Armagh City, Banbridge &
Craigavon Borough Council

Planning Enforcement Strategy

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Armagh City
Banbridge
& Craigavon
Borough Council

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1.0 INTRODUCTION

1.1 This strategy relates to Armagh City, Banbridge & Craigavon Borough Council's (the Council's) Planning Enforcement service and will set out the Council's objectives for planning enforcement, priorities for enforcement action and performance targets within the context of the Council's General Enforcement Policy.

1.2 The Council's function as the local planning authority for Armagh City Banbridge & Craigavon Borough Council is set out in the Planning Act (Northern Ireland) 2011. The Council's Planning Department will administer these planning functions including the discretionary power to take action against breaches of planning control in line with this strategy.

1.3 Development Management is a key part of an effective planning system in that it regulates the development and use of land, contributing to the objective of furthering sustainable development and promoting and improving wellbeing. Effective enforcement is essential to ensure the credibility and integrity of the planning system is not undermined.

1.4 Armagh City, Banbridge & Craigavon Borough Council is a diverse area which extends from the southern shores of Lough Neagh to the foothills of the Mournes in the east, to the Blackwater Valley in the west. It comprises a diverse mix of attractive rural and urban landscapes, rolling drumlin countryside and areas of peatland, as well as an abundance of heritage assets. The Borough contains the main settlements of Armagh City, Banbridge Town and Craigavon Urban Area as well as a number of other towns, villages and smaller settlements.

1.5 The Council is firmly committed to protecting these environments and our communities through fair and effective planning enforcement that is essential to protect the quality of the natural and built environment and the quality of life for people who live, work and enjoy visiting the Borough.

2.0 GENERAL APPROACH AND KEY OBJECTIVES TO PLANNING ENFORCEMENT

2.1 Under the provisions of The Planning Act (Northern Ireland) 2011, and being consistent with the Strategic Planning Policy Statement for Northern Ireland (SPPS), the Council has discretionary powers to take enforcement action when it considers it expedient to do so, having regard to the provisions of the local development plan and any other material considerations.

2.2 In exercising discretion, the Council will be mindful of its duty to enforce planning legislation and to ensure that development is managed in a proactive and proportionate manner. In determining the most appropriate course of action in response to alleged breaches of planning control, the Council will take into account the extent of the breach and its potential impact on the

environment. Any decision to proceed with enforcement action will also be informed by case law, precedents and appeal decisions.

2.3 It is important to note that the existence of a breach of planning control will not, in itself, necessarily be sufficient reason to take enforcement action. The Council must first decide, having regard to the Local Development Plan, and any other material planning considerations, whether or not it is 'expedient' to take formal action.

2.4 The purpose of planning enforcement is to resolve the breach rather than to seek punitive action. It is therefore appropriate that those concerned are given the opportunity to remedy any identified breach. This may be through a retrospective planning application or negotiating a solution acceptable to the Council in line with the regional guidance, best practice and local planning policies. Action taken must be proportionate to the scale of the breach. Formal enforcement action will only be considered where a satisfactory outcome cannot be achieved by negotiation and it is considered in the public interest to seek remedial action.

2.5 The Council's key objectives for planning enforcement are:

- To bring unauthorised activity under control;
- To remedy the undesirable effects of unauthorised development including, where necessary, the removal or cessation of unacceptable development; and
- To take legal action, where necessary, against those who ignore or flout planning legislation.

2.6 The Council is committed to securing these objectives in order to ensure that the credibility and integrity of the planning system is not undermined.

3.0 EXPEDIENCY

3.1 Enforcement action against a breach of planning control relating to all forms of development including trees may be taken when a Council regards it as expedient to do so. Whilst not formally defined, expediency is taken as a test of whether an unauthorised development or activity is causing unacceptable harm to the environment and / or public amenity, having regard to the provisions of the local development plan and to any other material considerations. Therefore, enforcement action is discretionary, and each case must be assessed on its own merits.

3.2 It is appropriate for the Council, in determining what (if any) enforcement action is to be taken, to give priority to those breaches where in the Council's opinion the greatest harm is being caused. It is considered good planning practice that any action taken against a breach of planning control shall be proportionate and commensurate to the breach of planning control.

