

Published 5 July 2016

**Agenda** for meeting of the Cabinet to be held at 6.00 pm on Wednesday, 13 July 2016 in the Town Hall, Eastbourne

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**Members of the Cabinet:**

**Councillor David Tutt** (Leader and Chairman of Cabinet): Responsibilities aligned with Chief Executive and including the Community Strategy, Local Strategic Partnership, the Corporate Plan and economic development.

**Councillor Gill Mattock** (Deputy Leader and Deputy Chairman of Cabinet): Financial services including accountancy, audit, purchasing and payments.

**Councillor Margaret Bannister:** Tourism and leisure services.

**Councillor Alan Shuttleworth:** Direct assistance services including revenues and benefits, housing and community development, bereavement services and the Crime Reduction Partnership.

**Councillor Troy Tester:** Core support and strategic services.

**Councillor Steve Wallis:** Place services including cleansing and recycling, parks and downland, engineering, building and development control, planning policy and strategy, environmental health and licensing.

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**[KD]** against an item indicates that the matter involves a Key Decision and that the item has been listed in the Council's Forward Plan for at least 28 clear days.

**[BPF]** against an item indicates that the matter is part of the Council's Budget and Policy Framework and as such will require the approval of the Full Council.

Publication of this agenda also constitutes notice (or confirmation that such notice has previously been given) to the Chairman of the Scrutiny Committee and members of the public as appropriate:

(1) Under regulation 10(3) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 in respect of any key decision not included in the Council's Forward Plan of Key Decisions within 28 days of this meeting. Such items (if any) are marked **[KDGE]** and the reasons why compliance with regulation 9 (publicity in connection with key decisions) was impracticable are given.

(2) Under regulation 5(4) of the above mentioned regulations that certain matters listed on this agenda (if any) may need to be considered in private. (This notice is given further to the earlier notice given under regulation 5(2)). The reasons for private consideration are given at the relevant item, together with details of representations received (if any) about why the meeting should be open to the public.

**1 Minutes of of the meeting held on 25 May 2016.** (Pages 1 - 12)

**2 Apologies for absence.**

**3 Declarations of interests by members.**

Declarations of disclosable pecuniary interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests as required by the Code of Conduct and regulation 12(2)(d) of the 2012 Access to Information Regulations. (Please see note at end of agenda).

**4 Questions by members of the public.**

On matters not already included on the agenda and for which prior notice has been given (total time allowed 15 minutes).

**5 Urgent items of business.**

The Chairman to notify the Cabinet of any items of urgent business to be added to the agenda.

**6 Right to address the meeting/order of business.**

The Chairman to report any requests received to address the Cabinet from a member of the public or from a Councillor in respect of an item listed below and to invite the Cabinet to consider taking such items at the commencement of the meeting.

**7 Annual accounts 2015/16 (KD).** (Pages 13 - 20)

Report of Financial Services Manager.  
Cabinet lead member: Councillor Gill Mattock.

**8 Medium term financial strategy (KD).** (Pages 21 - 36)

Report of Deputy Chief Executive.  
Cabinet lead member: Councillor Gill Mattock.

**9 Employee code of conduct (KD).** (Pages 37 - 52)

Report of Senior Head of Corporate Development and Governance.  
Cabinet lead member: Councillor Troy Tester.

**10 Planning enforcement policy (KD).** (Pages 53 - 96)

Report of Senior Head of Community.  
Cabinet lead member: Councillor Steve Wallis.

**11 Housing and economic development programme - Acquisition of housing by Eastbourne Housing Investment Company Ltd. (KDGE).**  
(Pages 97 - 100)

Report of Senior Head of Community.  
Cabinet lead member: Councillor Alan Shuttleworth.

**Inspection of background papers** – Please see contact details listed in each report.

**Public right of address** – Requests by members of the public to speak on a matter which is listed in this agenda must be **received** in writing by no later than 12 Noon, 2 working days before the meeting (e.g. if the meeting is on a Wednesday, received by 12 Noon on the Monday before). The request should be made to Local Democracy at the address listed below. The request may be made by, letter, fax, or electronic mail. For further details on the rules about speaking at meetings or for asking a question on a matter not listed on the agenda please contact Local Democracy.

**Public questions** – Members of the public may ask a question on a matter which is not on the agenda. Questions should be made in writing and by the same deadline as for the right of address above. There are rules on the matters on which questions can be asked. Please ask Local Democracy for further information

**Councillor right of address** - Councillors wishing to address the meeting who are not members of the Cabinet must notify the Chairman in advance (and no later than the immediately prior to the start of the meeting).

**Disclosure of interests** - Members should declare their interest in a matter at the beginning of the meeting, and again, at the point at which that agenda item is introduced.

Members must declare the existence and nature of any interest.

In the case of a disclosable pecuniary interest (DPI), if the interest is not registered (nor the subject of a pending notification) details of the nature of the interest must be reported to the meeting by the member and subsequently notified in writing to the Monitoring Officer within 28 days.

If a member has a DPI or other prejudicial interest he/she must leave the room when the matter is being considered (unless he/she has obtained a dispensation).

**Implementation of decisions** - Implementation of any key decision will take place after 5 working days from the date notice is given of the Cabinet's decision (normally on the day following the meeting) unless subject to "call-in". Exceptions to this requirement are allowed when the decision is urgent.

**Further information** – The Forward Plan of Key Decisions, Councillor contact details, committee membership lists and other related information are available from Local Democracy. To receive regular e-mails alerting you to the publication of Cabinet agendas (or other meeting agendas) please send an e-mail to:

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You can view the Forward Plan of Key Decisions at

<http://democracy.eastbourne.gov.uk/ieDocHome.aspx?bcr=1>

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# Cabinet



## Minutes of meeting held on Wednesday, 25 May 2016 at 6.00 pm

Present:-

Councillors **David Tutt** (chairman and leader of the council), **Gill Mattock** (deputy chairman and deputy leader of the council), **Margaret Bannister**, **Alan Shuttleworth**, **Troy Tester** and **Steve Wallis**.

### 1 Minutes of meeting held on 23 March 2016.

The minutes of the meeting held on 23 March 2016 were submitted and approved and the chairman was authorised to sign them as a correct record.

### 2 Declarations of interests by members.

Declarations of disclosable pecuniary interests (DPIs) by members as required under section 31 of the Localism Act and other interests as required by the council's code of conduct and regulation 12(2)(d) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

- Councillor David Tutt declared a personal (and non-prejudicial) interest in matters reported in minute 9 (*'Stronger Together' - Joint transformation programme - Business case and implementation*) as as he was a council appointed non-executive director iESE Limited.

### 3 Membership and responsibilities of cabinet members.

The chairman reported that he had made no changes and these were as set out in the agenda and as reported to the annual meeting of the council held on 11 May 2016.

### 4 Dates of future cabinet meetings 2016/17.

Dates of future cabinet meetings were agreed as follows:

- 13 July 2016 at 6.00pm
- 14 September 2016 at 6.00pm
- 19 October 2016 at 6.00pm
- 13 December 2016 at 6.00pm
- 8 February 2017 at 6.00pm
- 22 March 2017 at 6.00pm
- 24 May 2017 at 6.00pm

### 5 Delegation of executive functions.

**Resolved:** (1) That that the delegation of executive functions to officers be as set out in the scheme of delegation to officers (Section 3, Part D of

the council's constitution) and noting that relevant lead cabinet members are to be consulted by officers when exercising their delegated powers where required to do so.

(2) To note that delegations to individual cabinet members in respect of executive functions have not been made at this time.

## **6 Financial performance - Provisional outturn 2015/16 (KD).**

6.1 Councillor Jenkins asked questions in relation to the design, location, funding and spend to date of the proposed Sovereign Harbour community centre for which provision had been made in the 2015/16 and 2016/17 capital programmes. The chairman said he would arrange for a written response to be given.

6.2 Cabinet considered the report of the chief finance officer providing the provisional outturn results for 2015/16. The final outturn report would form part of the statement of accounts that would be reported to the audit and governance committee in June and to cabinet in July.

6.3 General fund service expenditure variance for the year was principally as a result of:

- Theatre show increased income achieved (principally from the pantomime) (£203,000).
- Savings on street cleansing contract (£102,000).
- Surplus on catering trading account (£101,000).
- Additional income and expenditure savings on bereavement service (£74,000).

Members thanked the staff involved for the improved financial performance. These had, however, been offset in part, by the following negative variances:

- Redundancy payments (£109,000).
- Rental income from corporate properties (£83,000).

**6.4 Resolved (key decision):** (1) That the provisional general fund outturn on services expenditure for 2015/16 of £16.427m, a net favourable variance of £195,000 against the revised budget, be agreed. (2) That the transfers to and from reserves as set out at appendix 2 of the report be agreed. (3) That the provisional housing revenue account surplus for 2015/16 of £559,000 be agreed. (4) That the final capital programme and outturn for 2015/16 of £18.0m. be agreed.

## **7 Wish Tower restaurant - Development and marketing programme update (KD).**

7.1 Cabinet considered the report of the senior head of regeneration, planning and assets. On 3 June 2015, cabinet had agreed a programme for the marketing and development of the site of the former Wish Tower café and sun lounge with a view to securing a café/restaurant operator and to the allocation of £1.2m from the £2m government grant award.

7.2 Focus Consulting had been appointed as project managers, together with Levitt Bernstein as architects and Bruce Gillingham Pollard, to procure a high quality operator for the site. The new facility had been designed to complement the planned war memorial and peace garden at the Wish Tower, providing a visual link between the two, in memoriam to the civilians of Eastbourne, killed in World War II. To that end, officers and architects had worked with representatives of the Foyle family (whose donation in the 1950's had funded the original building) so that the design of the new restaurant had been influenced by the proposed memorial.

7.3 The council had commissioned a 'soft market test' from an international leisure market and investment appraisal specialist. This highlighted the potential of the site and need to adopt a flexible approach to the terms offered in marketing the site. Following a period of advertising to the market, there were 14 initial requests for information and 6 potential operators submitted expressions of interest. Three operators had been shortlisted and would now go through a negotiated process to determine their best and final offer. The preferred operator would be determined in mid-June.

7.4 The preferred bidder must demonstrate a menu and price point to appeal to all potential customers and markets including beach goers, tourists and locals. It was important that the menu wasn't too focused on one particular food type without offering alternatives. Seafood was a natural food type given the location and this would be encouraged to appear on the menu. When considering each bid, and the suitability of the offer for Eastbourne, a high degree of regard had been given to the existing seafront offer. It was important that the preferred operator was able to offer something that did not already exist, bringing with it a certain cachet that would both attract new visitors to the town, but that would also hold appeal to local people.

7.5 Designs had been worked up to RIBA stage C within the parameters of the planning guidance note and reflecting the council's aspiration for this iconic site. The plans were to assist potential operators visualise the scale and form of the new facility, in turn assisting them in submitting bids for the future operation of the new café/restaurant. A construction contractor would be appointed to deliver the scheme. Internal fit out would be the responsibility of the tenant. The permanent facility would need to meet the financial targets set for the scheme, consistent with the council's commitment to achieving a sustainable asset base by 2021. A planning application would be submitted in June, for determination in September.

7.6 Intended as a temporary facility following the demolition of the former Wish Tower cafe, the Western View café had been constructed in such a manner that most of the building could be salvaged and relocated elsewhere. It was proposed the cafe would continue to operate until the end of November 2016. It would then be dismantled and moved to another location. This would need to be the subject of a separate report to cabinet presenting options and costs of relocation. Three potential

sites had been identified and officers were working up the options in more detail with a view to relocation taking place between January and March 2017.

7.7 There had been a number of stakeholder meetings with heritage, commerce and tourism stakeholders, including the Wish Tower memorial group, Business Breakfast and the Pier Action Group. There would be further public consultation as part of the planning process.

7.8 The future development of the Wish Tower site was an integral part of the council's seafront and tourism strategy. Significant progress had been made to develop a design and determine an operator. The next steps would be to appoint an operator, submit the planning application, and to prepare the construction contract and to this end it was proposed that delegation arrangements be put in place to progress the project.

**7.9 Resolved (key decision):** (1) That the contents of the report be noted.

(2) That the senior head of regeneration, planning and assets be granted delegated authority to conclude the commercial agreement with the preferred operator.

(3) That the senior head of regeneration, planning and assets be granted delegated authority in conjunction with the lead member for tourism and leisure services, and the lead member for core support and strategic services, to let the construction contract for delivery of the new building, subject to planning and other consents.

