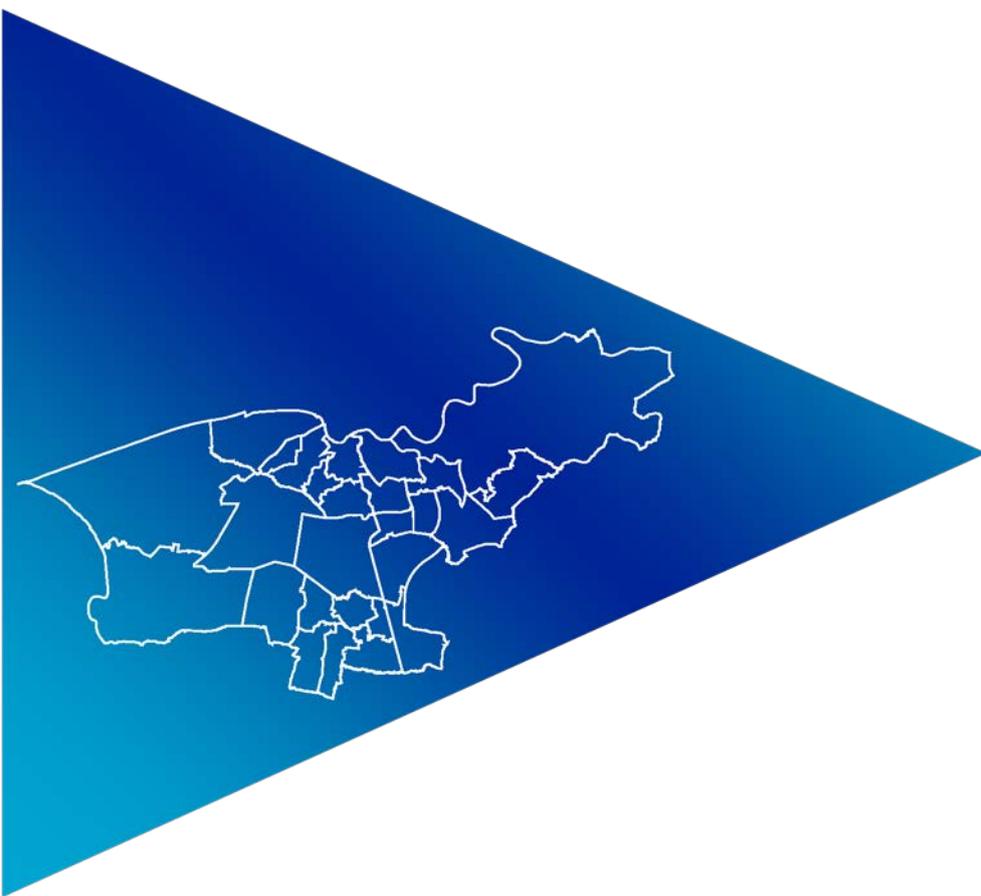


Planning Enforcement Policy

January 2017

Minor update 25th May 2018
Minor update 1st Feb 2019



INTRODUCTION

Effective enforcement is important as a means of maintaining public confidence in the planning system. It is not the purpose of planning enforcement to punish those responsible for a breach of planning control and it is important to remember that enforcement is a discretionary power. This means that the Council will decide if it is in the public interest to take enforcement action where there has been a breach of planning control. The Council is not obliged to take any action, and in some cases we may decide that no action is necessary. In some cases, the Council may not be able to take any action. Some complaints, such as neighbour disputes over boundaries, relate to matters over which planning law has no control, and cannot be investigated.

This Planning Enforcement Policy document sets out South Ribble Borough Council's priorities for the enforcement of planning control, explains what will be investigated and what will not, and outlines the Council's general discretionary powers with regard to planning enforcement. The plan sets out the priorities for dealing with complaints and clarifies the timescales for response by Enforcement Officers. This document also sets out the Council's general approach to handling planning related enforcement matters and what can be expected from our service.

