



# PLANNING COMPLIANCE STRATEGY

May 2022

## **1. Introduction**

Arun District Council are committed to providing an efficient, effective, and fit for purpose planning compliance service. This Compliance Strategy will explain how the service will be delivered and the extent of powers available to the Local Planning Authority in relation to breaches of planning control. This document replaces the Planning Compliance Strategy published in 2019.

## **2. The purpose of planning enforcement**

Planning laws and policies are designed to control development and use of land and buildings in the public interest. They cannot be used to protect the private interests of one person against the activities of another. The relevant legislation to these powers is contained primarily within the Town and Country Planning Act 1990 (as amended) and the Planning (Listed Building and Conservation Area) Act 1990. This legislation is supported by Government advice, including the National Planning Policy Framework (NPPF)<sup>1</sup> and the National Planning Practice Guidance (NPPG)<sup>2</sup>.

## **3. The Compliance Strategy comprises**

- Planning enforcement objectives
- Key principles
- General principles
- What is a breach of planning control?
- Reporting a breach
- Freedom of Information
- Case priority
- Investigating a breach of planning control
- Possible outcomes of the Council's planning investigation
- Monitoring of development for compliance
- Appendix 1 - Types of formal enforcement action

## **4. Planning enforcement objectives**

Arun District Council recognises the importance of planning compliance to maintain the quality of the environment. The Council has established the following objectives: -

- To remedy **significant** harm caused by unauthorised development.
- Enforcement action is discretionary, and local planning authorities should act proportionately in responding to breaches of planning control and take action where appropriate.

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6077/2116950.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf)

<sup>2</sup> <http://planningguidance.planningportal.gov.uk/>

- Where resources allow; be pro-active in regard to the monitoring of large-scale strategic development to ensure compliance with conditions imposed on planning permissions.
- Where a report refers to matters not controlled under planning legislation but is capable of being pursued by the Council the complaint will be passed to the relevant department for further investigation. Where a report refers to matters not controlled by the Local Authority complainants will be advised accordingly.

## **5. Key principles**

The key principles are:

### **Transparency**

- We will provide information in plain language to complainants and offenders.
- Be transparent in our actions (some information, such as the name of the complainant and any information which could be used to identify the complainant, will remain confidential unless required for court or appeal proceedings).

### **Helpfulness**

- Officers will clearly identify themselves by name when on site and provide contact details to enable further communication and act in accordance with the Town and Country Planning Act governing access to land and buildings.
- Interested parties (including complainants) will be updated when sufficient progress has been made on an investigation.

### **Consistency**

- Action against breaches of planning control will be proportionate to the impact of the breach.
- All duties undertaken will be carried out in a manner which is fair, equitable, and consistent.

## **6. General Principles**

The general principles which govern the operation of planning compliance are: -

- The Council will not take enforcement action to resolve all breaches of planning control.
- The use of enforcement powers is discretionary and carrying out development without planning permission, although unauthorised, is **not** illegal. It becomes a potential criminal offence if any subsequent formal notice (e.g., Enforcement

Notice) has not been complied with which then can be subject to a formal prosecution to the Courts.

- There are a number of powers available to address breaches of planning control and the Council will apply those most appropriate to the circumstances of each case.
- Anonymous complaints will not be investigated.
- The Council will seek to resolve breaches of planning control through negotiation in the first instance unless the breach is causing irrevocable harm requiring immediate action. Formal action will only be used if informal attempts to resolve the breach have failed.
- Where development taking place is unlawful (for example, where a developer has not discharged the required planning approval conditions before commencing development) the Council may use Temporary Stop Notices that will require development to stop until such time as all the required conditions are discharged and complied with.
- Where appropriate, reasonable time will be given for compliance in order to achieve resolution of the breach via an application.
- Applications submitted in an attempt to regularise unauthorised development may be determined by the Council.
- Action should be proportionate to the harm caused and should take into account relevant circumstances. The Council will consider if it is expedient or in the public interest to undertake enforcement action to resolve breaches of planning control.
- A Temporary Stop Notice will not be issued where there is a Discharge of Condition application awaiting determination that relates to breach.

