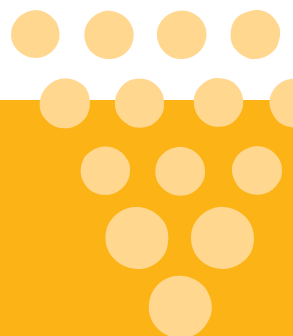




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# Planning Enforcement Plan

**March 2022**



## Contents

1. Introduction and overview	3
2. Is planning enforcement the right tool to use?	4
3. What is planning enforcement?	5
4. What is or is not a breach of planning control?	6
5. Relevant legislation and policies	8
6. The principles of good planning enforcement	9
7. How can a planning enforcement issue be reported?	10
8. How will the council deal with a report of an alleged breach of planning control?	11
9. What are the possible outcomes of an investigation?	12
10. What are the planning enforcement tools available and when we will use them?	14
11. What if a report is made about work on my property?	18
12. Advertisements	19
13. What if I am dissatisfied with the way the case was managed	20
14. Unreasonable customer behaviour	21
15. Appendices	22

## 1. Introduction and overview

Cornwall Council's Planning Enforcement Plan sets out the Council's procedures for dealing with alleged breaches of planning control. It explains how the Council's planning enforcement resources are put to best use dealing with breaches of planning control that cause harm to the local built or natural environment or the amenities of neighbours.

Planning enforcement action is discretionary and government guidance sets out that Local Planning Authorities (LPA's) must only take planning enforcement action when they regard it expedient to do so. Action must be proportionate to the breach of planning control to which it relates.

This Enforcement Plan sets out how the Council can and will respond to breaches of planning control. We will follow Government advice which encourages Councils to try to resolve issues by negotiation as this is very often the quickest and most effective way to resolve problems. It is also the best way to use resources - taking formal action can be a lengthy and costly process. However, where negotiation fails and there is development that results in planning harm, the Council will take formal action. In some instances, however, where there is a breach of planning control causing significant and irreversible planning harm, the Council may take enforcement action without any negotiation.

We will focus on the desired outcome when determining the most appropriate way forward. In doing so we will consider whether planning enforcement is the most effective route to achieve the outcome or whether different legislation would be more appropriate.

This plan sets out the Council's approach to dealing with planning enforcement matters specifically, and also outlines our approach to working with other Council teams or external agencies where necessary.

## 2. Is planning enforcement the right tool to use?

Local Authorities have a range of enforcement powers that extend beyond planning. In addition, agencies such as the Environment Agency, the Police and the Health and Safety Executive for example also have a range of enforcement powers. We will focus on outcomes and therefore in determining the appropriate way forward on a matter we will consider whether the use of different legislation would achieve a better outcome and re-direct the query as appropriate. In cases where it is considered that a joint approach is the most effective way to achieve the desired outcome, we will work with other agencies or Council teams to do so.

Where appropriate we will work with colleagues in building control, private sector housing, licensing, public protection, Fire Service, Environment Agency, Devon & Cornwall Police, Health and Safety Executive.

### 3. What is planning enforcement?

Planning enforcement is a regime to manage inappropriate development that causes planning harm. Local Planning Authorities have the power to manage and control development as set out in the Town and Country Planning Act 1990, as amended (“the Act”).

Section 55 of the Act defines development as: “the carrying out of building, mining, engineering or other operation in, on, under or over land, or the making of any material change of use of any buildings or other land”.

If the operation or use is not ‘development’ as defined it is not a breach of planning control and the LPA has no power to take any further action.

The Act also defines a breach of planning control as: “the carrying out of a development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted.”

The Act is supported by the National Planning Policy Framework (“NPPF”), which provides guidance to LPA’s in terms of how they should manage breaches of planning control and when enforcement action should be taken. Paragraph 58 of the NPPF states the following:

“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 in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.”

There are two main pieces of legislation covering development one being Planning legislation and the other Building Regulations and the two are often confused. In the main the thing to remember is:

- Planning deals with the development in principle – would the development be acceptable in terms of the visual aspects, amenity; how it fits in with neighbouring development, and the character of surrounding development, and
- Building Regulations are concerned with the construction; how something is built and whether it is structurally safe when it is built and fit for purpose. The legislation covering each aspect is different and therefore concerns relating to building regulations issues should be directed to the Council’s building control team.