1 – PURPOSE OF THIS DOCUMENT

- 1.1 This document aims to help you understand and get the best out of the Development Management / Enforcement Service. It sets out main service areas and explains how South Ribble Borough Council carries out its planning enforcement activity
- 1.2 In order to offer the best possible service, it is vital that we give clear guidance on what we can do, and how we balance demands on our services against the resources available to us.

2 - IS PLANNING PERMISSION REQUIRED?

- 2.1 Planning enforcement can only be considered where the building work or material change of use being undertaken requires planning permission. **An initial investigation by an Enforcement Officer will determine this.**
- 2.2 Certain types of building works or changes of use are defined as 'permitted development' which means that an application for planning permission is not required. Whether or not planning permission is required depends on several factors; these are detailed in the Town and Country Planning [General Permitted Development] Order 2015 as amended. Help in understanding 'permitted development' can be found in various sources. For example:

- www.planningportal.gov.uk - the interactive house function is particularly useful,
- www.southribble.gov.uk - planning pages
<https://www.southribble.gov.uk/content/planning-enforcement-0> - Planning Enforcement page
- Booklets published by the Department for Communities & Local Government.

(<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>)

- 2.3 In addition, the Town & Country Planning (Use Classes) Order 2010 details uses of land and buildings. The order is permissive not restrictive in that it details what is not a material change of use i.e. planning permission is not required to change from a hot food takeaway to a shop. In all other cases planning permission is only required if a change in the use of land or building is a material change of use. It is a matter for the Council as Local Planning Authority to determine if planning permission is required having regard to all material planning considerations.

3 - WHAT IS PLANNING ENFORCEMENT?

3.1 Most building/engineering work and changes of the use of land or buildings need planning permission from the Council. Sometimes development is carried out without planning permission, or not in accordance with approved plans or conditions which have been approved by the Council. Cases such as these can cause serious harm to the way in which people live. Residents and businesses have a right to expect that harmful activities are dealt with effectively.

3.2 Other matters which can be considered by planning enforcement include:

- Unauthorised display of advertisements.
- Unauthorised works to protected trees
- Unauthorised work to buildings listed as being of special architectural or historic interest.
- Unauthorised demolition of certain buildings within a Conservation Area.
- Land or property that is in such a poor condition that it adversely affects the amenity of the area.

3.3 The term used to describe such cases is, 'breach of planning control.'

4 - WHAT IS THE PURPOSE OF PLANNING ENFORCEMENT?

4.1 Planning laws are designed to control and manage the development or use of land and buildings in the public's interest. They are not meant to protect the private interests of one person against the activities of another.

4.2 Carrying out work, or changing the use of land or buildings without planning permission is not a criminal offence. In most cases the Council will attempt to resolve the breach of planning control by negotiation; this will include giving the opportunity to apply for retrospective planning permission. Where serious harm is being caused however, the Council will take firm action and may not enter into any negotiations before doing so. The Council will not allow prolonged negotiations to prevent the taking of effective formal enforcement action where this is necessary to resolve the breach of planning control.

4.3 Unauthorised works that do constitute a criminal offence.

- Cases involving listed buildings - works such as demolition, extension or alteration which affect the character or appearance of a listed building require Listed Building Consent. Where works have been carried out without consent a criminal offence may have been committed. Subject to the extent and nature of the works, consideration will be given to whether to start criminal proceedings and/or serve a Listed Building Enforcement Notice to make sure that appropriate remedial works are undertaken.
- Advertisements - the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 allows the display of some classes of advertisements and signs without the need to obtain consent from the Local Planning Authority. Where an advertisement is being displayed without appropriate consents it constitutes a criminal offence. Where the advertisement causes serious harm to "amenity" or "public safety" we will ask for it to be removed within a specified period. If the advertisement continues to be displayed after this time, formal prosecution proceedings will be considered.
- Works to trees subject to Tree Preservation Orders, within a Conservation Area or in the curtilage of a listed building- The Council imposes Tree Preservation Orders (TPO) to protect and retain visually important trees, particularly where they are threatened by development. Similar protection applies to trees in Conservation Areas and within the curtilage of a listed building. It is a criminal offence to cut down, top, lop, uproot, wilfully destroy or damage a protected tree in a manner likely to destroy it, without the Council's consent.