## **7. What is a breach of planning control?**

A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 (as amended)<sup>3</sup> as the carrying out development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted. Similarly, any contravention of the limitations, or conditions belonging to, permitted development, rights, under the Town and Country (General Permitted Development) (England) Order 2015<sup>4</sup>, constitutes a breach of planning control against which enforcement action may be taken<sup>5</sup>.

Below are examples of what does and does not constitute a breach of planning control:

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Breach of planning control	Not a breach of planning control
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<sup>3</sup> <http://www.legislation.gov.uk/ukpga/1990/8/section/171A>

<sup>4</sup> <http://www.legislation.gov.uk/uksi/2015/596/contents/made>

<sup>5</sup> Paragraph: 001, Reference ID: 17b-001-20140306, National Planning Practice Guidance<sup>6</sup>  
<http://www.legislation.gov.uk/ukpga/1990/8/section/171D>

<ul style="list-style-type: none"> <li>✓ Breaches of conditions attached to planning permissions</li> <li>✓ Not building in accordance with the approved plans of a planning permission</li> <li>✓ Unauthorised material change of use of land or buildings</li> <li>✓ Unauthorised works to a Listed Building</li> <li>✓ Unauthorised advertisements</li> <li>✓ Unauthorised works to trees the subject of a tree preservation order (TPO) or in a Conservation Area</li> <li>✓ Unauthorised demolition within Conservation Areas</li> <li>✓ Engineering operations, such as raising of ground levels or the creation of earth bunds</li> <li>✓ Unauthorised stationing of a caravan or mobile home for use as an independent dwelling</li> <li>✓ Land or buildings in such poor condition that they adversely affect the amenity of an area</li> </ul>	<ul style="list-style-type: none"> <li>✗ Any works which are deemed to benefit from 'permitted development' under the Town and Country (General Permitted Development) (England) Order 2015</li> <li>✗ Running a business from home where the residential use remains the primary use of the dwelling</li> <li>✗ Felling of a tree not within a Conservation Area or protected by a Tree Preservation Order</li> <li>✗ Land ownership or boundary disputes or trespass issues e.g., scaffolding erected on neighbouring property (these are private matters)</li> <li>✗ Dangerous structures or health and safety issues – these should be directed to the Council Building Control Department (number)</li> <li>✗ Internal works to a non-listed building</li> <li>✗ Obstruction of a highway (Contact West Sussex County Council), public right of way or a private right of way</li> <li>✗ Parking of private and commercial vehicles on the highway or on grass verges</li> <li>✗ Parking caravans on residential driveways or within the curtilage of domestic properties as long as they are incidental to the enjoyment of the property</li> <li>✗ Covenants imposed on property deeds (these are private matters)</li> <li>✗ Advertisements that are either excepted from deemed or express consent under the Town and Country (Control of Advertisements) (England) Regulations 2007</li> <li>✗ Damage caused to neighbouring properties during construction work (this is a private matter)</li> <li>✗ Anti-social behaviour</li> </ul>
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## **Minor Breaches of planning control that may not be investigated (not an exhaustive list)**

- Fences and outbuildings 10cm higher than allowed under permitted development rights
- Fences that are not harmful to amenity
- Untidy land unless significantly detrimental to amenity
- Where reports of breaches relate to works that do not require planning permission

Where cases of a minor breach are reported, minimal investigations will take place and the most likely outcome is that they are closed due to the limited and acceptable planning harm that they cause.

When/if minor breach reports are received case officers will send an appropriately worded email to say that these complaints will not be registered and proceed to close them.

### **8. Reporting a breach**

In most cases, complaints from members of the public, Councillors and other depts. can only be made and will only be accepted via the online form. Emails and telephone calls may be accepted for priority 1 cases only.