## **8 Arndale Centre extension - use of 'section 237' powers to assist with delivery of the proposed development (KD).**

8.1 Cabinet considered the report of the senior head of regeneration planning and assets. Following the secretary of state's decision to approve the compulsory purchase order (CPO) to allow the £85m planned extension to the Arndale to proceed (which would provide an additional 22 new retail units, approximately 300 extra car parking spaces, seven restaurants and a nine-screen cinema and was expected to create approximately 800 retail and catering jobs) it was considered that the acquisition of the land for planning purposes of the development, so as to engage S.237 of the Town and Country Planning Act 1990, should be approved on the following basis:

- (i) The development had the benefit of planning permission and it was considered desirable that the development progress and be completed as soon as possible;
- (ii) the council had already undertaken a lengthy CPO process to secure the necessary land and rights needed to facilitate the development;
- (iii) it was considered that appropriate investigations had been undertaken by the developer to identify those with the benefits of the rights proposed to be infringed and that it was reasonable to



conclude such beneficiaries could not or would not be identified within a reasonable time period;  
(iv) the development would deliver public benefits to the borough;  
and  
(v) those who currently benefited from the restrictive covenants would be entitled to compensation for the interference with their rights.

Accordingly, all relevant considerations had been assessed and on balance it was considered appropriate that the recommendation be approved.

8.2 Prior to and following the making of the CPO, the developer had sought to separately negotiate with relevant third party landowners in order to secure the land required for the Arndale extension by agreement. Various restrictive covenants existed over some areas of land which had been acquired by the developer and also over its existing land holding. A composite list of those rights, so far as it was possible to ascertain the rights from the title documentation, was set out in the schedule attached to the report.

8.3 The acquisition of the land by the council and subsequent use of S.237 powers to secure the release of any covenants that might impact upon the development would be followed by the transfer of the land to the developer. The CPO indemnity agreement between the council and the developer provided that the council's costs associated with the transfer of third party rights, the exercise of the section 237 power and any compensation payable as a result would be met by the developer. Accordingly, there were no financial implications for the council.

**8.4 Resolved (key decision):** That, in principle, the acquisition of the land, as identified on the attached plans and schedule by the council pursuant to Section 227 of the Town and Country Planning Act 1990 be authorised in order to then engage powers under section 237 of the Town and Country Planning Act 1990 for the planning purpose of facilitating the carrying out of the development (in its current form or as may be varied or amended) and subsequent disposal of that land to the developer (or an associated company) under section 233 of the Town and Country Planning Act 1990, and that the following authority be delegated to the senior head of regeneration, planning and assets in consultation with the lead cabinet member to:

(a) Finalise the terms for the acquisition and disposal of the above land with the developer (or associated company) and for the relevant documentation to be entered into by the council; and  
(b) finalise the extent/boundary of the land identified in the attached plans and schedule to be acquired by the council and subsequently disposed of to the developer once S.237 powers have been exercised over the land.

9.1 Councillor Jenkins asked about the funding split between the 2 councils of the costs of implementing the programme and the impact these costs would have upon the council's debt. The chairman said at this stage it was anticipated that the split of costs and benefits will fall 60:40 Lewes District Council (LDC) and Eastbourne Borough Council (EBC), reflecting the expected share of benefits and noted that certain costs, e.g. for system replacement would need to be incurred at some future time irrespective of the programme.

9.2 Cabinet considered the report of the chief executive and senior head of projects performance and technology. In October 2015, cabinet approved a strategy for the development of shared services between LDC and EBC based on the integration of the majority of council services. The report sought approval to the detailed business case, high level plan and technology arrangements for the implementation of that strategy. LDC's cabinet had considered and approved a similarly worded report earlier today.

9.3 The 4 strategic objectives of the programme were:

- **Protect services.** Protect services delivered to local residents while at the same time reducing costs for both councils and together save £2.8m annually.
- **Greater strategic presence.** Create two stronger organisations which could operate more strategically within the region while still retaining the sovereignty of each council
- **High quality, modern services.** Meet communities and individual customers' expectations to receive high quality, modern services focused on local needs and making best use of modern technology
- **Resilient services.** Building resilience by combining skills and infrastructure across both councils

9.4 The total estimated savings of the programme as a whole was £2.797m with an equivalent reduction of the equivalent of 79 full-time staff across both councils. LDC would achieve a higher share of the benefits than EBC because EBC had already delivered significant savings through its future model programme and the joint transformation programme inherited the savings target from LDC's cancelled new service delivery model programme. The total budget for the programme was £6.878m of which £1.275m had already been allocated for technology investment that would be required in any event. Therefore the investment required specifically to deliver the programme was £5.603m. This met the financial business case test. Costs and benefits would be shared in the same proportion. The full business case was given at appendix 1 to the report.

9.5 The programme would involve:

- The creation of a single senior management team operating across both councils.
- Reviewing current pay scales and structures and potentially adopting a new joint pay and grading system.

- Redesigning and integrating the technology infrastructures of both councils.
- Significant investment in new technologies, both hardware and software.
- Creating a new target operating model for 350 staff working in joint teams.
- Building hundreds of integrated business processes for the joint teams, based on harmonised policies, driven by common technology.
- Significant cultural change to ensure staff exhibit the same core competencies and customer-centric attitudes and behaviours.

9.6 A high level view of the programme, which included more than 30 projects across six major work streams, was provided at appendix 2 to the report and a full net present value calculation on the programme costs was given in appendix 3. A summary of the non-discounted costs and benefits was as follows:

Direct programme costs	£5.603m
Existing allocated technology investment	£1.275m
Total programme budget	£6.878m
Business case savings	£2.797m
Payback period (all costs)	2.5 years
Payback period (excl. existing allocated costs)	2 years

9.7 It was proposed to fund the capital and one off revenue costs from a mixture of capital receipts, prudential borrowing and reserves and with the ongoing revenue costs coming from the efficiency savings generated. Both councils had existing earmarked sums which would be used to contribute to the programme, including:

- LDC funding was allocated for the new service delivery model programme in November 2014.
- EBC strategic change fund.
- EBC IT capital block allocation.

9.8 The programme would be managed in accordance with standard programme and project management methodologies. The joint transformation board would oversee delivery, monitor risks and be consulted on key deliverables and decisions, and cabinets would receive regular updates. The recommended employment model, having reviewed a number of options, was a shared services model with EBC as the host authority. The programme depended on a common approach to information and communications technology (ICT) strategy and service provision, and a number of options had been considered to deliver this. The recommended option was for application management to be performed by a joint internal team and to vary EBC's contract with SopraSteria Ltd to provide infrastructure management services to LDC. It was also recommended that the Digital 360 platform in use at EBC was extended to LDC, subject to commercial and procurement matters being settled satisfactorily. This meant that LDC would benefit from the significant investment EBC had already made in that platform. Legal and

procurement advice had been sought on these matters and was detailed in the report.

9.9 Customer and stakeholder engagement was one of the key work-streams of the programme. Effective customer and stakeholder insight would ensure that both councils develop policies and services taking into account the views of individuals, communities, stakeholders, forums, organisations, etc. A range of methods to engage and consult would include surveys, meetings, focus groups or discussions and user testing.

**9.10 Resolved (key decision):** (1) That the business case for the joint transformation programme be approved and that a total of £6.878m be provisionally allocated to the programme (para. 4.4 of the report).

(2) That the deputy chief executive be granted delegated authority to determine the appropriate allocation of costs against revenue and capital funds (para. 4.5 of the report).

(3) That the deputy chief executive be granted delegated authority, in consultation with the Joint Transformation Programme Board, to determine the methodology for cost and benefits sharing with an overriding principle that joint costs are allocated on the basis of the benefits realisation ratio (para. 4.6 of the report).

(4) That the chief executive be granted delegated authority, in consultation with the Joint Transformation Programme Board, to run the programme within the allocated resources, reporting to cabinets regularly (para. 5.1 of the report).

(5) That the high level programme plan be approved (para. 5.3 of the report).

(6) That the procurement approach and contract variation outlined in the report, including the exceptions to contract procedure rules and the proposed changes to information and communications technology service provision, be approved and that the deputy chief executive be granted delegated authority, in consultation with the Joint Transformation Programme Board, to negotiate the associated cost of pension protection with the service provider (paras. 5.10 to 5.13 of the report).

(7) That the adoption of the proven 'Digital 360' platform as the basis for the joint transformation programme be approved, subject to procurement (para. 5.12 of the report).

(8) That engagement be undertaken with local community stakeholders in respect of relevant elements of the programme (para. 5.3 of the report).

**\* 9.11 Resolved:** That full council be recommended to approve the shared services employment model with Eastbourne Borough Council acting as the host authority (para. 5.4 of the report).

**10 Joint venture on energy and sustainability (KD).**

10.1 Cabinet considered the report of the senior head of community and Eastbourne Homes Limited managing director looking to see how the council could take a leading local role in addressing energy and sustainability issues and provide income to the council. Appendix 1 to the report listed the types of projects that could be considered, e.g. a public sector backed energy supply company, energy generation such as solar or CHP (combined heat and power) and commercial greenhouses. Lewes District Council's cabinet was due to consider a similar report at their meeting on 4 July 2016.

10.2 Following a market engagement exercise carried out via a Europe-wide advertisement, interviews were held with 3 major companies which confirmed:-

- A desire to work jointly with EBC to deliver the long term sustainability aims, including energy and food.
- That the costs of development, investment, risk and returns could be shared.
- That heat networks, energy generation plant, demand management to balance the national grid, and commercial greenhouses were financially viable and could provide an income to the council.
- The anticipated internal rate of return/return on investment (IRR/ROI) threshold ranged between 6-15%.
- There is no need for an expensive upfront masterplan - sites and business plans could be developed jointly as and when required;
- The council's long term thinking was in line with the need to tackle energy and food supply, waste and sustainability.
- Flexibility in approach to structuring the arrangements.
- That the approach should be phased – starting with key projects first and building up capacity and market value over time.

10.3 Officers from the Department of Energy and Climate Change had observed the market engagement exercise and were positive about the council's approach and long-term thinking.

10.4 It was proposed that the council set up a joint venture which at its top level was through a 'strategic partnership agreement' (SPA) as this gave the greatest flexibility for the long term aims. The SPA would act as an enabling body for the individual projects that would sit beneath it. The SPA would be procured through a competitive procedure with negotiation and in place by June 2017. It was anticipated that the commercial partner would need to be a significant market player and have a turnover of at least £50 million. Each individual project that sat within the SPA would be reported to cabinet to enable approval of a business plan, and the necessary capital allocation.

10.5 The key elements of the SPA that the council would be looking to secure were set out in the report and included 50:50 public:private split where appropriate and the opportunity to build in potential for other councils or public bodies to be able to participate and use the business

planning process. It is suggested that this be limited to within Sussex, Surrey and Kent.

10.6 A detailed legal analysis was given in the report covering procurement and the council's powers to undertake the proposed activities. External advice might be required for assessing some technical elements of the procurement process at an estimated cost of no more than £10,000. Once the joint venture had been set up, external legal advice might be required to verify bespoke contracts. The council had set aside a budget of up to £50,000 each year for the next three financial years to assist with these external costs. It was anticipated that any expenditure would be shared equally between the council and any other public sector partner/s in the joint venture.

**10.7 Resolved (key decision):** (1) That the start of a public procurement process advertised in OJEU for a joint venture with a private sector partner be approved.

(2) That the senior head of community and Eastbourne Homes Limited managing director be granted delegated authority to take all decisions during the joint venture procurement process, up to and including the selection and appointment of the private sector partner [where appropriate in consultation with the chief finance officer and lawyer to the council]. The delegation to include the detailed development, management and approval of the public procurement process to be followed and of all the procurement documentation required to deliver the project and the development and approval of all the contractual documentation to appoint the private sector partner.

(3) That the senior head of community and Eastbourne Homes Limited managing director be granted delegated authority to agree the inclusion in the joint venture structure of other local authority and public body partners within Kent, Surrey and Sussex.

## **11 \* Regulatory services - new and amended policies (BPF).**

11.1 Cabinet considered the report of the senior head of community seeking approval to a number of policies covering environmental health and licensing functions as follows:

- Regulatory services enforcement policy (amended).
- Redress schemes enforcement policy.
- Smoke and carbon monoxide alarms enforcement policy.
- Statement of principles for determining the amount of a penalty charge.

Copies were appended to the report.

11.2 The regulatory services enforcement policy had been amended to add a new section (5.5) to reflect the option to issue penalty charge notices. The other named policies and statement were proposed in response to recently approved government regulations. Consultation had taken place with the National Landlords' Association. No comments had been received.

**\*11.3 Resolved (budget and policy framework):** (1) That full council be recommended to adopt the following policies and statement:

- Regulatory services enforcement (amended).
- Redress schemes enforcement
- Smoke and carbon monoxide alarms enforcement.
- Statement of principles for determining the amount of a penalty charge.

(2) That full council be recommended to delegate the administration and enforcement of all the above policies and the statement of principles in exercise of relevant legislation to the senior head of community.

The meeting closed at 6.38 pm

**Councillor David Tutt  
Chairman**

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**BODY:** CABINET  
**DATE:** 13 July 2016  
**SUBJECT:** Annual Accounts 2015/16  
**REPORT OF:** Financial Services Manager

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**Ward(s):** All

**Purpose:** To present the annual accounts and final outturn for 2015/16.

**Contact:** Pauline Adams, Financial Services Manager Tel: 01323 415979.

**Recommendations:** Members are asked to -

- i) Agree the final outturn for 2015/16.
- ii) Approve the transfer to reserves and provisions as set out in paragraphs 2.3 and 3.2.

