains impartial in all cases. Enforcement action is open to challenge either on appeal or through the courts, and so the local planning authority must be confident that the enforcement action is commensurate to the alleged breach of planning control.

It is with this in mind that the Development Management Enforcement Team focuses on proportionate resolution, rather than pursuing all those who have acted in breach of

planning control (i.e. it is usually inappropriate to take formal enforcement action against a minor or technical breach of planning control which causes no harm to local amenity).

National planning policy advises that whilst it is unsatisfactory for anyone to carry out development without first obtaining the required permission, enforcement action should not be pursued simply to 'regularise' development which is acceptable on its planning merits, but for which permission has not been sought.

What type of development requires planning permission?

There are many types of development and some changes of use of land/buildings which do not require planning permission. Householders in particular have fairly extensive 'permitted development rights' under planning law which enable them to construct certain extensions, outbuildings and other operations within their domestic curtilage without requiring planning permission. This is subject to certain criteria regarding size, location and distance to shared boundaries of the site. Information regarding householder permitted development rights is available at our website by following the link below.

<http://www.lancaster.gov.uk/planning-environment/planning-permission/need-planning-permission/>

Alternatively, anyone wishing to discuss permitted development rights can talk to a Planning Advice Assistant on 01524 582950 between the hours of 9am and 5pm, Monday to Friday.

What matters lie outside the scope of planning control?

The Development Management Enforcement Team can only investigate matters that are controlled by planning-related legislation.

The following matters lie outside the scope of planning control and **cannot** be investigated:

- Boundary disputes;
- Land ownership queries;
- Obstruction of a right of way.

In addition, there are circumstances where the Council is time-barred from pursuing enforcement action. In general terms, work that was carried out more than 4 years from the completion of development, and most changes of use that occurred more than 10 years ago are considered lawful, and thus are immune from any enforcement action.

The Development Management Enforcement Team will not usually investigate complaints regarding potential, future development. It can only respond to development or activity that has already occurred, or is currently ongoing. There may however be exceptional cases where there is evidence of a seriously harmful breach of planning control which, if accompanied by credible evidence that the breach is about to occur, may be investigated.

How to Make a Planning Complaint

Anyone who believes that a breach of planning control has occurred, or is occurring, may make a complaint. This can be done in a variety of ways;

- By completing the Online Enforcement Report Form available at <http://www.lancaster.gov.uk/forms/ShowForm.asp> or;
- By emailing dm@lancaster.gov.uk; or,
- By telephone to either:
Debbie Threlfall, Enforcement Officer, 01524 582344; or
Alison Hesketh, Enforcement Officer, 01524 582350.
- In writing to:
Development Management (Planning Enforcement)
Lancaster City Council
PO Box 4, Town Hall
Lancaster
LA1 1QR

When making a complaint you should be prepared to identify yourself and leave contact details with the Enforcement Officer. In many instances it is not usually possible to investigate anonymous complaints, due to the problems caused later in the investigation by the absence of witnesses or credible evidence.

When making your complaint you should identify;

- The precise location where the alleged breach of planning control has occurred/or is occurring;
- The nature of the breach of planning control; and,
- The reason for making your complaint (you should describe the impact that the alleged breach of planning control is having upon you and/or the locality).

This information is necessary to allow the enforcement investigation to proceed.

Whilst the Development Management Enforcement Team 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 have to be disclosed.

The Development Management Enforcement Team seeks to manage its resources to ensure that the highest priority complaints can be addressed without delay. Response timescales to lower priority complaints are therefore adjusted accordingly. Allegations concerning breaches of planning control will be investigated in accordance with the **Order of Priority – Planning Enforcement Complaints**.

Order of Priority – Planning Enforcement Complaints

No.	Priority	Nature of Development
1	High	Unauthorised works (including alteration, partial demolition or demolition) to a Listed Building or a building within a Conservation Area
2	High	Unauthorised works to trees that are protected, either by a Tree Preservation Order or by virtue of the tree being situated within a Conservation Area, or involving works to a hedgerow that is protected by law
3	High	Any other unauthorised development which in the opinion of the local planning authority causes irreversible and serious demonstrable harm or presents an immediate and serious danger to the public
4	Medium	Unauthorised development/activities within an Area of Outstanding Natural Beauty, a Site of Special Scientific Interest, the North Lancashire Green Belt, within a Conservation Area, within an Area of Article 4 Direction or within any other national or locally-designated site of nature conservation
5	Medium	Any unauthorised development/activity or breach of a planning condition which in the opinion of the local planning authority causes demonstrable, continuous harm to the locality, or the living conditions of local residents
6	Medium	Unauthorised advertisements which have a detrimental impact upon public/highway safety or visual amenity
7	Medium	Unauthorised development where the time limit for pursuing enforcement action might expire within 6 months
8	Low	Technical breaches of planning control that marginally exceed permitted development rights
9	Low	Minor variations from approved plans that do not, in the opinion of the local planning authority, appear to cause demonstrable harm to the locality or the living conditions of local residents
10	Low	Unauthorised advertisements that in the opinion of the local planning authority, lie outside any of the categories listed above.
11	Lowest	Minor unauthorised development that would be likely, in the opinion of the local planning authority, to receive retrospective planning permission or would result in formal enforcement action not being instigated.
12	Lowest	Complaints that are made anonymously