Online Complaint Report Form: [Report a breach of planning regulations | Arun District Council](#)

Email: [planning@arun.gov.uk](mailto:planning@arun.gov.uk)

Tel: 01903 737500

#### **The reported breach must include (*as a minimum*):**

- An accurate description of the location or address for the site.
- A detailed description of the activities/development taking place that causes concern.
- Why the complainant believes there is a breach.
- The harm being caused and/or how it affects the complainant.
- Attached photo (subject to changes to the website/form).
- Estimated or real measurements.
- Names, address and phone numbers (if known) of those responsible for the alleged breach or the landowner.
- The date and times of when the alleged breach took place including when it first started.
- Other information or evidence that may be of assistance e.g., planning application number, previous planning problems/breaches, or additional evidence relating to the breach.
- Your name, address, phone number and e-mail address.
- If the site is large the precise location of the potential breach within that site.

**Failure to supply all the above information may result in your report being returned without investigation.**

Once the allegation has been investigated and it is established a breach of planning control has taken place, formal enforcement action **may** be taken if considered expedient to do so. Assessment of the extent of harm caused would not include the following (not exhaustive):

- ✗ Loss of property value
- ✗ Competition to another business
- ✗ Loss of an individual's view or trespass onto someone else's land
- ✗ Party Wall infringement
- ✗ Local/property bylaw infringement

### **9. Requests made under the Freedom of Information Act 2000 and Environmental Information Regulation 2004**

Where the Council receive requests for information on enforcement investigations under either the Freedom of Information Act 2000 or the Environmental Information Regulation 2004, information will be released subject to compliance with General Data Protection Regulation.

### **10. Case priority**

<b>Priority 1</b>	<b>Priority 2</b>	<b>Priority 3</b>	<b>Priority 4</b>
Direct and potentially irreversible harm	Potential to escalate and cause serious harm to the environment  Contentious	Loss of amenity  Other breaches likely to remain stable	Minor breaches  Private disputes  Other issues not stated below.
<b>Site visit within 1 working day</b>	<b>Site visit within 15 working days</b>	<b>Site visit within 20 working days</b>	<b>Desktop Assessment These will be dealt with without formal registration.</b>
<b>Examples</b>	<b>Examples</b>	<b>Examples</b>	<b>Examples</b>
Unauthorised works to protected tree/s or tree/s in a Conservation area	Unauthorised change of use of land and/or building	Unauthorised outbuildings/ Extensions	Boundary treatment

Unauthorised works to listed building	Unauthorised building	Untidy site	Telecommunications
Condition monitoring (contaminated land + piling only)	Condition monitoring (minus contaminated land + piling)	Deviation from approved plans (new application required, minor variation or de minimis)	General enquiries
Demolition of a building essential to retain	Business from home (high activity levels)	Advertisement control (visual amenity)	Advertisement control (for sale / to let boards)
Breach of condition (serious harm to amenity & ecology)	Advertisement control (highway safety)	Business from Home (initial investigations)	House in multiple occupation
Deviation from approved plans (irreversible harm)	Caravans & development related to travellers	Breach of condition (all other alleged breaches)	Flag poles
			Satellite dishes
			Works likely to be permitted development
			AirBnB's / Holiday lets
			Porches



## **11. Investigating a breach of planning control**

An enforcement investigation can be lengthy and complex, and the time taken to determine each case will vary.

On receipt of an alleged breach the Council aims to:

- Register and acknowledge your complaint within 5 working days
- Carry out the initial site visit:
  - **Priority 1** cases within 1 working day
  - **Priority 2** cases within 15 working days
  - **Priority 3** cases within 20 working days
  - **Priority 4** cases will involve a desktop assessment and a site visit may not be required.
- Provide an update to the complainant at key stages in the investigation and when **significant progress** has been made
- Advise the person reporting and site owner/occupier of the outcome of the investigation and any further action required:
  - **Priority 1** cases within 30 working days
  - **Priority 2, 3 & 4** cases within 90 working days

The council have set performance monitoring targets to carry out initial site visits in accordance with the time specified for that priority (above) in 75% of cases. Further performance monitoring targets have been set for concluding investigations (excluding formal enforcement action and allowing time for an identified breach to be resolved informally or via a retrospective planning application) of 30 days for Priority 1 cases and 90 working days for Priority 2, 3 & 4 cases 80% of the time.