## 4. What is or is not a breach of planning control?

Potential breaches of planning control could include (this is not an exhaustive list):

- Works to listed buildings
- Demolition of buildings in a conservation area
- Works to trees subject of a Tree Preservation Order (“TPO”) or in a conservation area
- Building without consent (i.e. extensions, outbuildings, fences, walls)
- Change of use of buildings and/or land (inc. sub-division of houses to flats / HMOs)
- Advertisements and signage
- Non-compliance with conditions attached to planning permissions
- Not building in accordance with the approved plans of planning permissions
- Untidy land where it affects the amenity of the area
- Engineering operations, such as raising of ground levels or earth bunds
- Deliberate concealment of unauthorised building works or changes of use
- Unauthorised residential use of the land (ie caravans)
- Breaches of planning conditions, S106 Agreements and Community Infrastructure Levy (CIL)
- Minerals and Waste Development
- Matters that are not breaches of planning control include:
  - Internal works to a non-listed building
  - Use of buildings in the curtilage of a dwelling for incidental domestic use
  - Parking of commercial vehicles on the highway or on grass verges
  - Land ownership disputes or trespass issues
  - Infringements of covenants in property deeds
  - Temporary structures/fencing associated with building works
  - Dangerous structures or other health and safety issues
  - Devaluing of property
  - Issues relating to party walls
  - Issues relating to damage of property or (potential) injury to persons
  - Use of land for forestry or agriculture
  - Carrying out of maintenance to pipes, sewers etc by a Council or statutory undertaker eg South-West Water
  - Highway maintenance by the Council

People often refer to illegal development when reporting what they believe to be a breach of planning control; however, it should be recognised unauthorised

development is not a criminal offence. The only exceptions being unauthorised works to Listed Buildings and protected trees without consent, removal of protected hedges, advertisements displayed without consent and non-compliance with formal enforcement notices.

The Town and Country Planning Act 1990 enables people who have carried out development to apply for planning permission retrospectively in an attempt to regularise matters. In dealing with such applications, the Local Planning Authority must consider the application in exactly the same way as any other development, proposed or otherwise. The fact a development has already been carried out is not something that can be taken into account or that prejudices the determination of an application.

## 5. Relevant legislation and policies

### Legislation:

1. Town and Country Planning Act 1990
2. The Planning and Compensation Act 1991
3. The Planning and Compulsory Purchase Act 2004
4. Planning (Listed Buildings and Conservation Areas) Act 1990
5. The Localism Act 2011
6. The Town and Country Planning (Development Management Procedure) (England) Order 2015
7. Town and Country Planning (General Permitted Development) (England) Order 2015
8. The Town and Country Planning (Use Classes) Order 1987 (as amended)
9. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as Amended)
10. Regulation of Investigatory Powers 2000
11. Police and Criminal Evidence Act 1984
12. European Convention on Human Rights Article 1 of the First Protocol and Article 8 and Article 14
13. Anti-social Behaviour Act 2005 - High Hedge Act
14. The Hedgerow Regulations

### Policies:

1. National Planning Policy Framework (NPPF)
2. Planning Practice Guidance (NPPG)
3. Cornwall Council Local Plan (2016-2030)
4. Cornwall Council Enforcement Plan
5. Supplementary Planning Documents (SPD's), Neighbourhood Plans, Conservation Area Character Assessments



## 6. The principles of good planning enforcement

Planning enforcement is a discretionary power and each case should be considered on its own merits. In deciding what action is necessary the degree of planning harm the unauthorised development is causing, or likely to cause, should be considered carefully.

Enforcement action must always be proportionate to the severity of the planning harm being caused. It should not be taken solely to 'regularise' development which is acceptable on its planning merits but for which planning permission has not been obtained. The Council will consider the full range of options when deciding what action to take. The full range would include negotiation, retrospective planning applications, or where appropriate, formal enforcement action. Alternatively, it could decide that no action is required because no harm is being caused.