This means that the Council may not take formal enforcement action in all cases where there has been a breach of planning control identified.

3.3 Formal enforcement action will be avoided where:

- There is a trivial or technical breach of control which causes no significant material harm or adverse impact on the amenity of the site or the surrounding area;
- Development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- In the assessment, the Council will consider if an application is an appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

4.0 WHAT IS A BREACH OF PLANNING CONTROL?

4.1 A breach of planning control is defined in Section 131(1) of the 2011 Act as either:

(a) carrying out development without the planning permission required; or

(b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.

(development undertaken which is not in accordance with approved plans would fall under (b) above)

5.0 WHAT IS NOT A BREACH OF PLANNING CONTROL

5.1 The following are examples of what is not a breach of planning control:

- carrying out work which is not development as defined under Section 23 of the Planning Act (Northern Ireland) 2011, for example, internal works to a building (this does not include listed buildings);
- carrying out works which fall within The Planning (General Permitted Development) Order (Northern Ireland) 2015 and as amended ('permitted development'), for example, certain types of development within the curtilage of a dwelling house, minor operations like the erection of a fence, gate, wall or other means of enclosure, certain changes of use, temporary buildings and uses which do not require planning permission (subject to the limitations and conditions set out in the Order);
- carrying out work which already benefits from planning permission or other planning consent e.g. advertisement consent;

- boundary or ownership disputes;
- breaches of deeds or covenants;
- removal of undergrowth, bushes and trees provided they are not protected by a Tree Preservation Order and are not within a Conservation Area or prevented by a specific planning condition;
- obstruction of a public road or right of way; and
- homeworking, such as child minding or the use of a room by the householder as an office, where the residential use remains the primary use and there is no unacceptable adverse impact.

5.2 It is not the function of the Council to become involved in private neighbour disputes where no planning issue is evident. Additionally, it is not the Council's role to mediate in private legal disputes such as boundary disputes, rights of way, or damage to private property. Such cases will not be investigated as they are civil matters.

6.0 OFFENCES UNDER PLANNING LAW

6.1 It is not a criminal offence to carry out development without planning permission or fail to comply with any condition or limitation subject to which planning permission has been granted. However, where an enforcement notice or a breach of condition notice is in effect and the requirements of the notice have not been complied with, the owner of the land shall be guilty of an offence. Additionally, a person carrying on an activity prevented by the notice shall be guilty of an offence.

6.2 The following activities constitute criminal offences under planning law:

- carrying out of almost any works, including demolition, to a listed building without having obtained Listed Building Consent;
- failing to comply with any conditions attached to a Listed Building Consent;
- demolition of a building in a conservation area without having obtained Conservation Area Consent;
- failing to comply with any conditions attached to a conservation area consent;
- contravention of a tree preservation order by undertaking works likely to destroy a tree / trees;
- undertaking works likely to destroy a tree / trees in a conservation area without having obtained consent;

- contravention of hazardous substances control; and
- displaying advertisements without consent

7.0 REPORTING A BREACH OF PLANNING CONTROL

7.1 The Council receives a large number of complaints each year concerning alleged breaches of planning control. In order that a complaint can be dealt with as soon as possible it is important to provide the Council with as much information as possible e.g. an accurate description of the exact location or address where the alleged breach is taking place, a detailed description of the activities taking place, the date and times of when the alleged breach first took place and whether it is ongoing, any other information or evidence that may be able to assist (e.g. photographs) and contact details of the person making the complaint.

7.2 The simplest way to report a breach of planning control is via the online enforcement section of the Northern Ireland Planning Portal, this will ensure that adequate information is submitted to inform the investigation. The Council will direct people to utilise the Portal in the interests of efficiency but will accept complaints through other methods in exceptional circumstances.

Complaints can also be submitted through:

• E-mail: planning@armaghbanbridgecraigavon.gov.uk

• Letter addressed to – Planning Enforcement, Armagh City, Banbridge and Craigavon Borough Council, Civic Building, Downshire Road, Banbridge, BT32 3JY

• Telephone: 0300 0300 900; and

• In person at the Council planning offices

7.3 It is important for the Council to hold the details of the complainant so that the outcome of the investigation can be communicated to them, or if additional information is required during the course of the investigation.