Reasonable time must be given for compliance with an Enforcement Notice and if this is challenged at appeal, then the Council would be subject to timescales imposed by the Planning Inspectorate or the Courts. As a result of long compliance periods there may be limited progress with which to update interested parties. In such cases interested parties are welcome to contact the investigating officer to check progress.

## **12. Possible outcomes of the Council's planning investigations**

In most cases, a breach of planning control is identified, and no action is taken. In cases where a breach is identified, in accordance with Government guidance the Council will seek to secure a negotiated solution unless there is substantive unresolvable harm that requires immediate action. Adequate time must be allowed for compliance to be achieved.

The table below shows potential outcomes for investigations.

<b>Outcome of the investigation</b>	<b>Action taken</b>
<b>No breach</b> – No development has taken place; the development is permitted by The Town and Country (General Permitted Development) Order 2015; or	The case will be closed, and no further enforcement action taken. The complainant will be informed of the closure and the reason for this.

is not within the control of planning legislation.	
<b>Breach identified but action not expedient</b> – e.g., the development is marginally larger than permitted development limitations and does not result in unacceptable harm. In such cases it would not normally be expedient to pursue formal action.	A retrospective application may be invited to regularise the development, or a delegated report prepared seeking authorisation for the case to be closed and no further action taken.
<b>Development is immune from action</b> – The development or use has been in existence for a period of time which makes it exempt from enforcement action.	Where the case is not priority 4 a report will not be prepared and the case closed.
<b>Breach ceased (negotiation)</b> – In line with the National Planning Practice Guidance, the breach has ceased following negotiation.	An application may have been invited; appropriate time given for the removal of the structure or cessation of the use; or alterations made to the development to resolve the case.
<b>Formal Action</b> – The development causes unacceptable harm and amendments cannot be made to resolve the harmful impacts of the development or use.	Formal action will take place. This is a lengthy process if negotiated solutions cannot be achieved. Adequate timescales for compliance with formal action must be provided by the Council. A Temporary Stop Notice <u>will not</u> be issued where there is a current and undecided discharge of condition application.

### **13. Monitoring of development for compliance**

The Local Planning Authority (LPA) will seek, where resources allow, to pro-actively monitor large-scale development to ensure compliance with planning approvals. Due to the number of planning permissions granted each year it is not possible to monitor all development. The LPA will continue to rely upon the knowledge of local people, Ward members and Town and Parish councils to identify matters of non-compliance.

## **Appendix 1 - Types of formal enforcement action**

If negotiation cannot secure a resolution to the case the Council will consider use of discretionary powers to take enforcement action. The nature of the breach will dictate what action will be most appropriate. The tools available include:

<b>Enforcement tool</b>	<b>Definition</b>
<p>Planning Contravention Notice and requests for information</p>	<p>In order to confirm the existence or nature of a breach, a Planning Contravention Notice (PCN) may be served under S171C of The Town and Country Planning Act 1990 (as amended). As well as clarifying the details in relation to a suspect breach, the PCN serves as a statement of intent of enforcement action by the LPA, formally demonstrating that it takes the matter seriously. The PCN offers the contravener an opportunity to meet officers to agree a plan for remedial measures. Failure to respond within time or not at all, or replying with false or misleading information, constitutes a criminal offence under Section 171D of the Town and Country Planning Act 1990 (as amended)<sup>6</sup> and may lead to a penalty of up to a maximum of £5,000<sup>7</sup>.</p> <p>A notice under s.16 of The Local Government (Miscellaneous Provisions) Act 1976 or s.330 of The Town and Country Planning Act 1990 (as amended) can be issued with respect to specific matters only (for example; names, addresses and nature of interest; and use of a premises, dates and names, addresses and interests of users respectively). Land Registry searches into ownership of land can be undertaken.</p>
<p>Enforcement Notice</p>	<p>An enforcement notice can be served under Section 172 of the Town and Country Planning Act 1990 (as amended)<sup>8</sup> and is the principle tool to remedy a breach of planning control. It imposes a legal duty on those with an interest in the land to affect measures specified in the notice within a specified period of time (no less than 28 days). Recipients may appeal to the Planning Inspectorate, during which time the notice is held in abeyance until the appeals determination.</p> <p>Enforcement Notices are entered in the Land Charges Register and Planning Enforcement Register and run with the land, remaining effective in perpetuity, even once complied with. Non-compliance constitutes a criminal offence for which recipients may be prosecuted and if found guilty are liable to a fine up to £20,000</p>