## **1.0 Introduction**

- 1.1** The Accounts and Audit Regulations 2011 require the Council to formally approve and publish the Statement of Accounts for the financial year ending 31 March 2016 by 30 September 2016.
- 1.2** A report to the Cabinet meeting on 25 May 2016 set out the provisional outturn for 2015/16. The forecast was for a credit variance of £195,000 on service expenditure.
- 1.3** Since that time the work on closing the accounts has now been completed and the final outturn confirmed. The outturn forms part of the Statement of Accounts presented to the Audit and Governance Committee.

## **2.0 General Fund Final Outturn 2015/16**

- 2.1** The content of the accounting statements and notes differ from budget reports submitted to Cabinet during the year, in that Income and Expenditure is analysed according to the statutory national groupings set out in CIPFA's Service Reporting: Code of Practice (SeRCOP), rather than reflecting the management organisation of the Council.

It is only the bottom line of the movement in reserves for the general fund that turns this statutory presentation into a comparable outturn figure with the performance monitoring arrangements.

- 2.2** The general fund final service outturn is a favourable variance of £204,835 detailed in the table below.

	<b>Original Budget £'000</b>	<b>Revised Budget £'000</b>	<b>Actual £'000</b>	<b>Variance £'000</b>
Corporate Services	5,457	5,898	5,917	19
Community Services	6,249	6,148	5,911	(237)
Regeneration, Planning policy and Asset Management	(42)	48	(6)	(54)
Tourism & Leisure Services	3,085	2,959	2,787	(172)
<b>Service Expenditure</b>	<b>14,749</b>	<b>15,053</b>	<b>14,609</b>	<b>(444)</b>
Contingencies	1,834	1,893	1,810	(83)
Net Interest and Capital Financing	(448)	(239)	-	239
Transfer to (from) Reserves	-	(57)	26	83
<b>Net Expenditure</b>	<b>16,135</b>	<b>16,650</b>	<b>16,445</b>	<b>(205)</b>
Financed by				
Government Grants	(4,720)	(5,264)	(5,215)	49
Council Taxpayers	(7,324)	(7,324)	(7,324)	-
Business Rates	(3,201)	(3,201)	(3,295)	(94)
<b>Total Financing</b>	<b>(15,245)</b>	<b>(15,789)</b>	<b>(15,834)</b>	<b>(45)</b>
Transfer from General Fund Balance	890	861	611	(250)

The main change from the details of the service variances reported to the June Cabinet relates to adjustment to provision for bad debt relating to housing benefits overpayment, accrual adjustments for the building control management fee and IT Steria contract and an increase in the legal fees chargeable to the HRA.

**2.2** The General Fund Balance at 31 March 2016 was £3.3m. Details of other reserves are included in the accounts.

**2.3** In addition to the transfers to and from reserves as approved by Cabinet on the 25 May 2016 a transfer of £575,381.51 was made to the Capital Programme reserve in line with the budget strategy representing the balancing mechanism on capital financing costs. This includes savings on external interest payable due to the continued use of internal balances and the actual timing of capital spending incurred compared to the expected cash flow profile.

### **3.0 Housing Revenue Account**

**3.1** The figure previously reported to the Cabinet on 25 May 2016 set out a favourable variance of £218,000. The final net expenditure for the year was a surplus of £527,929 a favourable variance against budget of £231,979. This movement in variance is due to an accounting adjustment for capital funding from revenue.

The Housing Revenue Account Balance as at 31 March 2016 was £3.7m

**3.2** In addition to the transfers to and from reserves as approved by Cabinet on the 25 May 2016 a transfer of £793,000 was made to the Housing Regeneration and Investment Reserve in line with the budget strategy and the 30 year Housing Business Plan. This represents the variance between the budgeted and actual depreciation

allowance.

#### **4.0 Capital Expenditure**

**4.1** The final capital expenditure for the year was £18.0m compared to a revised budget of £19.9m a variance of £1.9m-(General fund (£0.3m) and HRA £2.2m) or 9.5%.

#### **5.0 Statement of Accounts**

**5.1** The draft statement of accounts is available on the Council's Website and copies can be obtained from Financial Services. An overview and key points of interest is attached at Appendix 1.

**5.2** It is the Chief Financial Officer's (CFO) responsibility to ensure the preparation of the Statement is in accordance with the CIPFA/LASAAC Code of Practice on local Authority Accounting in the United Kingdom (the Code). The CFO is also responsible for certifying that the accounts represent a true and fair view of the authority's financial position by 30<sup>th</sup> June.

**5.3** The major changes to the Code for 2015/16 were:

- Narrative Report of the Chief Finance Officer – this has replaced the explanatory foreword and is now far more comprehensive in regard to the Council activities, plans and performance and is intended to become the equivalent of the director's report in company accounts. The report has moved from purely look backwards and should now have a forward looking orientation, identifying those trends and factors relevant to the users' assessment of the current and future performance of the authority and the progress toward the achievement of its long-term objectives both financial and operational.
- Fair Value Measurement – Authorities are now required to measure assets and liabilities in accordance with the highest and best use principle rather than the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction. This change has had no impact on the figures within the Financial Statement, but has increased the disclosure requirement in the notes.

**5.4** Other changes that have affected the Statement of Accounts:

- Accounting for Greencoat House (Ltd) (WEL) – Due to the Council holding 70% stake in the company the accounts have had to be treated as part of the Council's group accounts. Greencoat House Ltd has been included as an associate and appears as a long term investment on the Council's Balance Sheet valued on an equity share basis.
- Eastbourne Housing Investment Company – The financial transactions for this company as a wholly owned subsidiary of the Council, has been included in the group accounts section of the Statement.

**5.5** The external auditor (BDO) is due to commence work on 11 July and the accounts are open for public inspection between 1 July and 11 August 2016. All queries and

questions to the Auditor must be put in writing and sent directly to BDO's offices.

## **6.0 Summary**

- 6.1** The 2015/16 accounts have now been finalised and have resulted in the outturn position on the general fund varying by £9,000 from the provisional outturn reported to the Cabinet on 25 May.
- 6.2** There is a requirement to approve the statement of accounts 2015/16 by 30 September 2016. This responsibility has been delegated to the Audit and Governance Committee by Full Council.
- 

### **Background Papers:**

The Background Papers used in compiling this report were as follows:

Unaudited Statement of Accounts 2015/16.

CIPFA Code of Practice on Local Authority Accounting in the United Kingdom 2015/16 (the Code) and Guidance notes for practitioners

Final Accounts Working Papers 2015/16

Cabinet Report 25 May 2016: Provisional Outturn – Quarter 4 2015/16.

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**Overview of the 2015/16 Statement of Accounts.**

**Introduction**

1. The content and format of the accounts is as prescribed in the Accounting Code of Practice (the Code) issued by the Chartered Institute of Public Finance and Accountancy CIPFA, under the oversight of the Financial Reporting Advisory Board.
2. The code is based on approved accounting standards issued by the International Accounting Standards Board except where these are inconsistent with specific statutory requirements. The code constitutes proper accounting practice under the terms of section 21(2) of the Local Government Act 2003.

**Income and Expenditure**

**General Fund**

3. The total general fund underspend for the year was £250,389. This differed from the provisional outturn for the year reported to Cabinet on 25 May 2016 to adjustment to provision for bad debt relating to housing benefits overpayment, accrual adjustments for the building control management fee and IT Steria contract and an increase in the legal fees chargeable to the HRA. .
4. After taking all these reconciliation items into account the transfer from the general fund balance was £611,106, which at 31 March 2016 stands at £3.284m

**Housing Revenue Account**

5. The surplus for the year was £527,929 and the housing revenue account balance as at 31 March 2016 was £3.678m.

**Balance Sheet.**

6. Key points of Interest

Item	31.03.15 £'000	31.03.16 £'000	Change £'000
Creditors (money we owe)	(11,023)	(10,116)	907
Debtors (money owed to us)	13,769	17,496	3,727
Fixed Assets	248,548	264,397	15,849

Pensions Liabilities/Reserve	(39,582)	(33,667)	5,915
Long Term Investments	238	282	44
Cash and Investments	6,112	1,953	(4,159)
Borrowings	(48,332)	(52,357)	(4,025)
Collection Fund	655	454	(201)
Earmarked Reserves	(6,351)	(8,300)	(1,949)
General Fund Balance	(4,899)	(3,284)	1,615
Housing Revenue Account	(3,150)	(3,677)	(527)

7. The change to Creditors is due to decreases in the number of invoices received late in March not paid until April (£145k), the amount of year end accruals (£495k), the amount owed to central government relating to business rates (£424k), repayment of loans held as long term creditors (£453k) less an increase in the amount of income held in advance £582k.
8. The change to Debtors is due to an increase in the amount of long term loans awarded including capitalised interest to EHIC, Sea Change and WEL of £3.049m in total, increases in the value of year end accruals £491k and the amount of HB Subsidy owed by DWP £1,358k, a decrease in the provision for bad debts £617k less reductions in the amount owed by central government for the repayment of VAT (£548k), Housing benefits overpayment outstanding (£184k), Preceptors share of the Collection Fund (£981k) and general debtors outstanding (£169k).
9. The value of fixed assets has increased due to capital expenditure during 2015/16 (£18.034m), routine financial adjustments for inflation based on reviewed valuations provided by our external advisor less the charge for depreciation (£6.9m) and the write off of disposals.
10. Pensions liabilities increase is due to changes in actuarial assumptions and reduction of discount rate.
11. Long term investment has increased due to capitalised interest charged to investment in WEL.
12. Cash has decreased as funds held are used to finance expenditure in the short term rather than borrowing, in accordance with the treasury management strategy whilst investment rates are low .

13. Borrowing increase represents a need to borrow to finance in year capital expenditure and lock into historically low interest rates.
14. The increase in Earmarked reserves is due to the planned transfers for the Capital Programme reserve (£0.5m), the Housing Regeneration and Investment Reserve (£1.7m), and the Devonshire Park Review (£1.0m) less revenue expenditure charged to reserves in line with the budget strategy £1.2m.

### **Collection Fund**

15. The overall deficit on the Collection Fund is £206k which is recoverable from central government and each precepting authority. This balance is separated on the Balance Sheet between the authorities to reflect this Council's own financial position rather than a group position of the Collection Fund authorities.
16. The council tax element surplus of £1.403m will be recovered in proportion to each bodies Band D Council Tax during 2016/17 and 2017/18. The surplus is a result of a net increase in the overall income from council tax after allowing for reliefs and the council tax support scheme.
17. The business rate element of £1.609m will be recovered in the proportion of 50% from central government, 40% from this Council, 9% from East Sussex County Council and 1% from East Sussex Fire Authority during 2016/17 and 2017/18. The deficit has arisen due to the number of outstanding Business Rate Appeals as at 30.3.16. Each authority has made a contribution towards the 15/16 balance totalling £1.95m during the year.

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<b>BODY:</b>	<b>CABINET</b>
<b>DATE:</b>	<b>13<sup>th</sup> July 2016</b>
<b>SUBJECT:</b>	<b>Medium Term Financial Strategy 2016-2020</b>
<b>REPORT OF:</b>	<b>Deputy Chief Executive (Chief Finance Officer)</b>
<b>Ward(s):</b>	All
<b>Purpose:</b>	To set out an overarching financial strategy to support the Council's strategic priorities and plans over a four year period.
<b>Contact:</b>	Alan Osborne, Chief Finance Officer, Tel 01323 415149 or internally on ext 5149
<b>Recommendations:</b>	Members are asked to: <ol style="list-style-type: none"><li>i) Approve the updated medium term financial strategy and associated plan 2016-20 as summarised in <b>Appendix 2</b>.</li><li>ii) Agree the balance of assumptions made in the strategy</li><li>iii) Request that the emerging budget proposals for 2017/18 be brought to Cabinet in December prior to detailed consultation and that the MTFs be represented if material changes arise in the interim.</li><li>iv) Agree the principal risks of the strategy in <b>Appendix1</b>.</li></ol>

## 1.0 Introduction

The Council's Medium Term Financial Strategy is a Rolling 4 year Strategy that takes into account:

- The external financial environment
- The overall financial demands of services
- The Council's existing and projected financial resources
- The Council's political priorities and stated aims
- The Council's sustainable service delivery strategy
- The Council's corporate plan
- The major service strategies and plans

1.1 The MTFs was last approved in July 2015 and set the backdrop for the 2016/17 budget setting process as well as a informing a three year rolling service and financial planning cycle.

1.2 In common with all the public sector, the medium term outlook for the Council is extremely challenging and in order to protect and improve services an ambitious ongoing programme of savings is key to success. With more radical measures required, it is essential that the Council takes a longer term approach to savings as more radical savings initiatives will inevitably take longer to plan and deliver.