- Failure to comply with an enforcement notice, once the period for compliance has elapsed, and there is no outstanding appeal. A person guilty of an offence is liable, on summary conviction, to a fine currently not exceeding £20,000 or on conviction on indictment to an unlimited fine. Where a local planning authority achieves a successful conviction for failure to comply with an enforcement notice, they can apply for a Confiscation Order, under the Proceeds of Crime Act 2002, to recover the financial benefit obtained through unauthorised development.

4.4 Action taken by the Council will be appropriate to the actual breach of planning control and necessary to resolve it.

4.5 The Council must operate its planning enforcement activities in accordance with nationally and locally adopted and emerging policies and guidance, such as the National Planning Policy Framework, The Central Lancashire Core Strategy, The South Ribble Local Plan (2015) and the South Ribble Site Allocations and Development Management Policies DPD. This means that:

- The Council must decide whether the breach of planning control unacceptably affects the amenity of the area.
- Action should not be taken just because development has started without planning permission.
- The Council does not always have to take action, but the particular circumstances of the case must always be considered.
- It is not normal to take formal action against a minor breach of control that causes no real harm.

4.6 But:

- Enforcement action will be taken quickly when it is necessary.

What is 'harm'?

4.7 Harm resulting from a breach of planning control may concern amenity or highway safety issues and could include for example noise nuisance, loss of daylight or privacy, or danger from increased traffic flows; this is not an exhaustive list. Harm to the visual amenity of an area could occur for example through unauthorised work to a listed building, demolition within a Conservation Area or works to a protected tree.

4.8 Once the alleged breach has been investigated, and it has been established that harm is being caused, action may then be taken.

4.9 This harm would not, for example include:

- loss of value to a neighbouring property,
- competition to another business,
- loss of an individual's view or trespass onto someone else's land.

4.10 It may be possible to address issues such as the above, by way of civil action, although this is a matter for the individual to pursue and is not an area where the Council would be involved.

5 - WHO CAN COMPLAIN

5.1 Anyone who believes that a breach of planning control has occurred can make a complaint via email, telephone or in writing. Please see Section 6 below.

5.2 Please be prepared to identify yourself so that your complaint may be investigated.

- 5.3 Where a retrospective application for planning permission is made to regularise unauthorised development, publicity and consultation will be carried out, and adjacent residents/property owners will be given the opportunity to comment before a decision is taken.
- 5.4 Anonymous complaints will not normally be pursued unless other evidence suggests that the breach is causing serious harm to the environment or the amenity of residents

PLEASE NOTE - All initial complaints are dealt with in confidence, and details of the complainants will not be made known without their agreement. However, the substance of the complaints themselves is not confidential. In some cases it may be necessary to rely on evidence from complainants in order to take action and you will need to consider whether you are willing to actively assist the Council by collecting evidence and acting as a witness at an appeal or in Court. The Council's Enforcement Officer will explain what may be required in these cases.

It must be recognised that in some cases the identity of a complainant may become apparent to the transgressor despite the confidentiality policy of the Council.

6 - WHAT YOU NEED TO DO IF YOU WISH TO MAKE A COMPLAINT?

- 6.1 If you are concerned about building work, a change of use, or the condition of a property, you should contact the Planning Enforcement Section within the Development Management Team to establish whether there is a breach of planning control.
- 6.2 We can accept a complaint about an alleged breach of planning control in writing, by email, by reporting on line via our website, or in person at our offices.