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/1990/8/section/171D>

<sup>7</sup> <http://www.legislation.gov.uk/ukpga/1982/48/part/III/crossheading/introduction-of-standard-scale-of-fines><sup>8</sup> <http://www.legislation.gov.uk/ukpga/1990/8/section/172>

<sup>8</sup> <http://www.legislation.gov.uk/ukpga/1990/8/section/172>

	<p>together with costs and a criminal record or an unlimited fine on indictment<sup>9</sup>.</p> <p>Section 171B<sup>10</sup> of the Town and Country Planning Act (1990) as amended sets time limits within which the LPA can take planning enforcement action these are:-</p> <ul style="list-style-type: none"> <li>• Four years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially completed.</li> <li>• Four years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken.</li> <li>• Ten years for all other development. The ten year period runs from the date the breach of planning control was committed.</li> </ul> <p>However, where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action has expired. In such cases an enforcement order can be obtained which would enable the LPA to take action in relation to an apparent breach of planning control notwithstanding that time limits may have expired<sup>11</sup>.</p>
<p>Listed Building Enforcement Notice</p>	<p>This is the equivalent notice available under Listed Building legislation<sup>12</sup>. Works to a Listed Building do not benefit from the time limits for enforcement action imposed by The Planning and Compensation Act 1991. Therefore, this notice may be issued at any time.</p> <p>The same penalties apply to non-compliance with a Listed Building Enforcement Notice as to an Enforcement Notice. Any person who executes or causes work to be executed for the demolition of a Listed Building or for its alteration or extension in any manner will be guilty of an offence under s. 9 of the Planning (Listed Building and Conservation Areas) act 1990 (as amended) and if found guilty of an offence shall be liable</p>

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/1990/8/section/179>

<sup>10</sup> <http://www.legislation.gov.uk/ukpga/1990/8/section/171B>

<sup>11</sup> Paragraph 024, Reference ID:17b-024-20140306, National Planning Practice Guidance

<sup>12</sup> <http://www.legislation.gov.uk/ukpga/1990/9/part/I/chapter/IV>

	on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £20,000, or both; or on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both <sup>13</sup> .
Breach of Condition Notice	This remedy is available in the event of non-compliance with a condition on a planning permission. There is no right of appeal and the penalty for non-compliance is a fine up to £2,500 <sup>14</sup> .
Stop Notice	In the most serious of cases the LPA may decide to issue a Stop Notice. Such notices can only be served in conjunction with an Enforcement Notice. They can require cessation of unauthorised activities where they cause severe harm to local amenity. The duty to comply is universal and not limited to recipients of the notice. The improper use of a Stop Notice may result in the LPA being liable for compensating owners and/or occupiers for losses directly attributed to the service of the notice.  The fine for breaching a Stop Notice is currently £20,000 with an unlimited fine on indictment <sup>15</sup> .
Temporary Stop Notice	It is effective immediately and does not require the prior service of an Enforcement Notice. They last for a maximum of 28 days and cannot be renewed unless an Enforcement Notice is served. The fine for a breach a Temporary Stop Notice is the same as for a Stop Notice.
Court Injunction	This may be sought in the most serious of cases to restrain anticipated breaches as well as prevent actual breaches. Non-compliance is considered to be in contempt of Court and may result in a fine and/or imprisonment.
Untidy Land (s.215) Notice	Notices under s.215 of The Town and Country Planning Act 1990 (as amended) can encompass buildings as well as land. The LPA need only show that amenity is adversely affected by the state of the premises. Appeals are to the Magistrates' Court and non-compliance is a criminal offence for which recipients may be prosecuted and are liable to a fine of up to £1,000 <sup>16</sup> .
Advertisements	Advertisements, other than those exempt under The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 <sup>17</sup> , require consent. Any person who displays an advertisement in contravention of the Regulations is guilty of an offence under s. 224 (3) of The Town and Country Planning Act 1990 (as