7.4 All investigations are carried out confidentially and the details of the complainant are treated as confidential. Personal information will not be released without the permission of the complainant in accordance with the principles of the Data Protection Act 2018; The Freedom of Information Act 2000; and the Environmental Information Regulations 2004. However, if the investigation proceeds to formal action, resulting in an appeal to the Planning Appeals Commission or prosecution in the High Court, the complainant's information may be shared with the Commission or Court for legal reasons and it may not be possible for the Council to guarantee the anonymity of the complainant in these proceedings.

8.0 HOW WILL WE RESPOND TO THE INFORMATION WE ARE GIVEN?

8.1 After a valid planning enforcement query has been received, it will be logged and allocated a case reference number. The case will be allocated to a planning enforcement officer to investigate. We will send an acknowledgement in writing with the reference number. The Council aims to acknowledge receipt of 90% of all complaints within 5 working days.

The key stages in the investigative process are set out in the flow chart at Appendix 1.

9.0 WHAT ARE THE POSSIBLE OUTCOMES OF AN INVESTIGATION?

9.1 Once an investigation is concluded it could result in a number of different outcomes including:

- **No breach is established and the case is closed.**
- **There is a breach of planning control but it is not considered expedient to pursue, the case is closed with no further action.**
- **The development is immune from enforcement action, the case is closed with no further action.**

  With regard to immunity, Section 132 of the Planning Act restricts the Council's ability to take enforcement action after a certain period of time has elapsed.

  Section 132(1) states where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of five years beginning with the date on which the operations were substantially completed. In these instances, development without planning permission becomes immune from enforcement action.
- **Negotiations take place to find a solution.**
- **Lack of evidence, the case is closed with no further action.**
- **Invite a retrospective planning application.**

  When a retrospective planning application is requested, the Council will normally wait a reasonable period for this to be submitted and for its determination before taking further enforcement action.

- **Formal action**

  There is a range of formal powers the Council can use to remedy breaches of planning control including the issuing of:

  - Enforcement Notice;
  - Breach of Condition Notice;
  - Stop Notice/Temporary Stop Notice;
  - Listed Building Enforcement Notice.

  In addition to the above, further action is available including taking direct action to remedy a breach or to instigate prosecution proceedings in The Magistrates' Court for non-compliance with a formal notice or an injunction where it is deemed necessary to do so.

10.0 WHAT HAPPENS WHEN A COMPLAINT IS RECEIVED BY THE COUNCIL?

10.1 If a complaint is received about a property or development then the Council has a duty to investigate the complaint in order to establish whether or not there has been a breach of planning control. Breaches of planning control are not always intentional and may arise from the person involved being unaware of the requirement to obtain planning permission.

Power to enter land

10.2 Upon receipt of a complaint the planning enforcement officer will usually conduct a site visit, the site may be visited or monitored without advance warning being given. The site visit may be unaccompanied and the landowner or developer does not have to be present. Should the land owner or occupier not have been present at the time of the initial site visit and it was not possible to gain access, or should it be necessary to contact the land owner or occupier after establishing that there is a breach of planning control on the site, then a letter may be sent to the owner/occupier. The letter will request contact to be made with the planning enforcement officer and in some cases require specific actions to be taken within a specified timeframe.

10.3 Council planning enforcement officers are authorised under Sections 176, 177 and 178 of the 2011 Act to enter, at any reasonable hour and when it is reasonably necessary, any land to ascertain whether there is or has been a breach of planning control, without the need to obtain a warrant of entry. If it is necessary to enter a dwelling (and not just the garden) then the owner is entitled to 24 hours' notice. Denying access to the investigating officer is an offence and although the officer will seek the co-operation of the owner/occupier of the premises through discussion, the Council may apply to

the Magistrates' Court for a warrant under Section 177(1) (right to enter under warrant).