As the investigation progresses **its priority level may change** following the initial site visit, or following the receipt of further information. The priority level will always be determined by the Development Management Enforcement Team.

The Development Management Enforcement Team has had to deal with an increasing number of complaints over recent years. There are a number of reasons for this increased level of activity:

- An increasing public awareness of planning and environmental matters;
- Increased public participation in the Development Management process;
- Lack of communication or notification of development activity between neighbouring land users.

As a result of further increases in the number of enforcement complaints received, there will be occasions where the Order of Priority list will be reviewed and may be amended.

What happens to my enforcement complaint?

Once a complaint has been received, and the complaint is allocated a Priority Number, the enforcement investigation can commence.

Complainants will be advised of progress, and the outcome of the complaint will be made known either in writing (via letter or formal email) or will be conveyed by telephone by the Officer.

Whilst some complaints will be more complex than others, and may take longer to resolve, the Development Management Enforcement Team will strive to achieve an outcome within appropriate timescales. In the first instance, this Charter indicates timescales (overleaf) where we will aim to acknowledge your complaint and make a site visit or inspection.

In terms of the investigation, the enforcement complaint will follow the following **Procedure Chart** (overleaf):

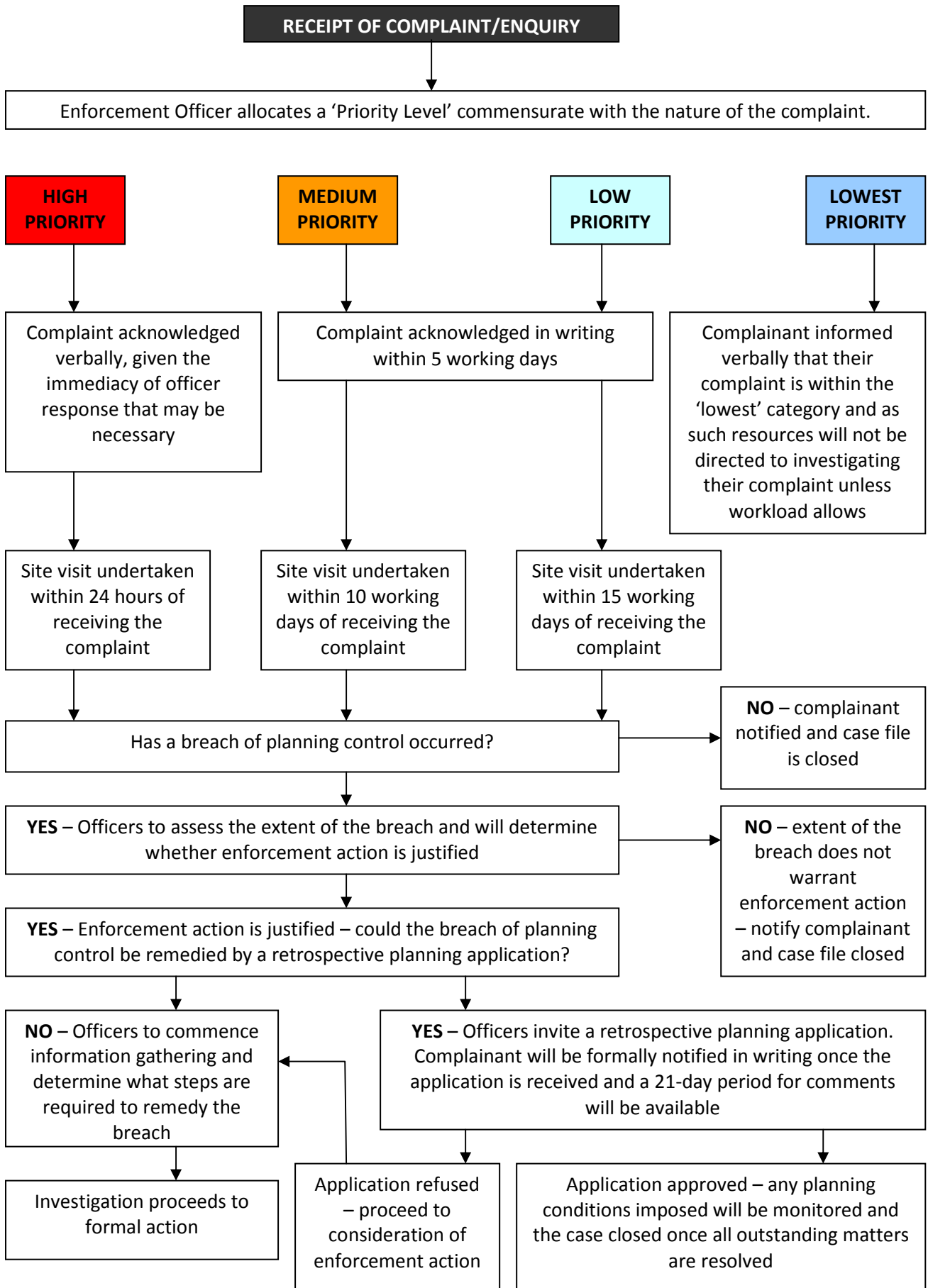
What happens if someone complains about me?