<sup>13</sup> <http://www.legislation.gov.uk/ukpga/1990/9/section/9>

<sup>14</sup> <http://www.legislation.gov.uk/ukpga/1990/8/section/187A>

<sup>15</sup> <http://www.legislation.gov.uk/ukpga/1990/8/section/187>

<sup>16</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/11491/319798.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11491/319798.pdf)

<sup>17</sup> <http://www.legislation.gov.uk/uksi/2007/783/contents/made>

	<p>amended) and would be liable to a fine upon conviction of up to £2,500<sup>18</sup>.</p> <p>A Discontinuance Notice can be served in respect of adverts that have deemed consent; this is the relevant power where the LPA consider that an advertisement is not appropriate or dangerous. The notice cannot take effect less than 8 weeks after service and the notice carries a right of appeal<sup>19</sup>.</p>
Prosecution	<p>Prosecution is one of the remedies available in respect of a breach of any of the notices listed above (excluding Court Injunctions) and this action will be taken where there is sufficient evidence and it is in the public interest in accordance with the Code for Crown Prosecutors<sup>20</sup>.</p> <p>If found guilty of the offence the Defendant may incur the costs of the LPA in bringing the prosecution; any resultant fines imposed; any costs incurred themselves directly in seeking legal representation; and have a resultant criminal record.</p>
The Proceeds of Crime Act 2002 <sup>21</sup> (POCA)	<p>The Act provides for the confiscation or civil recovery of proceeds of crime. POCA deals with a wide range of matters relevant to planning. Including confiscation orders against convicted individuals (requiring payment to the State based upon the benefit obtained from their crimes) and civil recovery of proceeds of crime from unconvicted individuals. Where a prosecution concerns offending conduct falling within the relevant tests under the Proceeds of Crime Act 2002, the Council will consider seeking a confiscation order to remove the benefit obtained from such criminal conduct. This sends a clear message 'that crime does not pay'.</p>
The Powers of Entry	<p>The Powers of Entry the LPA has to investigate potential breaches of planning control are;</p> <ul style="list-style-type: none"> <li>• S. 196A, s. 196B (Power of Entry following issue of a warrant) and s. 196C (supplemental provisions relating to Power of Entry) of The Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 2004).</li> <li>• S. 214B, 214C (Power of Entry following issue of a warrant) and s. 214D (supplemental provisions relating to Power of Entry).</li> <li>• S. 225 of the Town and Country Planning Act 1990 (only entitles access to buildings which have public access).</li> </ul>

<sup>18</sup> <http://www.legislation.gov.uk/ukpga/1990/8/section/224>

<sup>19</sup> <http://www.legislation.gov.uk/uksi/2007/783/regulation/8/made>

<sup>20</sup> [https://www.cps.gov.uk/publications/docs/code\\_2013\\_accessible\\_english.pdf](https://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf)

<sup>21</sup> <http://www.legislation.gov.uk/ukpga/2002/29/contents>

	<ul style="list-style-type: none"> <li>• S. 324 and 352 (supplemental provisions relating to Power of Entry) pursuant to the Town and Country Planning Act 1990.</li> <li>• S. 36 and 36A (Power of Entry following issue of a warrant) of the Planning (Hazardous) Substances Act 1990.</li> <li>• S. 88 of the Planning (Listed Building and Conservation Areas) Act 1990.</li> <li>• S. 24 of The Local Government (Miscellaneous Provisions) Act 1976.</li> <li>• S. 33 of The Local Government (Miscellaneous Provisions) Act 1982.</li> </ul>
Direct Action	Direct Action involves the Council undertaking the work specified in the notices.