Public's responsibilities

10.4 If a person receives a letter or a visit from a planning enforcement officer then we would encourage them to respond quickly, positively and to provide any required information so that the matter can be resolved quickly to the benefit of all parties. In cases where there has been no breach the matter will usually be resolved quickly. In cases where a resolution may be negotiated, the planning enforcement officer can enter into discussions; on occasion the Council may ask for additional evidence or a detailed record of activities to be submitted, however we will not accept undue delays in taking required actions or responses during these negotiations and will expect you to respond within stated timeframes. In some cases, the unauthorised development or activities will not be considered acceptable and a person will be requested to cease/remove the works in order to avoid formal enforcement and/or legal action being taken.

The investigation

10.5 In carrying out its planning enforcement investigations the Council will make efficient use of its own records and other sources. Close links are established with other sections of the Council and other government departments to improve and enhance investigations.

10.6 Officers may be required to consider a number of factors including (but not limited to) any planning histories, the local development plan, site constraints, aerial photography and mapping, land ownership information, building control records and any other relevant Council records.

10.7 Where necessary, the Council may request additional information, documents or evidence from relevant parties, and may ask a complainant to provide further detail or keep a record of dates, times and activities to assist the investigation. Site visits are an important part of the investigative process and may take place with or without prior notice. Whilst on site, officers may observe activities, ask questions of any present occupiers or persons carrying out works, and may take notes, photographs and measurements to help establish what is occurring and whether it amounts to a breach of planning control.

10.8 A planning contravention notice (PCN) may be served to request additional information about activities on land where the Council suspects a breach of planning control has occurred. A PCN may be served on the owner or occupier of the land in question, or a person with any other estate in the land, or on a person who is using the land or carrying out operations on the land or using it for any other purpose. Serving a PCN does not constitute taking enforcement action. It is an entirely discretionary procedure. Any information gathered will be assessed alongside relevant planning policy and other

material considerations to determine whether a breach has occurred and, if so, what the most appropriate and proportionate course of action is.

Consequences of unauthorised development

10.9 Property owners should be aware that development that does not benefit from the necessary planning permission is unauthorised. Any formal enforcement notices served will be registered on the Statutory Charges Register and will appear during any searches on the property. Consequently, it is in the owner's interest to have all necessary planning permissions in place and any enforcement issues resolved.

11.0 ENFORCEMENT PRIORITIES

11.1 The Council will investigate all alleged breaches of planning control. However, when determining what (if any) action is to be taken, priority will be given to those breaches where, in the Council's opinion, the greatest harm is likely to be caused.

11.2 Investigating complaints is often complex and time consuming. The priority given is commensurate with the breach of planning control to which it relates and any action in response to a breach will be proportionate to the harm it causes. The priorities are determined by the Council's General Enforcement Policy principles, which are:

- transparency,
- accountability,
- consistency,
- helping businesses and others to be compliant with legislation,
- adopting good enforcement procedures,
- working with other agencies and taking the appropriate and proportionate form of action following a proper investigation.

11.3 The priorities which reflect this are as follows:

Priority 1 – work resulting in public danger or development which may result in permanent damage to the environment. For example, demolition of or works to a listed building, works presenting road safety issues, trees protected by a Tree Preservation Order, demolition of a building in a conservation area.

Priority 2 – commencement of building operations without permission. Unauthorised work/use which causes loss of amenity or any other significant public or private impact.

Priority 3 – non-compliance with conditions of a planning approval (unless they relate to serious amenity issues in which case it may fall into Priority 1 or 2).

Priority 4 – minor breach that can be regularised, for example domestic sheds, fences, extensions.

11.4 The above list is for guidance only. It is ultimately the responsibility of the Council's Planning Enforcement Team to prioritise cases taking account of the nature of the breach and the harm being caused or likely to be caused.

11.5 The priority given is reflected in the timescales against which performance is measured i.e. Priority 1 cases have shorter timescales than Priority 2, 3 and 4 cases as set out below.

11.6 It is important to note that the vast majority of breaches of planning control are resolved informally through negotiation with the land owner/occupier or through the submission and consideration of a retrospective planning application. The speed at which a breach can be resolved will vary depending on the complexity of the individual case.