1.3 Over the life of the last parliament the Coalition Government has

effectively reduced the general support to the Council by some 50% in cash terms which equates to over 60% in real terms. Government funding is expected to fall a further 30% over the next parliamentary cycle to 2020.

- 1.4 In order to protect front line services the Council put in place a priority based budget system that has kept pace with the scale of cuts to funding and made provision for reinvestment in services. The Council has set out its stall to become less dependent on day to day revenues to run services, instead opting to use any spare financial capacity to enhance the capital programme.
- 1.5 The Council's DRIVE programme provides the programme to deliver efficiencies that support the Council's Corporate Plan. The MTFs and Capital Strategy identify and direct resources at a strategic level, which are then compounded via the service and financial planning and budget setting process.
- 1.6 In setting recent annual budgets the Council has achieved its "Golden Rule" of meeting its ongoing budget requirement from ongoing resources in each year. Technically, the rule applies to the cycle of the MTFs, and it is reasonable to use reserves to smooth out the budget as savings accrue over the cycle. By not using reserves in this manner it has meant that reserves over the minimum level are available for one off investments in services decided via the service and financial planning process.
- 1.7 The Council, as a registered social landlord is obliged to run a Housing Revenue Account (HRA) that is statutorily ring-fenced from its general fund. A 30 year rolling business plan has been adopted for the HRA. The Council is working in partnership with Eastbourne Homes Ltd a wholly owned subsidiary to deliver efficiency savings in partnership using shared services. All savings accruing to the HRA are reinvested in housing services. During the last two years over £600,000 of ongoing efficiencies has been realised with £500k built into the EHL repairs budget and an overall reduction of £100k being realised in the Management Fee paid to EHL by the HRA.

## **2.0 Sustainable finance**

- 2.1 The basic legal definition of a balanced budget is that planned expenditure can be met from income and reserves.
- 2.2 Whilst that definition is the legal minimum, it does not provide for sustainability if reserves are used in the long term to resource any differences between ongoing expenditure commitments and ongoing incoming resources.
- 2.3 Therefore it is a given that over the cycle of this MTFs ongoing expenditure must be financed from ongoing resources with only non recurring investments being met from reserves over and above the minimum.
- 2.4 As with all Councils, the effect of inflation is felt on gross expenditure, whilst any increase in council tax or grant is based on a net position. This "gearing effect" means that there is a natural gap of c£400k per annum that needs to be met from efficiencies (approximately 2.5% of net spend)

if services are to be protected. This is on top of the Government reductions outlined in 1.3.

- 2.5 Given the current reduction in grant and the inability to raise council tax in real terms, due to capping criteria, the Council has to look to longer term measures to maintain sustainable finances. These include measures under the Sustainable Service Delivery Strategy (SSDS) including the Council's "Future Model" as well as shared services and the growth of income streams.

### **3.0 The impact of the capital programme**

- 3.1 The Capital Programme also has an effect on the Councils revenue finances as any investments that cannot be met from grants, contributions, capital receipts or straight revenue funding need to be met from borrowing. This has to be repaid with interest from revenue or capital receipts over time.

- 3.2 The General Fund policy is to use borrowing only on a business case basis. Any such borrowing is fully financed by way of interest charges and the Minimum Revenue Provision (MRP) which is the capital repayment. As new schemes that require borrowing are approved, the Council has to make provision for repayment via the capital financing budget. In order to keep this sustainable a stability mechanism that pools the following budgets is maintained.

- Interest earned
- Interest payable on debt
- Minimum Revenue Provision
- Revenue contributions to the capital programme (to balance)

- 3.3 It is up to Councils to set their own MRP and balances of Capital Receipts and Contributions can be offset to reduce this liability in the short term, although this only provides for short term relief against the cost of capital. The current policy of the Council is to pay 4% MRP on historic debt and MRP based on the useful life of assets created since 2011. Any budget surplus from interest and MRP is recycled into the capital programme by way of a transfer to the "capital programme reserve". This system creates a stabiliser mechanism between interrelated budgets. The surplus is currently running at approximately £500k per annum.

- 3.4 Capital investment can be used as "invest to save" therefore borrowing is an important tool in the overall financial strategy where savings on schemes exceed the cost of capital.

### **4.0 The National Financial Picture**

- 4.1 The Government has set an objective to eliminate the nation's budget deficit by the end of the parliament.

- 4.2 This will involve various measures that will reduce the amount of resources to local government including:

- A further reduction in general central government support 2017-2020

- Reducing the amount of resource available to DCLG as it is not a “protected Department” which will impact on specific grants
- Increasing in the funding for New Homes Bonus (NHB) paid for by further reducing the revenue support grant (RSG) which is set to be zero for EBC by 2019
- A further year on year reduction in Housing benefit administration grant (on top of the £250k cumulative reduction in the last 5 years)

4.3 The current extended period of low interest rates reduces the income to the council as it generates investment income due to positive cash flow and reserve balances. Any debt is at fixed rates and it is important to manage all capital financing as one budget as described in section 3.

4.4 The Government continues to target an inflationary rate of 2% using its preferred method of Consumer Price Index (CPI) and is currently below target, although the Bank of England that is responsible for achieving the target has indicated that the below target rate is due to short term effects principally oil prices.

4.5 The actual effect of the national deficit reduction programme to this Council has been the amount made available via the Revenue Support Grant (RSG). The Council received £8.9m in RSG in 2010/11. Whilst a scheme to retain an element of business rates was introduced in 2013, the Council is now receiving £2.8m of RSG in 2016/17. This will be zero by 2019.

4.6 Against this backdrop service demands on Councils are ever increasing with demographic and increased expectation causal effects.

4.7 In his last budget statement, the chancellor suggested that a cap on public sector pay rises would be maintained and they should not increase above 1% per annum.

4.8 The Government has already reduced the benefits paid to members of the local government pension scheme, by pegging future increases to the CPI instead of RPI. This has had the effect of increasing the overall funding of pensions schemes and therefore reduces the demand for future increases in employer contributions. A new career average revalued scheme (CARE) came into being on 1.4.14 with employee contributions lifted and benefits reduced. The Council will however have to find additional resources to fund “auto enrolment” due to start in November 2017. The actuary of the East Sussex Pension Fund is due to announce new employer rates effective from 1.4.17 in November. A rise of 1% over three years is currently forecast.

## **5.0 The strategy commentary and main assumptions**

### **5.1 Issues arising from previous years**

The Foundation of any sound financial plan is a predictable budget to outturn position. The 2015/16 outturn, whilst containing normal variances in year, resulted in a positive overall variance (£200k)

## 5.2 Inflation on goods and services

The Government has a long term commitment to retain an inflation rate of 2% per annum (CPI) however rates have been between zero and 0.5% for over a year and therefore the strategy assumes an average of 1.5% up to 2020.

The Council, in common with most, does not add inflation each year to all its supplies and services budgets as this would add some £200,000 per annum.

Therefore continuous efficiency improvement of approximately £100,000 per annum is assumed. This results in an allowance for non-pay inflation of £100,000 per annum in the strategy.

## 5.3 Pay inflation

One of the major costs in a District Council is the cost of its employees. This accounts for some £12m for this Council.

The recent economic climate and caps on public sector pay has led to some cost relief in this respect.

The strategy assumes the following increases based on the Government announcements and inflation targets:

<b>Year</b>	<b>Pay inflation</b>
2017/18	1%
2018/19	1%
2019/20	1%

In addition the Council has to honour contractual increments and an allowance of £60,000 (0.5%) per annum is assumed in the strategy.

The Council will also be required to pay 0.5% as an “apprenticeship levy” from April 2017. Details are still to be finalised and the levy could be offset by directly employing apprentices to the same value. The strategy assumes a £50,000 net cost.

## 5.4 Pension costs

The next triennial revaluation of the fund is due to be announced in November 2016 will set rates effective from 2017/18. With the recent change from RPI to CPI as the annual index, and the changes arising from the Pensions Bill including Career Averaged Revalued Earnings (CARE) instead of the previous final salary scheme, the strategy assumes modest increases in employer contributions after the current revaluation of 1% over 3 years.

The Council previously recouped its past service deficit as a % of pay, however the fund actuary has required councils to amortise this deficit on a cash basis since 2014/15 due to the risk of falling payroll numbers. Whilst this budget will increase in the short term it is not a material increase and will be paid for using the inflation allowances. A stepped increase in the general employer rate of 1% over 3 years is assumed following the revaluation.

## 5.5 Fees and charges

The Council currently receives income from fees and charges for its services of around £15m.

The Council has been reducing its exposure to income targets in areas affected by the economic downturn in successive budgets.

It is assumed that for the year 2017/18 an overall gain of £150,000 (1%) per annum will be realised in fees and charges from inflation

Individual service and financial plans will still strive to achieve some real terms increases where it is felt appropriate and achievable as well as new income streams to reduce the long term dependency on government grants.

In addition to updating existing fees and charges the Council is seeking new income streams to replace Government grants and targets are included in this strategy. (See 5.9 and 5.10)

## 5.6 Interest Rates

The current bank "base rate" is 0.5% and has been since March 2009.

There are differing forecasts in the future profile of interest rates which are largely dependent on a recovery and inflationary pressures in the economy. Most analysts now predict that there will be a very slow recovery and rates will only increase modestly in the period from 2017.

The Council's treasury management advisor (Sector Ltd) is forecasting a small increase in the rate to 0.75% in 2017.

The strategy assumes no increase in overall yield from interest rate rises over the life of the MTFS. Any increases that do occur will have a short term effect of increasing the amount of resources available to the Council (around £100k per percentage point) however the strategy will need to recycle these into capital financing as longer term interest rates used for borrowing purposes will increase too. The stabiliser mechanism as outlined in 3.3 will be used to smooth the effects of changes in interest rates over the life of the MTFS.

## 5.7 Council Tax

It is inevitable that surpluses and deficits will arise due to the fact that the tax base has to be estimated 3 months before the start of the year and the actual position is subject to collection fund performance as well as changes in the tax base in year. However in recent years these have been well managed. The collection rate for budget purposes of 98% is assumed from 2016/17 which is consistent with current performance.

The Council has taken advantage of the Government's tax freeze grant for the last five years. No announcements have been made about council tax increases beyond March 2016. Therefore the strategy assumes that no freeze grant scheme will be available in future.

The strategy assumes rises of 2% (based on CPI target) from 2016/17 (i.e. no real terms (based on target CPI) increase in council tax across the life of the MTFs)

The strategy also assumes increases (1%) each year in the overall council tax base. The Base will be reassessed annually as part of each budget setting process. Each 1% increase in the tax base yields approximately £80,000 per annum of additional tax.

## 5.8 Government Grants/Retained Business Rates

The Council currently receives £2.8m of revenue support grant. This is set to reduce to zero by 2019.

In addition the Council retains a proportion of business rates (c£4m) collected based on 40% of the real increase in those collected using a base year of 2011/12. The Council has joined an East Sussex wide pool (administered by Wealden DC) that has led to a further retention of approximately £200k per annum from 2015/16, this additional resource has been added to the amount available for capital. The Councils will be reviewing the merits of pooling in October 2016 with the impending rate revaluation and potential for 100% retention being factors.

From time to time the Government will make adjustments to business rates scheme, for which it compensates Councils for the loss of retained rates by way of a "section 31 grant". An example is for small business rate relief.

There are still backdated appeals on rates that relate to the old national scheme (pre 2013) the Council has had to make immediate provision for these appeals in order to fall in line with the other councils in the East Sussex Pool. This will unwind during the life of the MTFs, but will be recreated once the 2017 revaluation is complete.

The strategy assumes that business rate retention will rise by 2% per annum based on CPI rate increases, although initiatives such as the Town Centre and should contribute to further retention in future years.

The new Homes Bonus is a reward grant that currently gives c£10,000 for each new property brought into use/constructed and is paid over six years. The funding stream has increased to a high point of £1.2m per annum in 2016/17.

No announcements have been made about the future beyond the current six year horizon, however it is assumed that the scheme will be withdrawn and it will wind down gradually (approximately £180k per annum in the first three years from 2017/18) A consultation has been carried out proposing restricting the payments to 4 years in future. It is assumed that this will prevail.

The third type of grant is specific grants for the purposes of running individual services e.g. housing benefit administration and NNDR collection grants. The service and financial planning process deals with fluctuations in such grants with a view to matching the cost of the service against the grant received.

The overall amount of the main general grants from Government is therefore as follows:

<b>Funding</b>	<b>2016/17 £m</b>	<b>2017/18 £m</b>	<b>2018/19 £m</b>	<b>2019/20 £m</b>
RSG	1.8	0.9	0.4	0
Rate Retention	3.8	4.1	4.2	3.8
New Homes Bonus	1.2	1.0	0.6	0.6
<b>TOTAL</b>	<b>6.8</b>	<b>6.0</b>	<b>5.2</b>	<b>4.4</b>

#### 5.9 Savings and income streams

Taking all known factors and assumptions as outlined above the Council needs make an average level of new additional savings and/or new income streams of £930k per annum over the life of the MTFs.