Planning Enforcement Officers will carry out their duties in an equitable and consistent manner. They will consider each individual matter on its merits. There will be a consistent approach to enforcement action against breaches of a similar nature and circumstance. This does not imply uniformity but a full consideration of all the circumstances of a case guided by the Council's adopted Development Plan (including where relevant Neighbourhood Development Plans), and consideration of the material planning considerations. They will also consider whether other legislation would be a more effective route to achieve the desired outcome.

In all but the most serious cases, the Council will seek to negotiate compliance rather than pursue formal enforcement action, providing that an appropriate resolution can be achieved in a timely manner.

Minor breaches of planning control that do no harm will not have action taken against them even if the developer refuses to apply for planning permission to regularise the development.

We aim to provide a consistently high-quality service in relation to our planning enforcement duties in accordance with the Government's Enforcement Concordat principles of standards, openness, helpfulness, proportionality, consistency and how to complain about the service. Compliance with these standards run through the plan.

## 7. How can a planning enforcement issue be reported?

It is strongly advised, prior to submitting any enquiry, to check whether the particular development or activity which is causing concern already benefits from planning permission. This can be done by checking our online planning register found at:

<https://www.cornwall.gov.uk/planning-and-building-control/planning-applications/online-planning-register/>

If you believe that a breach of planning control exists which is causing planning harm, you can report the matter to our team using the online complaint form via the link below. Photographs can be included but please do not put yourself at risk to do so.

<https://www.cornwall.gov.uk/planning-and-building-control/planning-enforcement/report-a-breach-of-planning-control/>

Reported matters will only be considered if the correct form is completed. It is essential that the information requested under the section 'what is the harm arising from the development' is provided, as this ensures that we can take your concerns into account when assessing the matter. Anonymous reports will not be investigated. This is to ensure that public resources are not spent unnecessarily investigating hoax or malicious complaints. It is also important that, should legal action become necessary in relation to a reported matter, the Council can state in Court that the matter was reported by a local resident. All details provided by a complainant will remain confidential, unless the information is required for use as evidence in court. If this does happen, the Council will make all reasonable efforts to inform you before disclosing any information.

## 8. How will the council deal with a report of an alleged breach of planning control?

When we receive a completed form a member of the team will triage the report. This is to ensure that our resources are prioritised to matters which constitute a breach of planning control where harm is being caused. Historically, 40% of the reports made were not a breach of planning control which resulted in significant resource on matters that we cannot control.

Therefore, if it appears at the outset the reported matter is not a breach of planning, we will not set up a case for it and the individual who made the report will be notified. If the reported matter could be dealt with by a different team within the Council or a different agency, we will re-direct the enquiry as appropriate.

In addition, we will not investigate reported matters relating to householder development that could be a breach of planning control (ie extensions, outbuildings etc) unless the complainant can demonstrate the development causes significant planning harm. This is because the planning system is a permissive system and planning harm is rarely demonstrated from minor household development such as fences, outbuildings, small extensions.

This enables our resources to be focussed on the serious breaches of planning control where our intervention is necessary.

The Council has produced a flowchart setting out the stages of an enforcement investigation and approximate timescales which can be accessed via the following link:

<https://www.cornwall.gov.uk/media/2dvfbqrc/enforcement-investigation-flowchart.pdf>

Planning enforcement is a lengthy process. Government guidance sets out that formal enforcement action is usually a last resort. If there is a breach of planning control, the responsible person will usually be given the chance to put the matter right first. This opportunity is normally given before taking formal enforcement action.

Please note that the specific information relating to the enforcement case would contain personal data. This is as defined under the General Data Protection Regulations (GDPR). We are unable to share this information. This means that we cannot provide regular updates as to what is happening on individual cases during the course of our investigation. If an update on an enforcement investigation is requested, we will only be able to provide information as to what stage the investigation has reached in accordance with the flowchart. Once the investigation is concluded, we will provide a brief summary of our findings to the individual(s) who reported the matter to us.

Planning Enforcement Officers have rights to enter land (Under Section 196 of the Town and Country Planning Act 1990) without notice to investigate a suspected breach of planning control on that land or adjoining land. At least 24 hours' notice must be given to enter a dwellinghouse. Failure to permit officers access to land is an offence and the Council reserves the right to prosecute anyone who wilfully obstructs entry and to also seek a warrant from the Courts to obtain entry.