11.7 Any Priority 1 cases which are recommended to be closed as not expedient must be authorised by the Planning Manager. The manager must review cases closed as 'not expedient', to establish if factors relied upon within the recorded reasoning are in keeping with enforcement guidance and council priorities, and whether there are repeat issues that can be acted upon to prevent future breaches. This should include examining the rigour of the investigation and whether sufficient effort was made to establish a breach.

12.0 PERFORMANCE TARGETS

12.1 The Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015 sets out the legislative target for enforcement:

Bring 70% of cases to a target conclusion within 39 weeks of receipt of initial complaint. Target conclusion means case closure, submission of a retrospective planning application, formal enforcement action, or summons to court.

12.2 In addition, the Council's Planning Enforcement Team will aim to:

1. Acknowledge receipt of 90% of all complaints within 5 working days;

2. Site inspect 95% of Priority 1 cases within 3 working days of receipt of the initial complaint;

3. Site inspect 90% of priority 2, 3 and 4 cases within 20 working days of receipt of the initial complaint;

4. Discuss and agree a course of action for 95% of Priority 1 cases within 10 working days from receipt of the initial complaint;

5. Discuss and agree a course of action for 95% of Priority 2, 3 and 4 cases within 12 weeks of receipt of the initial complaint; and

6. Notify complainants of case closure in 95% of all cases within 4 weeks of the date of closure.

7. Conclude 70% of all cases within 39 weeks.

12.3 The above method of performance measurement reflects the Council's approach to enforcement in that it focuses resources on those breaches of planning control where the greatest harm is being or is likely to be caused.

13.0 DEVELOPMENT MONITORING

EIA Development

13.1 Regulations 24 and 25 of the Planning (Environmental Impact Assessment) Regulations 2017 allow the Council to impose monitoring measures to a planning permission for EIA development. Submission of monitoring information will be processed through a discharge of condition application. Where there is a failure to submit the required monitoring measure information, the Council will consider the priorities listed above and assess the need to take enforcement action by way of issuing a Breach of Condition Notice.

Proactive monitoring

13.2 In addition to the service's role in responding to complaints regarding alleged unauthorised developments or breaches of condition, the Council is committed to carrying out some proactive monitoring to ensure compliance with conditions, planning permissions and other consents where it is appropriate. The planning enforcement team will work closely with the Council's Building Control Department in this regard. It should be noted that it is the responsibility of individual developers to comply with the conditions imposed on any planning permission or consent or with any terms identified in legal agreements, such as Section 76 agreements. However, failure to comply can affect not only the quality of the environment in the Borough or the amenity of neighbouring properties but also undermine the reasons and justification for granting planning permission or other consents in the first instance. Proactive monitoring will encourage and enable compliance with conditions to ensure that development remains acceptable in planning policy terms whilst maintaining an attractive, high quality environment.

The Planning Development Management Team

13.3 Within the Council's Planning Department there is ongoing liaison between the Development Management and Enforcement teams to ensure compliance with planning control. In both cases where officers are investigating potential breaches of planning control, and when planning applications resulting from enforcement cases are submitted, the relevant case officers from Development Management and enforcement will liaise closely in order to ensure that all relevant issues are fully considered.

13.4 The Council's Planning Enforcement team will also work with other departments outside of the Council to obtain information and to ensure effective enforcement of planning control. These departments include the Department of Agriculture, Environment and Rural Affairs, the Department for Infrastructure, the Department of Finance - Land and Property Services and the Northern Ireland Housing Executive.

14.0 PLANNING / BUILDING CONTROL PROTOCOL

There is an established protocol between the Planning Department and Building Control to ensure alignment of both functions in relation to better control and management of unauthorised development. Under the terms of the current protocol Building Control applications are sent to planning for review. The protocol will be monitored and reviewed by the two Departments on an ongoing basis and will be amended as appropriate.

15.0 UPDATES ON ANY INVESTIGATION / COMMUNICATION

15.1 We are normally unable to provide any updates or information during the course of our investigation. Information which may prejudice consideration of a case or judicial proceedings will normally be withheld until the case is concluded or the Court orders disclosure of information. This is because the public has a strong interest in allowing prepared evidence to be withheld so as not to potentially inhibit and prejudice the course of justice. Meetings to discuss ongoing cases will normally be considered inappropriate while an investigation is ongoing.