Planning Enforcement
Civic Centre
West Paddock
Leyland
Preston
PR26 1DH

Tel 01772 421491
Web: www.southribble.gov.uk
e-mail: enforcement@southribble.gov.uk

You should describe the problem in as much detail as possible, including the address of the site and any details of the owner or user of the land/building. State when and where you are available for interview, including a daytime telephone number if possible.

- 6.3 Complainants who have difficulty in writing down their concerns are advised to seek help from friends, relatives, telephone or make a personal visit to the Civic Centre
- 6.4 Once a breach of control has been confirmed, you may be asked to make a note of your observations and keep a log of any relevant activities. Where it is appropriate it is particularly useful to note times, dates, names, addresses, telephone numbers and registration details of any vehicles involved.
- 6.5 The names and addresses of any other witnesses who may support your case should also be included.
- 6.6 In cases of extreme urgency such as the unauthorised felling of a tree under a Tree Preservation Order, you can telephone the Arboricultural Officers of the Council's Neighbourhoods and Streetscene Department. For urgent contact concerning the unauthorised demolition of a listed building you can telephone the Development Management Service. Details of who to contact and other useful information are listed at the end of this document.

Please ensure that you are in possession of all the relevant facts and relate them calmly. Some people are understandably annoyed about a breach of control and this anger is sometimes vented on Council staff. It is important to remember that the Council will do all it can to resolve the problems and is most effective when you are prepared to actively assist officers with their investigations.

6.7 If you also raise your complaint with a Councillor, please advise them of any contact you may have had with the Enforcement/Development Management Section and give them the name of the officer who is dealing with your complaint.

7. WHAT ACTION CAN THE COUNCIL TAKE?

Effective enforcement is important as a means of maintaining public confidence in the planning system.

Enforcement action is discretionary, and local planning authorities should act proportionately. The Council has at its disposal a range of planning enforcement powers to ensure effective enforcement, including the power to take **Direct Action** (also known as **default action**).

Direct Action empowers the Council to take action in default to secure compliance with outstanding requirements of a planning enforcement or amenity notice. Where an owner or occupier of land has failed to comply with the requirements of a planning enforcement notice or amenity notice within the period for compliance specified in the notice, the Council may do the following:

- enter the land and take the steps to satisfy the requirements of the notice; and;
- recover from the person who is the owner of the land any expenses reasonably incurred by them doing so.
- A local planning authority can also prosecute for a failure to comply with a notice as well as using default powers.

7.1 The Council will first determine whether it is appropriate to take enforcement action by establishing whether a breach of control has occurred. It might be required that the Enforcement Officer will have to contact the owner/developer of the land where there is a suspected breach and try to obtain information from them to ascertain whether a breach has occurred.

If the owner/developer is unwilling to provide information it may be necessary to use statutory provisions for the requisition of information by a Request For Information S.330 Notice (RFI) where there is an alleged breach of planning control, served on those with an interest in the property/land or, when it is suspected that a breach of planning control has taken place, a Planning Contravention Notice (PCN) served on the owner and/or occupier of the property/land to obtain the facts.

7.2 Where a breach of control has taken place the Council will then make an assessment of the harm caused by the breach of control in accordance with nationally and locally adopted and emerging policy and guidance such as the National Planning Policy Framework, The Central Lancashire Core Strategy. The South Ribble Local Plan and the South Ribble Borough Site Allocations and Development Management Policies DPD.

7.3 Where an assessment is made, and it is likely that an unconditional planning permission would be granted, the person responsible would be invited to make an application for retrospective planning permission. Similarly where it is likely that planning permission may be granted subject to the imposition of conditions a retrospective application would be the most appropriate form of action.