## 9. What are the possible outcomes of an investigation?

### **No breach**

Following a site visit or desktop study it may be found that there is no breach of planning control because, for example, development has taken place but a planning application is not required as the development is 'Permitted Development' meaning planning permission is deemed to be granted under the Town and Country Planning (General Permitted Development) (England) Order 2015; there is insufficient evidence to confirm the allegation; the development already has planning permission; or the works do not constitute development.

### **There is a breach of planning control but not 'expedient' to pursue**

Expediency is a test of whether the development is causing serious harm, having regard to the development plan policies and other material considerations. Just because a breach may exist does not automatically mean that formal action will be taken. The planning enforcement team will not take formal action against a breach of control that causes no real planning harm. However, any breach of planning control will be recorded and may be drawn to the attention of the developer and/or landowner, as appropriate. The Divisional Councillor will be consulted on these cases as per the Divisional Members Protocol referred to in Annexe A.

### **Negotiations take place to find a solution**

Where it is considered that the breach of planning control is unacceptable, attempts to negotiate a solution without recourse to formal enforcement action will be made, unless of course the breach is continuing to cause irreparable harm to amenity. Negotiations may involve the reduction or cessation of unauthorised development. In carrying out negotiations the Council will have regard to the specific circumstances of the individual case. Planning guidance advises the Council, where possible, to negotiate resolutions to planning breaches thus avoiding formal action. This can often be the quickest way of resolving an issue.

### **Breach established but now immune from enforcement action**

The investigation reveals that a planning breach has occurred, but that it has been occurring continuously for so long that it has now become immune from enforcement action. In cases relating to operational development this period is four years, anything else being ten years.

### **A retrospective application is submitted**

A retrospective planning application will be invited where there is a reasonable likelihood that planning permission may be granted or where a development may be made acceptable by way of imposing suitable conditions to control how it takes place. The development will be subject to the planning application process and assessed against planning policies, taking into consideration the views of local residents (the contents of the enforcement investigation file will not be carried over to that of the planning application).

### **Formal action is taken**

Generally a small percentage of cases we receive result in formal action being taken. There are a range of formal powers the council can use to remedy breaches of planning control set out in Section 10 below.

There may also be instances where other agencies or regulatory teams within the Council could achieve an effective outcome in which case the matter would be passed to that team or agency to progress.

## 10. What are the planning enforcement tools available and when we will use them?

Listed below are the tools the Council has available to it when dealing with planning enforcement matters:

### **Planning Contravention Notice**

Requires persons to divulge information in respect of land and activities. Often undertaken to determine if there is a breach of control and to help decide the appropriate course of action.

### **Breach of Condition Notice**

Secures compliance with conditions specified within a planning permission

### **Tree Replacement Notice**

Requires the replacement of trees removed without consent

### **Enforcement Notice**

Requires particular steps to be taken to remedy the harm caused by unauthorised development

### **Listed Building Enforcement Notice**

Requires works to be done to prevent or reverse unlawful works to a listed building

### **S225A Notice**

Requires the removal of advertisements displayed without consent

### **S330 Notice**

Requires information about interests in the land

### **Stop Notice / Temporary Stop Notice**

Requires the unauthorised activities to cease immediately, a stop notice is linked with an enforcement notice and a temporary stop notice lasts for a period of up to 28 days

### **Section 215 Notice**

To secure the proper maintenance of land and buildings and protect public amenity

An appeal may be lodged with the Planning Inspectorate against an enforcement notice before it comes into effect on one of seven specified grounds. If an appeal is made, the requirements of the notice are on hold until the appeal is decided. Appeals against enforcement notices can sometimes take up to a year or longer.

If an appeal is allowed, the notice no longer applies. If an appeal is dismissed the Notice will take effect once the specified time period has passed (starting from the date of the appeal decision. Legal action, such as a prosecution, can only be taken if an individual then fails to comply with the enforcement notice.

## **When will we use these tools?**

Planning laws are designed to manage, and where necessary control the development and use of land and buildings. They are not intended to protect the private interests of one person against the activities of another.

Formal planning enforcement action will not be instigated solely to regularise breaches in planning control or seek a planning fee. In taking formal planning enforcement action the Council will be prepared to use whichever available enforcement power or combination of powers that are appropriate to deal effectively with an identified breach of planning control.