The Council has set out a number of corporate initiatives in order to help facilitate savings under the auspices of DRIVE.

The principal programmes are now under the Sustainable Service Delivery Strategy (SSDS)

Whilst these programmes have stretch targets that have been agreed as part of each individual programme, this strategy assumes the following bankable savings accruing as set out below. This does not alter the targets set for each programme, but merely reflects what can reasonably be counted at this stage. Service and financial planning will provide more certainty as each year approaches.

<b>Programme</b>	<b>2016/17 £m</b>	<b>2017/18 £m</b>	<b>2018/19 £m</b>	<b>2019/20 £m</b>
Future Model	0.150	0	0	0
Shared services including Joint transformation programme	0.250	0.400	0.300	0.250
Procurement		0.100	0.150	0.200
New income Streams		0.400	0.350	0.350
<i>Service Based</i>	<i>0.085</i>	<i>0.100</i>	<i>0.100</i>	<i>0.100</i>
<b>Total</b>	<b>0.485</b>	<b>1.000</b>	<b>0.900</b>	<b>0.900</b>

#### 5.11 The Housing Revenue Account (HRA)

The HRA is ring fenced from the General Fund although should it fall into deficit then it would have to be subsidised by the general fund.

Transactions between the HRA and the general fund comprise three main elements:



- Interest on the HRA balances paid to the HRA
- Debt charges paid by the HRA to the General Fund
- Recharges from the General Fund to the HRA for support services

For the purposes of this strategy it is assumed that there is no change to the existing overall level of transactions between the accounts.

From 2012/13 the HRA became more like the general fund in that it needs to assess the cost of its capital programme against the resources available in the HRA, now that the subsidy system has been disbanded. Responsibility for setting rent levels is now localised however controls over rent levels and borrowing limits remain.

A 30 year business plan was adopted by the Council February 2012, and the HRA is subject to an annual refresh and overhaul from 2016.

Substantial reform to the HRA has been brought about by the Housing and Planning Act 2016 and the Finance Bill. Measures have included:

- “pay to stay” - which requires tenants with income in excess of £30k per household to pay a market rent with proceeds paid to Government.
- A levy on “high value” asset sales (some £6-£8m per annum) to be paid to Government
- A reduction in HRA rents of 1% per annum for four years 2016-2020 (previously subject to a CPI increase)

These measures have led to pressures in the HRA that have to be managed in order to keep it sustainable. A separate paper will be brought to Cabinet in the Autumn.

## **6.0 Reserves**

6.1 The Council has four main revenue reserves:

### Revenue

- General fund reserve – As a contingency and support the corporate plan
- Strategic change fund – to support the DRIVE programme
- Repairs and maintenance fund – to support the asset management plan
- Economic regeneration fund – to support the local economy

In addition there is one principal capital reserve

- Usable Capital Receipts – earmarked for future capital schemes

In addition the Council holds funds on behalf of others e.g. section 106 contributions.

6.2 The 2015/16 draft accounts show the balance available to the general fund to be c£3.6m. This is the assumed starting point for the MTFs. There is a planned draw on reserves to meet non- recurring expenditure in subsequent years at around £100k per annum. No assumption on

underspends is made in the strategy.

- 6.3 The previous MTFS recommended a minimum general fund reserve of at least £2m. The budget paper in February itemised the risks and as they have not changed significantly in the interim, it is assumed that the minimum level of reserves is fixed at £2m for the MTFS.
- 6.4 The strategic change fund was established in order to help facilitate the release of ongoing savings. This reserve is a key enabler for change and it will need replenishing in time.
- 6.5 The repairs and maintenance reserve had a balance of over £1m at 31.3.16 and has been used to support the asset management plan, high priority and corporate asset non capital items are financed from this fund where they cannot be met from the service budgets.
- 6.6 The system of carry forwards was abolished in 2010, with the exception of partnership and third party funds. The Council now follows a policy of pooling all general reserves which better facilitates corporate planning. It is not intended to reintroduce carry forward of unspent budgets during the life of the strategy.
- 6.7 The Council has had a conscious policy of keeping reserve levels above minimum levels in reaction to the challenging economic climate and the continued squeeze on public sector spending. The MTFS summary (appendix 2) shows that the general reserve will be reduced over the life of the MTFS to an estimated £2.8m excluding any windfalls or underspends.
- 6.8 The Council set aside £500,000 from general reserves in the economic regeneration reserve to pump prime initiatives aimed at promoting the local economy and creating new income streams for the Council to help offset the reductions in Government funding.

## **7.0 Risks**

- 7.1 The main risks arising from this strategy and actions to manage are included at **appendix 1**.

## **8.0 Consultation**

- 8.1 The MTFS starts the period of consultation and a separate paper on the agenda on the Councils improvement journey makes recommendations on the consultation processes from now until the budget setting in February 2017.
- 8.2 It is a requirement to consult with the business and voluntary sectors over the detailed budget proposals that will emerge from this strategy in the autumn.
- 8.3 The Joint Staff Committee is briefed regularly as the process emerges.
- 8.4 The Council's staff are consulted routinely via the Managers Forum as well as participating in the service and financial planning process annually.

## **9.0 Conclusions**

- 9.1 In order to maintain sustainable finances and fund its ambitions, the Council will need to make new efficiency savings or income streams averaging £1m per annum for the next four years.
- 9.2 Due to the scale of the challenge the programme of change will require more radical measures for savings that often have a lead in period of 1 to 2 years, therefore the SSDS programme is a key enabler to meeting this challenge.
- 9.3 The MTFS both collects the financial effects of demand and supply changes and informs the corporate change agenda.

**Alan Osborne**  
**Deputy Chief Executive and Chief Finance Officer**

**Background Papers:**

The Background Papers used in compiling this report were as follows:

*Cabinet Reports:*

- *Budget and Council Tax Setting February 2016.*
- *MTFS – July 2015.*
- *Statement of Accounts – June 2016.*
- *Performance Monitoring Reports - Quarterly*

*Audit and Governance Committee - Final Accounts - June 2015.*

To inspect or obtain copies of background papers please refer to the contact officer listed above.

<b>Risk/Effect</b>	<b>Contained in MTFS</b>	<b>Other Mitigating Measures</b>
Income Reductions due to demand changes	<ul style="list-style-type: none"> <li>• Statutory recession hit income budgets adjusted each year as part of service and financial planning</li> <li>• The economic regeneration reserve set aside to aid regeneration and contribute new sources of income</li> <li>• Interest budget set at current low interest rate</li> <li>• Unachievable income budgets reviewed during service and financial planning and adjusted</li> <li>• Programme savings targets being set higher than the assumed delivery in the MTFS</li> <li>• Reserves above the minimum level</li> </ul>	<ul style="list-style-type: none"> <li>• Service and financial plans to test possible income generation activities and price sensitivity</li> <li>• New sources of income explored in service and financial Plans annually across three year horizon</li> <li>• Planning at 2 levels in service and financial planning process to challenge assumptions</li> </ul>
Government Support Being Reduced even further than forecast	<ul style="list-style-type: none"> <li>• Assumption follows the Governments announcements to date</li> <li>• Prudent estimates of future income flows</li> <li>• Zero basing of reward / new burdens grants</li> </ul>	<ul style="list-style-type: none"> <li>• Possibility of service alterations to a modified level</li> <li>• Change assumptions during budget setting</li> <li>• Update MTFS early in the event of material change</li> <li>• Priority based budget system has flexibility to adapt</li> </ul>

	<ul style="list-style-type: none"> <li>• Reserves above minimum level</li> </ul>	
Benefits Performance reducing due to scale of changes	<ul style="list-style-type: none"> <li>• No overall surplus built into subsidy budget</li> </ul>	<ul style="list-style-type: none"> <li>• Service review of delivery arrangements</li> <li>• Mobilise resources from other areas if performance hit by staffing shortages</li> <li>• Relieve service with one off resources to avoid performance drop</li> </ul>
Savings not being delivered	<ul style="list-style-type: none"> <li>• Reserves above minimum level can be used to smooth out fluctuations</li> <li>• Level of Revenue contribution to capital can be varied in the short term</li> </ul>	<ul style="list-style-type: none"> <li>• Use compensating savings in short term</li> <li>• Reduce discretionary spend in year</li> <li>• Review minimum revenue provision to slow down capital repayments</li> <li>• Review vacancy management policy in year</li> </ul>

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**Summary of MTFS 2017-2020**  
**General Fund**

**Appendix 2**

	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>	<b>2019/20</b>
<b>Total Budget b/f</b>	<b>16,135</b>	<b>15,166</b>	<b>14,493</b>	<b>13,892</b>
Less non recurring items	(1,172)			
<b>Adjusted Base Budget</b>	<b>14,963</b>	<b>15,166</b>	<b>14,493</b>	<b>13,892</b>
<b>Pay and Price Inflation</b>				
Pay Award and Increments	276	180	180	180
Pension costs	30	30	30	30
National Living Wage	42	30	30	20
Apprentice Levy	0	50	0	0
Inflation on Contracts	64	80	80	80
Other Growth	379	100	100	100
<b>Total Budget Demand</b>	<b>15,754</b>	<b>15,636</b>	<b>14,913</b>	<b>14,302</b>
<b>External Funding</b>				
RSG	(1,752)	(944)	(445)	0
Retained Business Rates	(3,174)	(3,439)	(3,700)	(3,300)
Business Rates Pool	(212)	(200)	(200)	(200)
Section 31 Grants	(648)	(661)	(500)	(500)
Other Government Grants	(354)	(200)	(200)	(200)
New Homes Bonus	(1,165)	(1,040)	(600)	(600)
<b>Total External Funding</b>	<b>(7,305)</b>	<b>(6,484)</b>	<b>(5,645)</b>	<b>(4,800)</b>
<b>Council Tax</b>	<b>(7,679)</b>	<b>(7,909)</b>	<b>(8,147)</b>	<b>(8,391)</b>
<b>Council Tax Surplus</b>	<b>(182)</b>	<b>(100)</b>	<b>(100)</b>	<b>(100)</b>
<b>Total Sources of Funding</b>	<b>(15,166)</b>	<b>(14,493)</b>	<b>(13,892)</b>	<b>(13,291)</b>
<b>Gap in Funding</b>	<b>588</b>	<b>1,143</b>	<b>1,022</b>	<b>1,011</b>
Inflation on Income	(103)	(150)	(150)	(150)
General Savings	(85)	(100)	(100)	(100)
SSDS - Future Model	(150)	0	0	0
SSDS - Shared Transformation	(250)	(400)	(300)	(250)
Procurement Savings		(100)	(150)	(200)
New Income Streams		(400)	(350)	(350)
<b>Residual Gap / (Surplus)</b>	<b>0</b>	<b>(7)</b>	<b>(28)</b>	<b>(39)</b>
General Reserves B/F	(3,600)	(3,014)	(2,921)	(2,850)
Non recurring service investments	586	100	100	100
Budget balance from (to) reserves	0	(7)	(28)	(39)
<b>Reserves C/F</b>	<b>(3,014)</b>	<b>(2,921)</b>	<b>(2,850)</b>	<b>(2,789)</b>

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# Agenda Item 9

- Body:** CABINET
- Date:** 13 July 2016
- Subject:** CODE OF CONDUCT FOR EMPLOYEES – REVISED/UPDATED POLICY
- Report of:** Senior Head of Corporate Development and Governance
- Ward(s):** ALL
- Purpose:** To agree the implementation of a Revised Code of Conduct for Employees of Eastbourne Borough Council.
- Contact:** Peter Finnis, Senior Head of Corporate Development and Governance  
Telephone 01323 415003 or internally on Extension 5003
- Recommendations:** That Cabinet : Approve the implementation of this policy for recommendation to full Council.

## **1.0 Overview: Code of Conduct**

Eastbourne Borough Council has always had a Code of Conduct for Employees (and another for Elected Members). HR regularly reviews policies to ensure they reflect best practice and keep up to date with legislative changes. The revisions to this Code have been fairly minor and include reference to Safeguarding, the use of loyalty cards when purchasing items on behalf of the Council and the form for declaring personal relationships at work.

## **2.0 Use of the Code of Conduct**

- 2.1 The Code of Conduct lays out the standards of behaviour expected of Eastbourne Borough Council employees. The Code forms part of the contract of employment and must be followed. A breach of the code could lead to disciplinary action under the Council's Disciplinary procedure, and even dismissal depending on the severity of the breach.
- 2.2 These revisions have been undertaken in consultation with the relevant portfolio holding members, Unison, the Council's Equalities Officer, the Council's Legal and Democratic Services, and with consideration to ACAS best practice guidance and the needs of the business.