- 7.4 Should a retrospective application not be received the Council will commence enforcement action where the breach of control is causing sufficient harm to justify it.
- 7.5 The Council can serve an Enforcement Notice on the owner and/or occupier of the land. The notice explains the nature of the breach of control, sets out what steps are necessary to put things right and a date by which this must be done. If the notice is not complied with, the Council may bring a prosecution in the Magistrates Court where there is a maximum fine of £20,000; should the case progress to the Crown Court the fine is unlimited.
- 7.6 In the most serious cases the Council may also consider serving a Temporary Stop Notice or a Stop Notice, or may apply to Court for an Injunction to prevent further harm being caused. This action requires those responsible to stop specified activities.
- 7.7 In most cases, people who receive an Enforcement Notice can appeal to the Planning Inspectorate. Appellants must set out why it is felt that the action should not be taken. An appeal is normally dealt with by an exchange of letters known as written representations. More serious or complex cases can be dealt with by an informal hearing or at a Public Inquiry led by a Planning Inspector.
- 7.8 The Council can also carry out other enforcement action, including:
- Service of a 'Breach of Condition Notice' where development has taken place without compliance with a condition[s] imposed on a planning permission.
 - Service of a notice requiring the proper maintenance of land and buildings under Section 215 of the Town and Country Planning Act 1990.
 - Prosecution in connection with unauthorised advertisement display.
 - Prosecution for unauthorised work to a listed building
 - Service of a 'Listed Building Enforcement Notice' where unauthorised work has taken place to a building listed as having special architectural or historic interest.
 - Service of a 'Conservation Area Notice' where unauthorised demolition has taken place within a designated Conservation Area.
 - Prosecution for non-compliance with a requirement to replace a protected tree.
 - Prosecution for unauthorised work to a protected tree.
 - Where there has been deliberate concealment of a breach of planning control, the LPA may apply to the Magistrates Court for a planning enforcement order (PEO). Where a PEO is granted, the LPA will have 1 year and 22 days to serve an enforcement notice, beginning on the day that the order is granted, irrespective of how long ago the breach first occurred. The 4 and 10 year periods for immunity will not apply in cases of concealed breach. An application for a PEO must be made within 6 months of the LPA becoming aware of the breach sufficient to justify enforcement action being taken. A Magistrates Court may only make a PEO if it is satisfied that a breach has been deliberately concealed. There is no definition of what deliberate concealment means in practice.

8. WHAT CAN YOU EXPECT?

- 8.1 Written complaints will **normally** be acknowledged within 5 days of receipt by telephone, letter or email and each case will be individually assessed on its own merits.
- 8.2 You will be informed of the name of the Enforcement Officer who will be dealing with your complaint. The officer then checks the Council's records, inspects the site and interviews witnesses in order to establish whether a breach of planning control has occurred.
- 8.3 If a breach has occurred, the person responsible may be asked to put it right, either by submitting a planning application or by stopping the unauthorised work.

8.4 If this approach fails, the Council can then consider serving an Enforcement Notice. The Council may prosecute offenders who do not comply with an Enforcement Notice.

8.5 Where the Council decides not to take formal enforcement action, or no breach of planning control has taken place, the complainant will be notified in writing of the reason for the Council's decision. Updates on enforcement proceeding progress will be given to those who ask for the information

How long will it take?

8.6 Dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably in complexity as does the time taken for their resolution. It may be that the case is complicated and may involve a multi-agency investigation involving Lancashire County Council and the Environment Agency. If a person decides to appeal against an enforcement notice, this will add to the time taken to resolve the case. In consequence it is not possible to give a standard time for dealing with enforcement cases.

8.7 If the investigations indicate that a breach of control has occurred that justifies enforcement action an Enforcement Notice will be served. The Notice takes a minimum period of 1 month to come into effect during which time the person(s) served with the notice can appeal against it to the Secretary of State for Communities & Local Government via the Planning Inspectorate. An Enforcement Notice may be quashed or revised by the Planning Inspector who is appointed by the Secretary of State.

8.8 Where an appeal is lodged the Council can take no further action until the appeal has been decided. It is not unusual for the appeal process to take several months.