In deciding whether to take enforcement action the Council will have regard to the development plan and to any other material planning considerations. Material planning considerations include (but are not limited to):

- Local Development Framework
- Development Plan documents
- Supplementary planning documents
- The Statement of Community Involvement
- The annual monitoring report
- Government planning guidance
- The Council's corporate policies
- Highway safety and traffic levels
- Noise, disturbance and smells resulting from the proposed development
- Design, appearance and layout
- Conservation of buildings, trees and open land
- Flood risk
- Impact on the appearance of the area
- Effect on the level of daylight and privacy of existing property
- Need to safeguard the countryside or protected species of plant or animal
- Planning case law and previous decisions
- The need for the development
- The planning history of the site

### **Matters that are not considered to be material considerations include:**

- Private property rights such as covenants
- The developer's identity, morals or motives
- Effect on the value of your property
- Loss of a private view
- Private neighbour disputes

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

In considering whether it is expedient to take planning enforcement action the decisive issue for the Council will be whether the breach of planning control causes planning harm. Any action taken will be proportionate with the breach of planning control to which it relates. This reflects the approach to enforcement set out in the NPPF and the NPPG.

Planning harm can be caused by a number of factors or a combination of factors and what could be considered harmful in one circumstance may not be considered harmful in others and a judgement will be required. Some examples of situations creating harm in planning terms are:

- Increased risk of flooding
- Unacceptable design
- Severe harm to highway safety
- Loss of residential amenity - such as excessive overlooking of windows or gardens, loss of light, overbearing by large new buildings too close to boundaries.
- Detrimental impact on general amenity – when comparing against the existing character, appearance and environmental quality of a place
- Harm to heritage assets
- Harm to designated landscape such as Area of Outstanding Natural Beauty (AONB), Conservation Area (CA), World Heritage Site (WHS), etc.

**Harm in relation to planning does not include:**

- Competition caused to another business
- Loss of an individual's view or trespass onto their land
- Ownership disputes
- Loss of value to a property
- Rights to light

These issues are private civil matters and advice can be sought from a Solicitor or the Citizens Advice Bureau.

In defending planning enforcement action on appeal and in the courts, it will be necessary to show that the relevant procedures have been followed and that national and local policy on planning and enforcement has been taken into account.

Where an Enforcement Notice is being breached the Council would usually seek to prosecute or seek an Injunction in respect of non-compliance. Direct action will rarely be taken and only as a last resort. Where an offence has been undertaken prosecution action will only be taken where the evidential and public interest tests have been met.

The planning enforcement team will not take formal action against a minor breach of control that causes no real planning harm having assessed the matter against adopted



policies and all material planning considerations. However, any breach of planning control will be recorded and may be drawn to the attention of the developer and/or landowner, as appropriate. This is in line with Government advice set out in the National Planning Practice Guidance (NPPG) which states:

Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case.

In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

- there is a trivial or technical breach of control which causes no 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.

The Divisional Member Protocol for Enforcement will be followed in all cases.

Appendix A attached sets out the Divisional Member Protocol

## 11. What if a report is made about work on my property?

The Council recognises the anxiety that is caused by finding out that someone has reported to the Council an alleged development or activity on your property. It is therefore important to us to make sure that people or companies who are the subject of the planning enforcement investigation are treated fairly and given the opportunity as part of the investigation to explain the situation from their perspective. If you have received a visit or a letter from an enforcement officer explaining that a matter has been brought to our attention please don't ignore the issue. The law provides the Council with a series of tools in order to enable a full investigation to be carried out. This means that the matter will not 'go away' if you ignore the correspondence you have received regarding the matter which has been reported to the Council. If you do not engage with the Council from the outset to address the matter you run the risk of the Council taking formal enforcement action without further warning.

Please note that the information submitted to the Council as part of the initial report it is considered to be personal information, which is therefore exempt from the provisions of the Freedom of Information Act 2000 (as amended) and will not be disclosed by the Council. The only details which could be revealed are the nature of the report made, e.g. wall built without planning permission.

## 12. Advertisements

The LPA will not normally take action against advertisements displayed without consent unless they cause significant harm to amenity or public safety.