If the Development Management Enforcement Team receives a complaint about your property, building, or your land, and the alleged breach of planning control warrants further investigation, then we shall write to you.

You have the right to know what the alleged breach of planning control is. However the complainant's details will usually remain confidential.

The Team always tries to resolve breaches with co-operation, and formal action would only be taken as a last resort.

Procedure Chart



Expediency

In determining whether to pursue enforcement action, the Development Management Enforcement Team has to assess whether it is **expedient** to do so.

Government guidance is clear on this matter. 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 involves a technical breach of planning control that would be likely to benefit from retrospective permission, then Government advice is that enforcement action would usually be inappropriate. In cases where it is resolved that it is not expedient to take enforcement action, the Development Management Enforcement Team will explain why this is the case.

Where it is resolved that it is not expedient to pursue enforcement action, this does not give the landowner a formal permission. Serious problems can still occur when the property/landowner tries to sell the 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.

The City Council will not be responsible for any delays in conveyancing that occur because the owner has failed to secure the appropriate permissions in the past.

What is 'Harm'?

Harm resulting from a breach of planning control could include highway safety issues; loss of daylight or private amenity; noise; and impact upon the visual amenity of an area.

However 'harm' would **not** include the following:

- Impact upon property values (not a planning consideration);
- Competition to another business (not a planning consideration);
- Loss of an individual's view (not a planning consideration);
- Trespass onto someone else's land (this would be a private matter between the individuals involved)

Enforcement Methods and Remedies

The majority of breaches of planning control are resolved informally through discussion and negotiation. This may result in the submission of a retrospective planning application by the person who has breached planning control. The retrospective application would be an attempt to regularise the situation. However there will be cases where the unauthorised

development carried out is unacceptable in planning terms, and whilst the submission of a retrospective planning application is still an available option, in these circumstances planning permission would not be forthcoming.

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

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 planning breach. Even where complainants may think that they know the full names and addresses of the persons responsible, the local planning authority has to ensure that no other person has a land or property interest. Therefore the local planning authority has to gather information, and it can do this by 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. Again, 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:

- **Prosecution via the Magistrates' Court** – immediate prosecution proceedings can only be brought in relation to those activities which, by themselves, are *criminal offences*. These include unauthorised works to Listed Buildings; unauthorised work involving protected trees; and the display of unauthorised advertisements. Prosecution proceedings in relation to other types of unauthorised development can only be brought if the owner/occupier has failed to comply with one of the Notices listed below and overleaf.
- 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 ceases within a specific period, where the period is no less than 28 days. 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. Non-compliance with an EN within the specified period is a criminal offence for which the recipient may be prosecuted in the Magistrates' Court. There is an equivalent EN under the national Listed Building legislation, and a Conservation Area Notice where unauthorised demolition has occurred within a designated Conservation Area.