## **3.0 Conclusion**

Cabinet is asked to:

1. Endorse the revised Code of Conduct for Employees.
2. Recommend its approval and implementation to the full Council.

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**Peter Finnis**  
**Senior Head of Corporate Development and Governance**

# CODE OF CONDUCT FOR EMPLOYEES

## Version Control

Version Number	Date	Review Date	Author	Reason for New Version
			Human Resources	

## **1. INTRODUCTION**

- 1.1 The public is entitled to expect the highest standards of conduct from all the Council's employees. Our customers must be sure that the Council makes decisions and provides services with honesty and without corruption.
- 1.2 The purpose of the Code of Conduct is to assist you in carrying out your job by making clear the standards of behaviour the Council requires you to meet. It incorporates existing policies, regulations and conditions of service and "The Seven Principles of Public Life " identified by the Nolan Committee on Standards in Public Life in 1995.
- 1.3 The Code forms part of your contract of employment and must be followed. It is important that you understand that a breach of this code could lead to disciplinary action under the Council's Disciplinary procedure, and even dismissal depending on the severity of the breach.
- 1.4 All staff are required to complete the Register of Interest – Declaration Form for all potential conflicts of interests. This form will be completed on appointment and you will be asked to review your declaration form annually. However, if there is a change in your circumstances and a potential conflict of interest arises, it is your responsibility to inform your manager as soon as possible so that the conflict of interest can be considered.
- 1.5 Please take time to read this Code and make sure that you understand it. If you are unclear or in any doubt you should seek advice from your line manager or HR Adviser.

## **2. SCOPE**

The Code applies to all employees of Eastbourne Borough Council.

## **3. STANDARDS**

- 3.1 You are expected to give the highest possible standard of service to the public, and where it is part of your duties, to provide appropriate advice to Councillors and fellow employees with impartiality.
- 3.2 In performing your duties, you must act with integrity, honesty, objectively and without bias.

- 3.3 You are expected, through agreed procedures and without fear of recrimination, to bring to the attention of the appropriate level of management any impropriety or breach of procedure which would impact on the provision of the service. More detailed guidance is contained within the Council's Anti Fraud and Corruption Policy.

#### **4. DISCLOSURE OF INFORMATION AND CONFIDENTIALITY**

- 4.1 It is generally accepted that open government is best. The law requires that certain types of information must be made available to members, auditors, government departments, service users and the public. The Freedom of Information Act 2000 for example requires disclosure of information in response to written requests in circumstances set out in the Act, and the Data Protection Act requires that the Council comply with statute in relation to the handling and processing of personal data. You must ensure that you are aware of the Freedom of Information and Data Protection policies and the guidance for staff issued in relation to these.
- 4.2 No confidential information, politically or commercially sensitive information, or personal information protected by the Data Protection Act, should be released to anyone without authorisation from your line manager.
- 4.3 You should not use any information obtained in the course of your employment for personal gain or benefit, nor should you pass it on to others who might use it in such a way.
- 4.4 You must not deal direct with the press or the media in relation to anything related to Council business unless required to do so as part of your duties, or you have been expressly authorised by the Council's Press Office (Cobb PR).

#### **5. POLITICAL NEUTRALITY AND ACTIVITY**

- 5.1 You serve the Council as a whole. It follows you must serve all the Councillors and not just those of the controlling group, and must ensure that the individual rights of all councillors are respected.
- 5.2 As part of your work you may be required to provide advice to Councillors or other employees. You must do so impartially and must not allow your own personal or political opinions to interfere with your work.

- 5.3 Certain posts are designated politically restricted by the Local Government and Housing Act 1989. Your letter of appointment/contract of employment will tell you whether you hold one of these posts and, if you do, you will be required by law to observe certain restrictions regarding your out of work activities. For example, you may not:
- Stand for election to local authorities (except Town or Parish Councils), the House of Commons or the European Parliament
  - Hold office in a political party
  - Canvass at elections, or
  - Speak or write publicly on matters on party political lines

## **6. RELATIONSHIPS**

### **6.1 Personal relationships**

- 6.1.1 You must declare to the appropriate manager any situation where your impartiality, objectivity or honesty may be compromised due to your being related to or having a close personal relationship with someone at work. The guidance on Close Personal Relationships in Employment gives a definition of "close personal relationships" and should be referred to for further information.

### **6.2. Councillors**

- 6.2.1 Mutual respect between employees and Councillors is essential to good local government and working relationships should be kept on a professional basis. Close personal familiarity between yourself and individual Councillors can damage the relationship and prove embarrassing to other employees and Councillors and should therefore be avoided.

### **6.3 The Local Community and Service Users**

- 6.3.1 You should always remember your responsibilities to the community you serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the Council.

### **6.4 Contractors**

- 6.4.1 All relationships of a business or private nature with external contractors, or potential contractors, should be made known to the appropriate manager. Orders and contracts must be awarded on merit, by fair competition against other tenders,

and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against.

- 6.4.2 If you engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors you should declare that relationship to the appropriate manager.

## **7. EQUALITIES**

- 7.1 You must comply with the Council's policies relating to equalities issues in addition to the requirements of the law. All members of the local community, customers and other employees have a right to be treated with fairness and equity.

## **8. APPOINTMENT AND OTHER EMPLOYMENT MATTERS**

- 8.1 If you are involved in the appointment of employees, you should be aware that it is unlawful for you to make an appointment based on anything other than the ability of the candidate to undertake the duties of the post. To avoid any possible accusation of bias, you should not be involved in an appointment where you are related to an applicant or have a close personal relationship with the applicant.
- 8.2 You should not be involved in decisions relating to discipline, promotion or pay and conditions adjustments for another employee who is a relative or with whom you have a close personal relationship.
- 8.3 The canvassing of any Member of the Council, directly or indirectly, for any appointment under the Council will automatically disqualify the candidate concerned for that appointment.

## **9 CONDUCT OUTSIDE OF WORK AND CRIMINAL OFFENCES**

- 9.1 Employees are expected to conduct themselves at all times (inside and outside of work) in a manner which will maintain public confidence in both their integrity and the services provided by the Council. In general what an employee does outside of work is his/her personal concern, unless those actions would cause a breakdown in the employment relationship.

- 9.2 This also extends to the use of social networking. Owing to the open nature of social media, control over this content is generally considered to have been lost once it hits the public domain regardless of the privacy settings of an account. Making derogatory personal comments or offensive remarks about the Council and/or other employees could fall within the Council's Dignity at Work policy, for which disciplinary action could result.
- 9.3 You must inform your manager if you are arrested / convicted /cautioned of a crime and if arrested must notify the manager of the development and outcome of the case as soon as it happens.
- 9.4 Disclosing all convictions does not necessarily mean disciplinary action will be taken against you. The extent to which a criminal offence may affect employment depends on whether the conduct:
- 9.4.1 makes the employee unsuitable for their work; and/or
- 9.4.2 may reflect adversely on the Council's reputation or ability to perform its function.
- 9.5 Employees sentenced to immediate imprisonment may be dismissed without notice or compensation in lieu of notice.
- 9.6 Where it is deemed that there is an adverse impact on your employment, the Council's Disciplinary Procedure will apply.

## **10. ADDITIONAL EMPLOYMENT AND PRIVATE PROFESSIONAL WORK**

- 10.1 You should not undertake additional employment (paid or unpaid), if your proposed additional work either will or has the potential to:-
- breach employment legislation
  - conflict with or detrimentally affect the Council's interests
  - weaken public confidence in the Council
  - affect your ability to undertake your Council work

If in any doubt you should seek advice from your line manager.

- 10.2 You should not carry out private professional work within the Borough of Eastbourne which involves making an application to the Borough Council as a statutory authority for any form of permission or approval



or

handle any matter in a private capacity in which you could find yourself in a professional relationship with the Council, including your own colleagues.

- 10.3 If you are employed by the Council in a post paid at spinal column point 29 or above, you are required to obtain written consent from your Senior Head of Service to take any outside employment paid or unpaid. In the event approval is withheld you may appeal through the normal Grievance Procedure.
- 10.4 Where you are allowed to undertake additional work, this will be on the express understanding that it will in no way be detrimental to the performance of your normal duties and no part of it will be carried out during office hours.
- 10.5 These instructions do not preclude you handling a private matter or making an application to the Council for yourself or immediate family e.g. a planning application related to the property in which you live or propose to live. However, you must still avoid in these circumstances the conflicts of interests referred to in Paragraph 10.2.
- 10.6 Failure to observe these instructions may render you liable to disciplinary action.
- 10.7 Although there is no requirement, if you are paid below spinal column point 29, it is recommended in your own interests that you inform your manager, in writing, of any involvement in outside or private work.

## **11. PERSONAL INTERESTS**

- 11.1 Personal interest must not conflict with your public duty. An official position or information acquired in the course of your employment must not be used to further personal interests or for the interests of others.
- 11.2 You must declare, in writing, using the Register of Interest-Declaration Form, to your manager any:
  - Financial or non-financial interest which could conflict with the Council's interests
  - Interest in an existing or proposed contract with the Council

- Membership of any organisation or club which could result in a conflict with the Council's interests, or of any organisation or club which is not open to the public and which has secrecy about its rules.

11.3 You are invited to voluntarily register your membership of clubs, organisations or movements with your Senior Head of Service. The register will be open to inspection only by Members of the Council. Such registration enables the Council to protect itself and its staff from any allegation of abuse.

## **12. SAFEGUARDING OF CHILDREN AND VULNERABLE ADULTS**

12.1 The Children's Act 2004 includes a specify duty on District Councils to have regard to the need to safeguard and promote the welfare of children and to co-operate with other agencies to improve the well-being of children and young people, therefore all employees are expected to work to promote safeguarding within the Council and with members of the public

12.2 You should ensure that all policies relating to Safeguarding of Children and Vulnerable Adults as agreed by the authority are complied with in addition to the requirements of the law.

12.3 You have a responsibility to report any safeguarding concerns over the welfare of children, young people or vulnerable adults. This extends to the identification of signs of abuse; poor practice by staff, councillors and others acting for or on behalf of the council, and allegations brought to our attention by a member of the public in line with the Safeguarding policy.

## **13. SEPARATION OF ROLES DURING TENDERING**

13.1 If you are involved in the tendering process and dealing with Contractors you should be clear on the separation of client and contractor roles within the Council. It is incumbent on the Council to make that distinction clear, both through the allocation of responsibility and through the organisational structure it adopts. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.

- 13.2 Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and subcontractors.
- 13.3 If you are privy to confidential information on tenders or costs for either internal or external contractors you should not disclose that information to any unauthorised party or organisation.
- 13.4 You should ensure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.
- 13.5 If you are contemplating a management buy-out, you should, as soon as you have formed a definite intent, inform the appropriate manager and withdraw from the contract awarding processes.

#### **14. DECLARATION OF INTEREST IN CONTRACTS**

- 14.1 If you have a financial interest in a company, firm or other organisation, which is proposing to contract with the Council you must give notice of that fact in writing to the Chief Executive immediately. A financial interest of any employee includes any interest of his/her spouse or partner if they are living together. It is an offence not to comply with this provision the maximum fine for which is £1000.
- 14.2 Your declaration will be recorded in a register maintained by the Chief Executive and you should obtain confirmation of entry in the register.

#### **15. PERSONAL DEALINGS WITH THE COUNCIL**

- 15.1 You may have dealings with the Council on a personal level, for instance as a Council Tax payer, as a tenant, or as an applicant for a grant or a planning permission. You should never seek or accept preferential treatment in these dealings because of your position as an employee of the Borough Council. You should also avoid placing yourself in a position that could lead the public to think that preferential treatment is being given: for instance, by being in substantial arrears to the Council, or by discussing a planning application personally

with officers when other members of the public would not have the opportunity to do so. Likewise, you should never use your position as an employee of the Borough Council to seek preferential treatment for friends or relatives, or any firm or body with which you are personally connected.

- 15.2 The Council views an employee's failure to pay any money due to itself as likely to bring the Council's own reputation into disrepute. It is for the Council to demonstrate an employee's liability for any payment, and to institute recovery procedures. But any persistent failure to pay a legitimate demand presented in this connection will be dealt with within the framework of our agreed Disciplinary Procedure.

## **16. USE OF FINANCE AND OTHER RESOURCES**

- 16.1 You must ensure that public funds entrusted to you are used in a responsible and lawful manner. You should strive to ensure value for money to the local community and to avoid legal challenge to the Council.

- 16.2 You must not utilise property, vehicles, equipment, materials or other facilities of the Council for personal use unless authorised in advance to do so. You must comply with the Council's Financial Procedures.

- 16.3 Intellectual Property is property which enjoys legal protection and is a result of intellectual effort, including patents, copyright, trademarks, design and software. Where developed in the course of your duties, such intellectual property is the property of the Council. You should not make use of the Council's intellectual property to conduct private work.

## **17. CORRUPTION**

- 17.1 You must be aware that it is a serious criminal offence for you to solicit or receive or give any gift, loan, fee, reward or advantage for doing, or neglecting to do something or showing favour, or disfavour, to any person in your official capacity. If an allegation is made it is for you to demonstrate that any such rewards have not been corruptly obtained.