The Council will generally support groups advertising local agricultural shows and similar events. Generally speaking, not more than one advertisement should be displayed at any location and these should be restricted to within a five-mile radius of the event venue.

However, the Council does reserve the right to use its discretion not to take action if the number of this guidance is exceeded where there is justification for it.

### **Charging for Discretionary Services**

The Council receives a number of these requests each month from Solicitors, and the general public/individuals in respect of such matters as to whether Enforcement Notices, planning conditions have been complied with etc. These questions are usually requested to be answered at short notice as part of the conveyance process. If the answer is known because it is recorded on Public Access, the requestor has the option of self-service. However, the Council can offer an expedited service for a fee with a guaranteed response within 10 working days from receipt.

A further expedited service is offered to assist in resolving issues of unauthorised works which are discovered through the sale process of a property. Due to time pressures of the sale a quick response is required from the Council as to whether the works are considered to be acceptable or not. The Council will provide a quick decision as to whether the works constitute a breach of planning control and if so, what action, if any, the Council would require to be taken to resolve the matter.

Details of the current fees for these services and other services the Planning service can provide can be found in the Fees and Charges Document for Planning, Building Control and Land Charges at <https://www.cornwall.gov.uk/media/pe2kkcoc/fees-and-charges.pdf>

Where the Council have no statutory duty to provide enforcement functions it will look to recover its costs of providing such a service where it is able to do so.

### 13. What if I am dissatisfied with the way the case was managed

If, having received the Council's final response to your enquiry, you are dissatisfied with the way the investigation has been managed (rather than being unhappy with the outcome if it has been decided that formal action will or will not be taken), you can raise a formal complaint from the Council's complaint process by emailing [egdfedback@cornwall.gov.uk](mailto:egdfedback@cornwall.gov.uk).

If, having received the Council's final response to your complaint, you are still not satisfied with the outcome; you can refer the matter to the Local Government and Social Care Ombudsman. Please note The Ombudsman will not investigate any complaint until the complainant has first followed the Council's own corporate complaints procedure and sought resolution directly with the council in the first instance.

## 14. Unreasonable customer behaviour

The Council does not normally limit the contact people have with it, whether complaining, making requests for service, information or help and guidance. The Council is committed to dealing with these requests fairly and impartially and to providing a high quality of service to those who make them. It is keen to resolve any dispute and/or complaint as early as possible. However, please remember that the level of information that can be provided about an ongoing enforcement investigation is necessarily limited due the General Data Protection Regulations.

The Council understands that people sometimes feel frustrated, but the Council will not tolerate behaviour which is deemed unreasonable.

Examples of unreasonable behaviour could include where a customer:

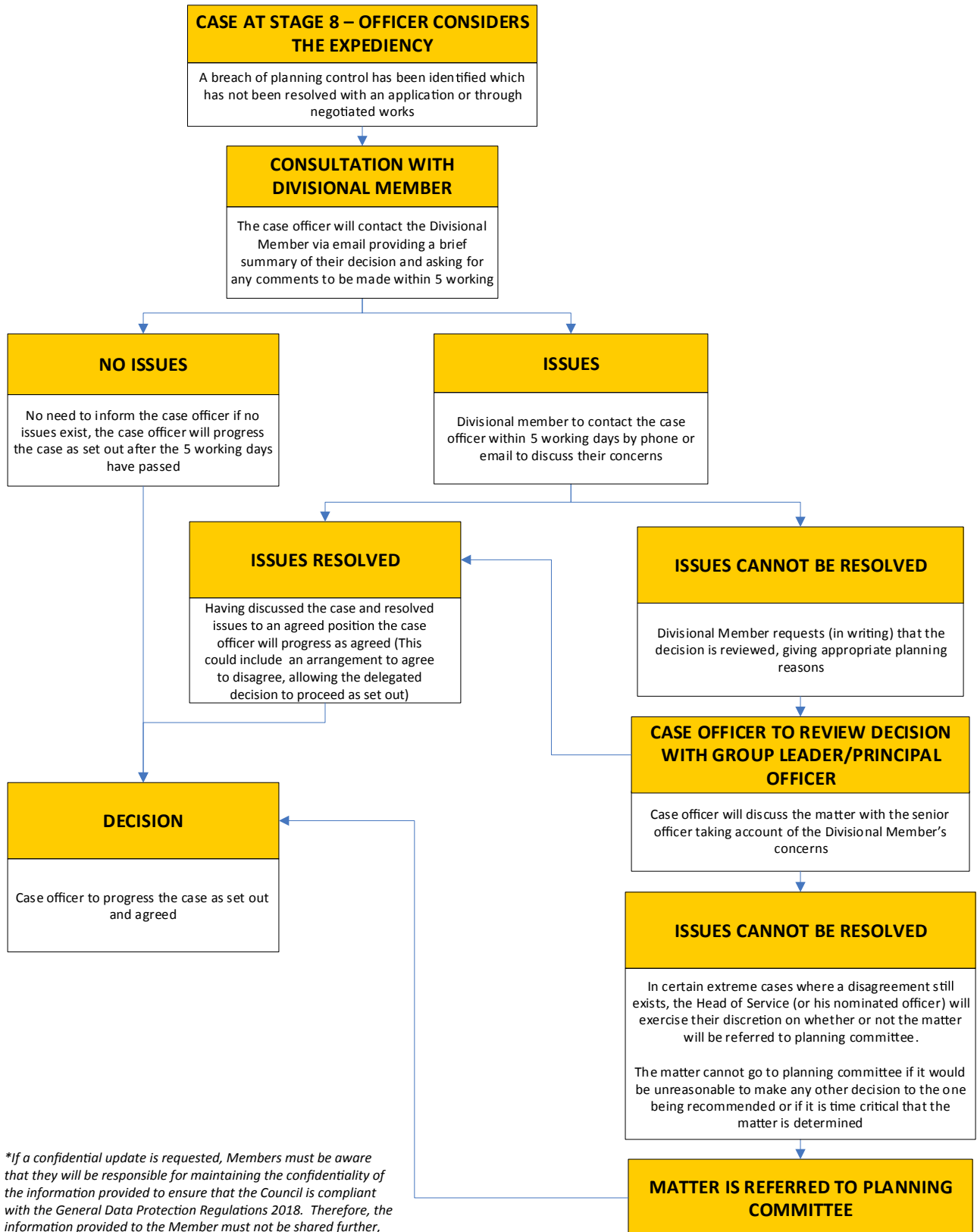
- abuses or threatens staff or other people
- pursues a personal grudge
- makes unfounded accusations
- makes multiple requests that are very similar, or is unreasonably persistent
- adopting a 'scattergun' approach; pursuing parallel disputes and/or complaint(s) on the same issue with a variety of officers, departments or services
- making unnecessarily excessive demands on the time and resources of employees whilst a dispute and/or complaint is being looked into. Making excessive telephone calls or sending emails to numerous Council employees, writing lengthy complex letters every few days and expecting an immediate response.

When this happens, we have a duty to take appropriate steps to limit the customer's contact with the Council. See the Councils [unreasonable customer behaviour policy](#).

# 15. Appendices

## Annexe A: Divisional Members Protocol - Planning Enforcement Matters

The Divisional Member may wish to contact Planning Enforcement to seek confirmation that a case exists or request a confidential update on progress, ensuring compliance with Data Protection Law\* (please see footnote below).



*\*If a confidential update is requested, Members must be aware that they will be responsible for maintaining the confidentiality of the information provided to ensure that the Council is compliant with the General Data Protection Regulations 2018. Therefore, the information provided to the Member must not be shared further, such as with local councils or members of the public.*

The objective of the Protocol is to encourage dialogue at the right stage in a confidential manner to comply with GDPR and to make sound planning decisions locally.

Matters outside of the scope of referral to planning committee.

Matters that are determined to be permitted development, non-planning issues or where the time limit for taking enforcement action has passed are outside of the scope of this Protocol and cannot be considered for referral to planning committee.

If you would like this information  
in another format please contact:

Cornwall Council  
County Hall  
Treyew Road  
Truro TR1 3AY

Telephone: Tel: 0300 1234 151

Email: [enquiries@cornwall.gov.uk](mailto:enquiries@cornwall.gov.uk)

[www.cornwall.gov.uk](http://www.cornwall.gov.uk)