8.9 An Enforcement Notice specifies the time period needed for compliance. This period will take account of the steps required to comply with the Notice and will set a practical and reasonable period for their completion.

8.10 However, if someone does not comply with a notice they may be prosecuted with the possibility of being fined by the Courts.

8.11 Where a breach of control is causing serious harm to amenity which cannot be remedied if allowed to continue, the Council can seek immediate remedial action. This action may involve the serving of a Stop Notice when an Enforcement Notice has already been issued.

8.12 The Enforcement Officer will advise you of any significant progress made as and when this occurs. Please be aware that due to peaks of workload, this may take more time to conclude.

9. WHAT ARE THE PRIORITIES?

9.1 The Council receives approximately 300 planning enforcement complaints every year.

9.2 Because of the often lengthy and complex nature of planning investigations and limited staff resources, it is necessary to give priority to those cases where the greatest harm is being caused. The following provides examples of how cases are prioritised:

Priority One

- Demolition or alterations to a Listed Building.
- Demolition in a Conservation Area that is causing immediate and irreparable harm.
- Permanent damage to the environment (e.g. loss of protected tree, unauthorised work affecting the character of a listed building)
- Development that is causing serious danger to public safety • Changes of use which are seriously impacting upon amenity.

Priority Two

- Building work, which is unlikely to be given planning permission/or granted without substantial modification.
- Property or land whose condition adversely affects the amenity of the surrounding neighbourhood
- Development which is contrary to significant policies in the Development Plan

Priority Three

- A breach causing problems, which may be resolved by limited modification (E.g. insertion of opaque glazing in an unauthorised window to overcome privacy problems; restrictions on hours of use etc.), reduction in boundary fence height.

Priority Four

- Breaches of a minor nature raising minimal planning concerns.

9.3 We will assess whether a site visit is necessary. If we consider it necessary to do so – we aim to visit in accordance with the following timescales:

- Priority 1: Same day or next working day.
- Priority 2 & 3: Within 10 working days (5 days if harm is considered substantive).
- Priority 4: Within 20 working days
- Complainant will be updated within 28 days of the initial complaint

What to do if you are not satisfied with the Council's service.

9.4 If you feel that there is unreasonable delay, or an error in the way in which an enforcement investigation is being carried out, you should contact the Team Leader of the Development Management Section (see below for telephone number). They will investigate the matter, review the circumstances and advise you within 10 days about what action will be taken. If a matter requires further investigation, you will be advised of this at the time.

9.5 If you are still dissatisfied with the service, then you can make a formal complaint – details of the procedure for which will be sent to you. Please remember that the complaints procedure does not apply to matters which are directly related to a Council or committee decision or where there is a legal remedy or appeals process. You can, of course, contact your local Councillor at any time.

9.6 If you remain dissatisfied with the outcome of any investigation, you may complain to the Ombudsman; information on how to do this will be given to you by the Council. The Ombudsman will not normally deal with a complaint unless it has first been through the Council's own complaint procedures and deals only with aspects concerning the conduct of the investigation.

9.7 We always welcome constructive criticism and any ideas on how we can improve Council services. Please contact us if you can suggest ways of improving the service.

10. WHAT IF SOMEONE COMPLAINS ABOUT YOU.

10.1 If you are contacted about an alleged breach of planning control you are entitled to know what the allegation is (but not who made it), and have the opportunity to explain your side of the case. Please remember that the investigating officers are undertaking their duties and they are looking at the case objectively with no pre conceived view. Please assist them with their investigation and treat them with respect.

10.2 If the complaint is not justified no action will be taken against you. If it is the Development Management Service will advise you of the details of the breach and how it can be put right.

10.3 Your co-operation will be sought to correct the breach, either by removing or modifying the unauthorised development or by ceasing the unauthorised work. A reasonable period of time will be allowed for you to do this.

10.4 In some circumstances you may be invited to submit a retrospective planning application if it is considered that permission may be granted.