- 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. Unlike an EN, there is no right of appeal. Again non-compliance is a prosecutable offence. BCNs are not entered onto the Land Charges Register.
- An **Untidy Land or Section 215 Notice (s215)** – this can include untidy buildings as well as land. Appeals against the s215 Notice are to the Magistrates' Court and not the Planning Inspectorate. The local planning authority has to demonstrate that the land or buildings are not just untidy, but that its condition adversely affects amenity as a consequence of its untidiness. Non-compliance with a s215 is a prosecutable offence.
- A **Stop Notice (SN)** – this Notice can require cessation of activities which are demonstrated to cause the most serious harm to local amenity. As such they are used sparingly by local planning authorities and usually only where there are extreme breaches of planning control. Whilst it would appear that a SN is the ultimate sanction, there are disadvantages. Firstly, a SN can only be served alongside (or shortly after) the serving of an EN. Secondly, it incurs the local planning authority risking liability and may require them to compensate the owners/occupiers for any losses that can be proved to be directly attributable to the cessation of activities required by the SN.
- A **Temporary Stop Notice (TSN)** – the TSN is effective immediately and does not require the serving of an EN. However it can only subsist for a maximum period of 28 days, and it cannot be renewed. Again, the local planning authority can endure the risk of liability for compensation. Such a Notice is usually only considered where there are activities that are demonstrated to cause the most serious harm to local amenity and will require immediate cessation.
- A **Court Injunction** – this is a rarely used power due to the costs associated with it and the fact that the outcomes are often uncertain, as the case often rests with the discretion of the Magistrates' Court. Injunctions can be sought in the most serious of cases and non-compliance (which would be a contempt of court) can result in imprisonment.
- An **Advertisements Discontinuance Notice** – this can only be used where an advertisement already benefits from deemed consent, but where the local planning authority determines that the advertisement is causing a 'substantial injury' to amenity or where danger is caused to members of the public. This Notice can be the subject of an appeal to the Planning Inspectorate.

In determining periods of compliance with a Notice, Officers have to pay regard to the particular circumstances of the case. For example, an Enforcement Notice might require a business to cease operating from unauthorised premises, and so the period for compliance could be lengthy to allow for relocation opportunities (in an attempt to avoid potential loss of jobs).

Penalties

Failure to comply with the requirements of an EN can result in a fine of upto £20,000, payable on summary conviction (i.e. trial without jury in the Magistrates' Court). There are also powers for local authorities to undertake works required to ensure compliance with an EN and then charge the perpetrator for costs incurred.

The Breach of a TSN can lead to a fine of upto £20,000.

Prosecution for criminal offences such as works to a Listed Building or unauthorised works to a protected tree can result in fines of upto £20,000.

Removal of a protected hedgerow can result in a fine of upto £5,000.

Failure to comply with a BCN can result in a fine of upto £1,000.

Targeted Action

Occasionally the Development Management Service will instigate, or be heavily influential in proactive initiatives that seek to resolve localised problems. For example, there may be instances where direct, targeted action is needed within a Conservation Area to tackle a series of untidy buildings and/or land.

In almost every circumstance the extent of targeted action will be communicated in advance by letter to property and landowners and details of the action will usually be disclosed to the local media.

Development Management Enforcement Team – Code of Conduct

Whether you are a complainant or someone who is the subject of a planning enforcement investigation, Officers of the Service will conduct themselves in accordance with the following standards:

- Allegations of breaches will be investigated in accordance with the Order of Priority List;
- Officers will remain impartial at all times and will act in the wider public interest, within the legislative boundaries of planning control;

- Officers will investigate the complaint in accordance with the provisions of the Procedure Chart;
- Officers will use their powers of entry to premises or land if it is not possible to establish all the relevant facts and/or if further information is required. When doing so, Officers will advise any owners/occupiers present at the time of the reason for their visit and will produce Council identification and proof of rights of entry;
- Where a breach is identified, those responsible will be advised of the remedial steps (where necessary), timescale and consequences of inaction;
- Where the breach is likely to accord with planning policy, those parties will be advised to submit a retrospective planning application (where necessary) in an attempt to regularise the situation;
- Where informal attempts to negotiate a satisfactory remedy to the breach have failed, Officers will commence formal action (either to establish ownership details or via the serving of formal Notices upon owners/occupiers);
- At the closure of the case, all parties will be formally informed that the case is being closed and the reasons for doing so. This involves cases where it is considered not expedient to pursue enforcement action;
- A summary of enforcement cases that have proceeded to formal action will be presented on a quarterly basis to the Elected Members of the Planning and Highways Regulatory Committee;
- Where there is a perceived threat to either an Officer of the Council or a member of the public, the Police will be requested if necessary to attend site visits in the interest of public safety.

What happens if I am not satisfied with the service I have received?

Complaints regarding the Service will usually be treated as Stage One complaints under the City Council's formal Complaints Procedure. Additional information regarding this Procedure can be found at the Council's website: www.lancaster.gov.uk Complaints regarding the Development Management Enforcement Service must be made in writing to:

*Assistant Head of Regeneration and Policy (Development Management)
Lancaster City Council
PO Box 4
Town Hall
Lancaster
LA1 1QR*