15.2 Depending on the nature of the investigation, it can be a lengthy process and can take considerable time to resolve a case. If formal action is necessary, due to the complexities of planning control, it can take several months, and in complex cases years, to satisfactorily resolve problems. The Council will not enter into correspondence with a complainant other than to confirm that a case has been opened, once a case has been concluded complainants will be notified of the outcome.

15.3 However, it is important to note that the exchange of such information is controlled by regulations such as the Data Protection Act 2018, Freedom of Information Act 2000 and Environmental Information Regulations 2004 (EIR).

15.4 Under the General Data Protection Regulations the Council has a duty to protect the privacy of both:

- the person who is the subject of the complaint and
- the person reporting the complaint.

15.5 Members of the Planning & Regulatory Services Committee will be provided with quarterly reports on enforcement cases, in terms of live number of cases; current Enforcement Notices awaiting compliance; number of prosecutions and number of fixed penalty notices served. An update on particular cases will be provided as and when requested by the Committee or an individual Member.

16.0 APPEALS

16.1 Depending on the type of Notice the recipient may have the right to lodge an appeal to the Planning Appeals Commission before the Notice takes effect. This will suspend the effect of the Notice until the outcome of the appeal.

16.2 An appeal may be lodged with the Planning Appeals Commission (PAC) against an Enforcement Notice, Listed Building Enforcement Notice, Submission Notice, Hazardous Substances Contravention Notice and Section 64 Notice (replacement of trees). There is no right of appeal to a Breach of Condition Notice, which can only be challenged through the courts.

16.3 The timeframe for hearing an appeal and issuing a determination is a matter for the PAC. Additional information on the planning appeals process can be obtained from the PAC website www.pacni.gov.uk

17.0 LEGAL ACTION

17.1 Under the provisions of the Planning Act (Northern Ireland) 2011, failure to comply with a notice is an offence and prosecution may be pursued where the Council has sufficient, admissible, and reliable evidence that the offence has been committed and there is a realistic prospect of a conviction. If enforcement is going to be effective this course of action must be pursued when appropriate. To determine whether prosecution is appropriate, the Council will assess the case in accordance with the tests set out in the Code for Crown Prosecutors. Prosecution will be considered even when the requisite works, or the breach is removed prior to court action. Costs will be sought where successful prosecutions are brought.

Injunctions

17.2 In cases of severe harm, the Council can apply for an Injunction in the High Court.

17.3 Section 156 of the 2011 Act gives a council the power to apply to the courts for an injunction to restrain any actual or apprehended breach of planning control when the Council considers it necessary or expedient. The power to apply to the courts for an injunction to restrain any acknowledged or apprehended contravention also applies in relation to unauthorised demolition or works to a listed building or failing to comply with any condition attached to a listed building consent, contravention of a tree preservation order and

certain acts in respect of trees in a conservation area; or Section 76(6) allows a council to seek an injunction regarding a restriction or requirement imposed under a planning agreement.

Proceeds of Crime Act 2002

17.4 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.

18.0 HOW THE PUBLIC CAN HELP US

18.1 If a member of the public is unsure as to whether planning permission is required, they should contact the Council's Planning Department for advice before starting work.

18.2 If they already have planning permission, they must ensure all necessary conditions have been complied with before starting work and ensure they build in accordance with the approved plans. If they want to make any changes to the approved proposal, they should contact the planning department before carrying out work which deviates from or is not shown on the approved plans for advice.