## **18. ACCEPTANCE OF HOSPITALITY AND GIFTS**

- 18.1 You should exercise discretion in offering or accepting hospitality. It is essential that any suggestion of improper

influence should be avoided. If you are in any doubt about the right course of action to take you should always seek the advice of your manager.

- 18.2 You should only accept hospitality if there is a genuine need to impart information or represent the Council in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community or where the authority should be seen to be represented. They should be properly authorised and recorded.
- 18.2 You should also ensure that accepting the hospitality does not create a conflict of interest and is not likely to cause embarrassment to the Council.
- 18.3 Your acceptance of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal, where the authority gives consent in advance and where the authority is satisfied that any purchasing decisions are not compromised. Where visits to inspect equipment, etc. are required, you should ensure that authorities meet the cost of such visits to avoid jeopardising the integrity of subsequent purchasing decisions.
- 18.4 You must not, either directly or indirectly, accept any gift, reward or benefit from any member of the public or any organisation with whom you are brought into contact by reason of your duties. The only exceptions to this rule are:-
- small gifts under the value of £10 given by way of trade advertisements to a wide range of people e.g. calendars, diaries, pens, mugs and similar articles for use in the office
  - small gifts under the value of £10 offered during official authorised hospitality e.g. gifts on the conclusion of any courtesy visit of a type normally given by that organisation
  - small gifts or tokens of appreciation under the value of £10 where the donor is a service user or client and where refusal would cause offence.
- 18.5 You should handle the refusal of gifts or hospitality with tact - courteously and firmly informing the donor of the procedures and standards operating within the Council.

- 18.6 In the event of you receiving a gift without warning, which does not fall in any of the exceptions mentioned above, this should immediately be reported to your Service Manager.
- 18.7 All gifts and offers of gifts, including inducements such as air miles, trading discounts, vouchers or offers of hospitality , over the value of £25 must be reported to your manager and a Gifts/Hospitality Received Form completed. The incident will be recorded by the service manager/ Senior Head of Service for areas under their control in a Control Register.
- 18.8 The use of personal loyalty cards whilst making purchases on behalf of the Council is unacceptable. It may bring into question the impartiality of the use of that supplier.

## **19. SPONSORSHIP – GIVING AND RECEIVING**

- 19.1 Where an outside organisation wishes to sponsor or is seeking to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily, the conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
- 19.2 Where the Council wishes to sponsor an event or service neither you nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to an appropriate manager of any such interest. Similarly, where the authority through sponsorship, grant aid, financial or other means, gives support in the community, you should ensure that impartial advice is given and that there is no conflict of interest involved.

## **20. RELATED DOCUMENTS AND POLICIES**

Your attention is drawn to the following documents which should be read in conjunction with the Code of Conduct for Employees:

- Register of Interests – Declaration Form
- Anti Fraud and Corruption Policy
- Data Protection Policy
- Freedom of Information Policy
- Safeguarding Policy
- Close Personal Relationships in Employment Guidance
- Fair Employment Policy
- Comprehensive Equality Policy
- Social Media Policy

- Contract of Employment/Letter of Appointment
- Hospitality/Gift Received Form
- Hospitality Given Form

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<b>BODY</b>	<b>CABINET</b>
<b>DATE</b>	<b>13 July 2016</b>
<b>SUBJECT</b>	<b>Planning Enforcement Policy</b>
<b>REPORT OF</b>	<b>Ian Fitzpatrick, Senior Head of Community</b>

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<b>Ward(s)</b>	All
<b>Purpose</b>	To adopt this policy
<b>Contact</b>	Anna Clare, Specialist Advisor - Planning 1 Grove Road, Eastbourne Tel no: (01323) 415644 E-mail: anna.clare@eastbourne.gov.uk
<b>Recommendations</b>	<ol style="list-style-type: none"><li>1. That Cabinet approve the Revised Proposed Enforcement Policy for publication for a six week period to receive representations on its content.</li><li>2. Following the end of the representation period then delegation of any non-substantive change to The Snr Head of Community in consultation with the Chair of Planning Committee.</li><li>3 . Adopt the final Enforcement Policy Statement 2016</li></ol>

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## 1.0 Introduction

1.1 The planning system operates to regulate the development and use of land in the public interest. The effective and proper enforcement of planning controls is essential to protect the local environment and interests of residents, visitors and businesses of the Borough from the harmful effects of unauthorised works.

1.2 The need for effective enforcement is very important as it helps to-

- Tackle breaches in planning control which would otherwise have an unacceptable impact on the amenity of the area
  - Maintain the integrity of the decision-making process
- The Council has a duty to investigate alleged breaches of planning control and has powers to remedy proven breaches by statutory and other means.

1.3 Breaches of planning control are investigated and it is our policy to exercise these powers appropriately and proportionately so that development takes place

in accordance with the appropriate legislation or conditions and limitations imposed on any planning permission.

1.4 The National Planning Policy Framework (Para 207) identifies that local planning authorities should consider publishing a **local enforcement plan** to manage enforcement effectively and proactively. This is endorsed by the Royal Town Planning Institute and The Planning Advisory Service.

1.5 Since 2010 Eastbourne have been using an Enforcement Plan, which has been updated/amended over the years due to legislative changes but which has never been previously adopted by Cabinet as policy.

1.6 It is considered that having an adopted planning enforcement policy would assist in the delivery of an 'enforcement process/function' that remains faithful to the delivery of what development has been permitted, should also assist in engendering a culture of compliance and help to maintain the integrity of the planning system.

1.7 The Enforcement Policy has been presented to Planning Committee (Minute 38 July 2015) and Local Plan Steering Group and endorsed by both.

## **2.0 Content of the Policy**

2.1 The Enforcement Policy statement continues to:-

- Promote the joined up enforcement approach, recognising that working closely with others from outside the planning service is essential to maximise outcomes
- Reflect and reinforce the more proactive work already undertaken by the planning Caseworkers and Specialists and also by the Difficult Properties Group to improve the environment of the Borough and the amenities of its residents.
- Planning Committee will continue to receive a quarterly report detailing the actions and outcomes relating to enforcement matters.
- Outlines the Councils re-active and pro-active approach to Enforcement.
- Outlines a regime for monitoring and compliance with planning compliance.
- Outlines a regime through its Difficult Properties Group to pro-actively instigates action to remedy the environmental harm caused by unsightly buildings and land under Section 215 of the Town and Country Planning Act.

## **3.0 Human Rights Implications**

3.1 When deciding to take enforcement action, including prosecution, the rights of individuals under the Human Rights Act will be carefully considered. Particular account will be taken of Article 6, the right to a fair trial and Article 8, the right to respect for private and family life, home and correspondence.

## **4.0 Conclusion**

4.1 Since the Enforcement Policy was first published in April 2010 it has been successfully implemented bringing about significant changes in the Council's approach to enforcement issues in general.

4.2 Planning enforcement now enjoys a significantly higher profile than in the past. Public expectation is also higher and therefore a more robust policy document which more clearly identifies when and how action can be undertaken is required to ensure that these expectations can be met.

### **5.0 Recommendation:-**

1. That Cabinet approve the Revised Proposed Enforcement Policy for publication for a six week period to receive representations on its content.
2. Following the end of the representation period then delegation of any non-substantive change to Enforcement Policy Statement 2016 to the Senior Head of Community in consultation with the Chair of Planning Committee
- 3 . Adopt the Enforcement Policy Statement 2016

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## Introduction

This guide sets out Eastbourne Borough Council's procedure for the enforcement of planning control within the Borough.

The planning system operates to regulate the development and use of land in the public interest. The effective and proper enforcement of planning controls is essential to protect the local environment and interests of residents, visitors and businesses of the Borough from the harmful effects of unauthorised works.

The need for effective enforcement is very important as it helps to-

- Tackle breaches in planning control which would otherwise have an unacceptable impact on the amenity of the area
- Maintain the integrity of the decision-making process
- Ensure that the public acceptance of the decision making process is maintained

The Council has a duty to investigate alleged breaches of planning control and has powers to remedy proven breaches by statutory and other means.

Breaches of planning control are investigated very seriously and it is our policy to exercise these powers appropriately, proportionately and rigorously so that development takes place in accordance with the appropriate legislation or conditions and limitations imposed on any planning permission.

## Our General Approach to Enforcement

The decision to take enforcement action is discretionary and the Council will always act in an impartial manner.

In considering whether to pursue action, the Council takes into account:

- whether the breach of planning control unacceptably harms public amenity, or the authorised use of land and buildings merits protection in the public interest
- if any enforcement action is in proportion with the breach of planning control to which it relates. Enforcement action will not normally be taken to remedy trivial or technical breaches of control which are considered to cause no harm to amenity
- if initial attempts to persuade an owner or occupier of a site to voluntarily remedy the harmful effects of unauthorised development fail, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds
- statutory time limits for taking enforcement action
- relevant planning policies and other material considerations

## Types of Planning Enforcement Problems

A variety of breaches can occur throughout the Borough. These could be any of the following:

- Unauthorised development
- Non-compliance with planning conditions
- Unauthorised changes of use
- Unauthorised advertisements
- Works to listed buildings
- Works to protected trees
- Untidy/unmaintained land/buildings/plots

## Matters that are not breaches of planning control

If you are looking to contact us about any of the following issues, these are deemed not to be breaches of planning control and will not be investigated:

- Internal works to a non-listed building
- Works undertaken to a non-listed building over 4 years ago
- Obstruction of a highway or public right of way
- Parking of commercial vehicles on the highway or on grass verges
- Parking caravans on residential driveways or within the boundary of domestic properties as long as they are incidental to the enjoyment of the property
- Running a business from home where the residential use remains the primary use and there is no adverse impact on the residence
- Land ownership/boundary disputes or trespass issues
- Covenants imposed on property Deeds
- Any works that are deemed to be 'permitted development' under the Town and Country Planning (General Permitted Development) Order 2015 as amended and or substituted
- Advertisements that are either exempt from deemed and express consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007
- Dangerous structures or other health and safety concerns
- High hedge disputes – these are dealt with under Part 8 of the Anti-Social Behaviour Act 2003

## What you can expect if you report a suspected breach of planning control

We will

- Investigate all suspected breaches of planning control reported to the council either by post, online, e-mail, telephone or in person
- Acknowledge your complaint, providing the name and contact details of the case worker investigating the matter
- Actively investigate your complaint to a satisfactory conclusion

- Keep you informed of the progress of the case and of any decision made with regard to whether to take action and likely timescales involved
- Aim to close most cases within 3 months of the initial report, though some cases may take longer
- We will notify you of the reason for not taking formal action and close the case, in cases where there may be a technical breach of planning control but the harm caused is insufficient to warrant formal action
- Negotiate with those responsible for any breach of planning control, allowing them the opportunity to resolve the matters of concern before serving a formal notice.

The identity of persons reporting suspected breaches of planning control will be treated as confidential unless the complainant is required to give evidence at a public hearing, inquiry or court case.

We do not investigate continuous, vexatious or malicious reports that do not have any substantive planning reasons.

## How we will prioritise your report

All reports of suspected breaches of planning control will be investigated and progressed with a priority rating of 'A', 'B' or 'C' depending on the nature of the breach and the degree of harm caused. Individual cases maybe re-prioritised as the investigation progresses.

### Category A

- Demolition or alterations to a Listed Building
- Demolition in a Conservation Area that is causing immediate and irreparable harm
- Works to trees with a Tree Preservation Order or within a Conservation Area
- Development that is causing serious danger to public safety

### Category B

- Unsightly buildings or untidy land that is causing serious harm to the amenity of neighbours
- Development that causes serious harm to the amenities of neighbours or are contrary to significant policies in the Development Plan
- Unauthorised development that has gone undetected and the statutory time limit for taking enforcement action will expire within the next six months
- Disrepair of a Listed Building

### Category C

- Advertisements causing serious harm to amenity
- Businesses being operated from home
- Minor works i.e. gates, walls, fences, domestic outbuildings and satellite dishes
- Untidy land, except where it causes serious harm to the amenity of neighbours

## Timescales

In most cases, a site visit will be required to establish whether or not a breach of planning control has occurred. The initial site visit will normally be undertaken by officers within the Neighbourhood First Team within the following timescales:

- Category A – within one working day
- Category B – within ten working days
- Category C – within fifteen working days

On completion of the initial site visit, the findings will be assessed and a decision will be made as to how the investigation will proceed.