10.5 If you are running a business which is threatened by enforcement action, you will be helped to identify alternative premises so as to minimise the possible impact on the business. This does not mean that the enforcement action will be delayed or stopped.

10.6 If you are issued with an Enforcement Notice you will be given the precise details of the breach, the reasons for the action, the steps required to overcome the problem and the time period for compliance.

10.7 You may be served with a 'Planning Contravention Notice' that requires information concerning the development carried out. This Notice is used to establish the facts of what has occurred so that the Council can determine whether a breach of control has taken place, and whether formal enforcement action is appropriate. The implications of not completing and returning the Notice will be explained to you.

10.8 There are several types of enforcement action [see '7 'What action can the Council take?' above]. Further information and guidance on planning enforcement can be obtained from the Department of Communities & Local Government. Their website is:

www.gov.uk/government/organisations/department-for-communities-and-local-government

Where to get more information

If you require further information or wish to comment and / or complain about this service, contact your Enforcement Officer or, in their absence, the Development Management Manager.

USEFUL CONTACTS

Planning Enforcement and Development Management Teams

Civic Centre
West Paddock
Leyland Preston
PR26 1DH

Tel 01772 421491
Web: www.southribble.gov.uk
e-mail: enforcement@southribble.gov.uk

Enquiries Regarding Tree Preservation Orders

Tel 01772 625625

GLOSSARY OF TERMS

Breach of Condition Notice (BCN) - A notice served by the Local Planning Authority (LPA) when there has been a failure to comply with any condition or limitation imposed on a grant of planning permission (e.g. failure to carry out landscaping, not keeping to agreed opening hours).

Building Operations - Demolition of buildings, rebuilding, structural alterations of, or additions to buildings, and other operations normally undertaken by a builder.

Breach of Planning Control - Where development which requires planning permission has taken place, but this permission has not been obtained or the conditions of the permission have not been complied with.

Certificate of Lawful Development (CLD) - Enables Local Planning Authorities, when the appropriate conditions are satisfied in each case, to grant a certificate stating that:

- (a) an existing use of land, or some operational development, or some activity in breach of a planning condition, is Lawful; or
- (b) a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be Lawful

Development - The carrying out of building and other operational works in, on, over or under land or a material change in the use of a building or other land.

Enforcement Notice - A notice served by the LPA to remedy an alleged breach of planning control by requiring a use to stop or building works to be removed.

General Permitted Development Order (GPDO) - A national government document which sets out various categories of development that do not require planning permission (e.g. many alterations and extensions to dwellings).

Immune from compliance action - We do not have the power to take compliance action against a developer or land owner when:

- An unauthorised building or operational development has been substantially completed for four years or more.
- An unauthorised change of use from a building to a dwelling-house has been in place for four years or more. (excludes caravans).
- An unauthorised change of use to a building or piece of land was made ten years ago or more.
- Conditions of a planning permission were breached ten years ago or more.

Lawful - In this context Lawful means that the development or use of land specified is immune from compliance action and/or a specific grant of planning permission is not required.

Request for Information S.330 Notice (RFI) – A notice served on those who have an interest in the premises where there is an alleged breach of planning control including unauthorised development, adverts, trees and listed buildings.

Planning Contravention Notice (PCN) - A notice served by the LPA when it suspects there has been a breach of planning control and information is required about activities on the land or the nature of the occupier's interests in the land.

Temporary Stop Notice - A notice which can be served quickly to stop suspected breaches for 28 days giving the planning authority time to consider all the relevant issues.

Stop Notice - A notice served in conjunction with an enforcement notice to require unauthorised activities to cease with almost immediate effect.

Town and Country Planning Act 1990 - This is the primary piece of planning legislation and includes sections on Control over Development and Development Plans.

Town and Country Planning (Use Classes) Order 2010 - Lists certain changes of use which do not usually require planning permission (e.g. change of use from a restaurant to a shop or from light industrial to offices).