19.0 COMPLAINTS ABOUT THE SERVICE

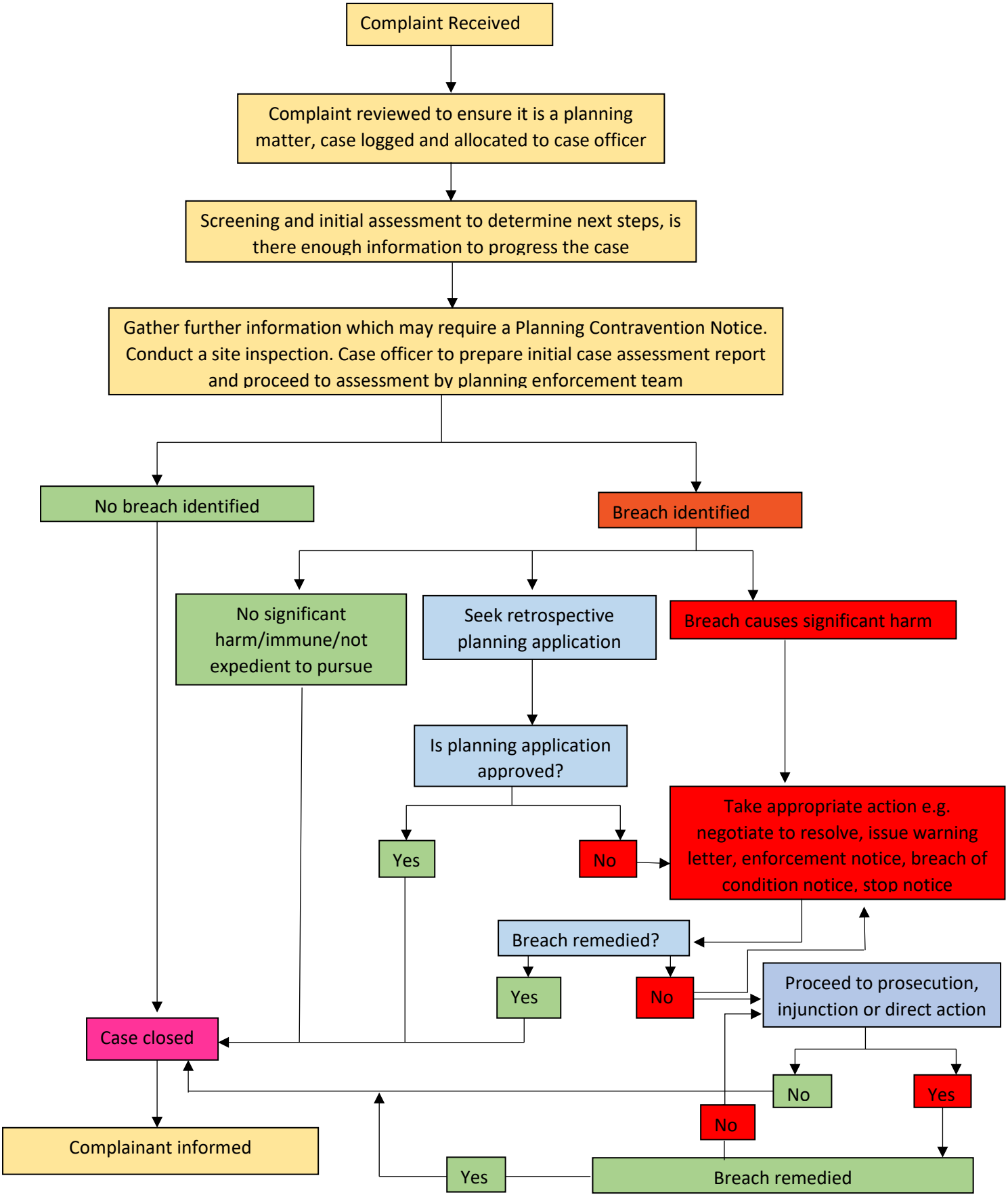
19.1 If a member of the public is unhappy about the level of service they have received from the planning enforcement department, or how the process has been managed, then they may firstly discuss their concerns with the Head of Planning or through the Council's Corporate Complaints Procedure. A complaint can be made using any of the following options:

By telephone on: 0300 0300 900

By email at: planning@armaghbanbridgecraigavon.gov.uk

Or in writing or in person at: Planning Department, Armagh City, Banbridge and Craigavon Borough Council, Civic Building, Downshire Road, Banbridge, BT32 3JY

APPENDIX 1 The Planning Enforcement Process



INTERESTED IN PLANNING

in the Armagh City, Banbridge and Craigavon Borough

Please contact
ABC Planning Department at Armagh City, Banbridge & Craigavon Borough Council

0300 0300 900

planning@armaghbanbridgecraigavon.gov.uk

armaghbanbridgecraigavon.gov.uk

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