## Possible outcomes of an investigation

Detailed below are the most common outcomes of an investigation:

- No further action is proposed either because no breach has occurred, a minor or insignificant breach has occurred, or there is insufficient evidence to pursue the matter. The person reporting the suspected breach of control will be notified either verbally or in writing that no further action will be taken and an explanation provided of the Council's reason(s)
- Further investigation is required. The person reporting the suspected breach of control will be updated throughout the investigation as and when necessary
- A breach of planning control is established the person reporting the suspected breach will be notified which course of action the Council intends to take to secure regularisation of the breach. In most instances this will involve one of the three following options:
  - a) Attempt to negotiate a solution to any confirmed breach. By entering into negotiations a solution may be found which could involve the termination of any unauthorized change of use or building operations and/or the removal of any unauthorized building works or items constituting a material change of use
  - b) Invite the submission of retrospective application for planning permission where it is considered that there is a reasonable likelihood that planning permission may be granted in line with local and national policies, or where a development may be made acceptable by way of the imposition of conditions
  - c) Consider formal enforcement action. The council has a range of formal powers under the Town and Country Planning act that it can use to remedy breaches of planning control

## Formal Action

Where necessary the Council will pursue formal enforcement action, which could include the service of one or more of the notices below. Failure to comply with a notice could result in prosecution proceedings, a financial penalty and/or direct action being undertaken by the Council.



#### Breach of Condition Notice (BCN): (S187A of the T&CP Act 1990).

Where the breach of planning control relates to non-compliance with a condition on a planning permission or a limitation on a deemed planning permission has been exceeded, the Council will consider the suitability of serving a BCN.

#### Enforcement Notice: (S172 of the T&CP Act 1990)

The Council will consider the service of an Enforcement Notice where unauthorised operational development or change of use has taken place and it is considered suitable to do so.

#### Listed Building Enforcement Notice and Conservation Area Enforcement Notice: (S38-46 of the Planning (Listed Buildings and Conservation Areas) Act 1990)

If the breach of planning control relates to a Listed Building or the demolition of an unlisted building in a Conservation Area the Council will consider the suitability of serving a Listed Building Enforcement Notice.

#### Stop Notice: (S183 of the T&CP Act 1990)

Where a breach of planning control is causing very serious harm to public amenity and the environment, the Council will consider the suitability of serving a Stop Notice at the same time as the service of an Enforcement Notice, which will require unauthorised works or a use to cease immediately.

#### Temporary Stop Notice (S171E of the T&CP Act 1990)

A temporary Stop Notice can be served without the service of an Enforcement Notice to require unauthorised works or a use causing serious harm to public amenity and the environment to cease immediately.

#### Section 215 Notice: (S215 of the T&CP Act 1990)

In cases where the amenity of an area is adversely affected by the condition of land or buildings, the Council will consider serving a Section 215 Notice to require the tidying of the land or improvements to the appearance of a building.

#### Prosecution:

The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the above Notices where the date for compliance has passed and the requirements have not been complied with.

The Council will also consider prosecuting in the Courts where

- a) Unauthorised works have been carried out to trees subject to a Tree Preservation Order, or in a designated Conservation Area
- b) An advertisement is being displayed without the necessary consent and the Council's request to remove it within a specified timescale has been declined or ignored
- c) Unauthorised works have been carried out to a Listed Building
- d) Unauthorised demolition has been carried out in a Conservation Area
- e) The recipient of a Planning Contravention Notice has failed to provide a response within the prescribed time period or has supplied false or misleading information

Before starting any legal proceedings the Council will be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

## What happens if an allegation is made against you

If a report is received in relation to your property or land then the first thing that will happen is the site in question will be visited by one of our Neighbourhood First Team.

This first visit allows us to establish the facts of the case and whether there is any basis to the allegations made. The officer will, where necessary, take measurements and photographs of the development or activity taking place. This site inspection may be undertaken without any prior notification. Contact details will be taken so that contact can be made after the site visit.

If no breach of planning control is identified you will be notified that no further action will be taken.

If a breach of planning control is identified you will be advised of the details of the breach and what steps need to be taken to either rectify the breach or regularise the situation. You will be given a reasonable period of time (subject to the nature of the breach) to resolve any breach of planning control.

If compliance is not secured through amicable negotiations or by the submission of a retrospective planning application formal action may be instigated.

In investigating the alleged breach it may be appropriate to issue Requisition for Information Notices in order to gain more information in relation to the ownership of a property or the nature of a use/details of unauthorised development this could include one of the following;

- a) A Notice under Section 330 of the Town and Country Planning Act 1990 can require the recipient to state in writing the nature of their interest in a property and to state in writing the name and address of any other person known to them as having an interest in the property, as a freeholder, mortgagee, leasee or otherwise.
- b) A Planning Contravention Notice (PCN) under Section 171C of the Town and Country Planning Act 1990 can be served on the owner or occupier of the land in question or a person who is carrying out operations in, on, over or under the land or is using it for any purpose and where a suspected breach of planning is believed to exist to gain further information in relation to the operation/development.

Once the breach of planning control has been rectified you will be notified that no further action will be taken and the case has been closed.



## Contents

1. Introduction	1
2. Context	1
3. Council's Vision for Enforcement	4
4. Openness	4
5. General Approach to Enforcement	5
6. Type and Incidence of Enforcement Problems	7
7. Investigations of Suspected Breaches of Planning Control	8
8. Consideration of Enforcement Action	11
9. Powers Available to the Local Planning Authority	12
10. The Council's Policies for Enforcing Planning Control	20
11. Complaints about the Service	27

## Appendix

Appendix 1: Legislative Framework and Government Guidance	28
Appendix 2: Enforcement Complaints process Flowcharts	29



# 1. Introduction

The planning system operates to regulate the development and use of land in the public interest. The effective and proper enforcement of planning controls is essential to protect the local environment and interests of residents, visitors and businesses of the Borough from the harmful effects of unauthorised development.

This document sets out Eastbourne Borough Council's policy for the enforcement of planning control within the Borough.

Effective operation of this policy will support the Sustainable Community Strategy for East Sussex (Pride of Place) and the Council's Priorities in the Corporate Plan and re-inforce the saved policies in the Adopted Borough Plan (2007) and the policies contained in the Eastbourne Core Strategy Local Plan 2027.

The National Planning Policy Framework at paragraph 207 states '...effective enforcement is important as a means of maintaining public confidence in the planning system...'

The need for effective enforcement is very important as it assists in-

- Tackling breaches in planning control which would otherwise have an unacceptable impact on the amenity of the area;
- Maintaining the integrity of the decision-making process;
- Helping to ensure that the public acceptance of the decision making process is maintained.

# 2. Context

## The National Planning Policy Framework

The National Planning Policy Framework (NPPF) at paragraph 207 states:-

"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 it is appropriate to do so”.

Following the advice contained within this paragraph of the NPPF this document has been adapted from the adopted version (April 2010) as the enforcement policy approach for Eastbourne Borough Council.

‘Pride of Place’ is the sustainable community strategy for East Sussex, setting out the key tasks needed to improve the quality of life in East Sussex by 2026.

### Sustainable Community Strategy

The Council’s approach to planning enforcement should be consistent with the objectives of the Sustainable Community Strategy (East Sussex Pride of Place), the relevant themes of which are:-

By 2026 Eastbourne will have:

#### Regeneration and Economy

- Well paid jobs for local people with a workforce skilled to match employment opportunities;
- A modern sophisticated town that people want to live in, work in and visit with space for businesses to grow;
- A broad economic base with diverse employment opportunities available.

#### Environment

- Enjoy a higher quality of life through having a clean, safe and accessible natural, urban and marine environment;
- Value and protect the environment, conserving and enhancing it for future generations;
- See all new developments being planned and designed with minimal adverse impact on either the historic or the natural environment;
- Be aware of the local implications of climate change and are actively seeking to reduce their carbon footprint.

## Housing

- A housing market that provides greater housing choices for all
- Successful, well run safe neighbourhoods supported by appropriate infrastructure and amenities

## Crime and Disorder

- The main thrust of which is to ensure that, by 2026, Eastbourne will be a safe and secure place to live.

## Culture and Sport

- Cultural, sports and leisure facilities for everyone that will encourage community participation;
- Historical, archaeological and built environments that celebrate and contribute to civic understanding.

Planning enforcement has an important part to play in securing these objectives. In respect of the environment the planning enforcement service will play a vital role in tackling the issue of unsightly buildings thereby improving the visual amenities of the Borough.

In addition, the promotion of a culture of positive and proactive planning enforcement will assist in meeting the Council's objectives relating to crime and disorder.

## Council Priorities

The Council's key priorities include crime prevention and enforcement, with particular emphasis on "joined up enforcement". Co-operation with other Council service areas and external agencies (for example the East Sussex Building Control Partnership, Fire and Police Services, Environment Agency, etc.), is an integral part of the approach to enforcement and these working relationships will continue to be developed in the future in order to make the most effective use of available resources throughout the Council.

This 'joined up' approach has been used with great success in the Difficult Properties Group (DPG), a corporate group of officers from various departments of the Council, working together to maximize the impact of enforcement powers across all service areas (Housing, Environmental Health and Planning).

### **3. Council's Vision for Enforcement**

The Council has a duty to investigate alleged breaches of planning control and has powers to remedy proven breaches by statutory and other means. Breaches of planning control are viewed very seriously and it is our policy to exercise these powers appropriately, proportionately and rigorously so that development takes place in accordance with the appropriate legislation, or conditions and limitations imposed on any planning permission.

The integrity of the development management process depends on the Council's readiness to take effective enforcement action when it is justifiable.

Public acceptance of the development management process is quickly undermined if unauthorised development, which is deemed unacceptable on planning merits, is allowed to proceed without any apparent attempt by the Council to intervene before serious harm to amenity results from it. The Council will therefore act positively and swiftly in tackling breaches of planning control in accordance with the considerations and processes described in Sections 5 and 7 of this Policy statement.

The purpose of this policy document is to ensure that Councillors and Officers, external agencies and the general public are aware of the Council's proactive approach to its planning enforcement responsibilities.

We are always trying to improve the service that we provide. All relevant comments that we receive will be taken seriously and used to help us improve services. Please contact us if you would like to make any comments or suggestions about our planning enforcement service.

### **4. Openness**

In discharging their planning services responsibility Eastbourne Borough Council will:

- Review performance regularly and publish results;
- Planning Committee will be provided with a quarterly report detailing the actions and outcomes relating to enforcement matters;



- The Enforcement Policy will be subject to review at least every three years, but the Policy will be reviewed on a more regular basis if circumstances dictate;
- Provide information (subject to it not being covered by privacy/protection policies) and advice to individuals and organisations so as to remain transparent at all times;
- Keep all interested parties informed as to the progress with any investigation;
- Where formal action is necessary, make it clear as to why the Local Planning Authority intends to take, or has taken, enforcement action;
- Where it is decided that it is not expedient to take enforcement action any complainants will be informed of the reasons for this decision.

Each individual matter will be considered on its merits. There will be a consistent approach to enforcement action against breaches of similar nature and circumstance.

Where immediate action is considered necessary, an explanation of the reasons will be given at the time and confirmed in writing together with a timescale for implementation.

Where formal action is taken by the Council issuing a statutory enforcement notice, all parties served with a copy of the notice will be informed of the appeal procedure and advised in writing of the consequences of non-compliance with such a notice.

The Council will generally prosecute individuals or organisations who do not comply with any formal notice served on them, and when appropriate will take direct action, having regard to degree of harm and public safety.

## **5. General Approach to Enforcement**

The integrity of the development management process depends on the Council's readiness to take enforcement action when it is considered expedient to do so. Parliament has given Local Planning Authorities the primary responsibility for taking whatever planning enforcement action is

necessary within their area and the Council will always exercise its enforcement powers rigorously when it is considered expedient to do so.

It is important to note that the decision to take enforcement action is discretionary and that the Local Planning Authority should always act in a proportionate manner.

In considering the issue of expediency, the Council will have regard to:

- whether the breach of planning control unacceptably harms public amenity, or the authorised use of land and buildings merits protection in the public interest;
- ensuring any enforcement action is commensurate with the breach of planning control to which it relates. Enforcement action will not normally be taken to remedy trivial or technical breaches of control which are considered to cause no harm to amenity;
- ensuring that, if initial attempts to persuade an owner or occupier of a site to voluntarily remedy the harmful effects of unauthorised development fail, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to cease, but bearing in mind that action cannot be progressed whilst an application or appeal are live;
- statutory time limits for taking enforcement action, or whether we consider the breach has been deliberately concealed we will consider action under 171BA of the Town and Country Planning Act 1990 (as amended by the Localism Act 2011);
- relevant planning policies and other material considerations.
- the provision of the European Convention of Human Rights such as Article 1 of the First Protocol, Article 8, and Article 14 when considering enforcement action. We will, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by any proposed action and those who are affected by a breach of planning control.

The identity of persons reporting suspected breaches of planning control will be treated as confidential unless the complainant authorises

otherwise, or the complainant is required to give evidence at a public hearing, inquiry or court case.

The right to privacy under the Human Rights Act 1998 enhances and strengthens the Councils Policy on the protection of complainants. The Freedom of Information Act 2000 does not override this right to privacy and therefore the identity of complainants will not be revealed to third parties, unless any of the circumstances above apply.

Where the success of an appeal or prosecution is dependent on evidence being provided by the person who reported the breach of planning control, the Council will discuss with the complainant whether they are willing to relinquish their confidentiality and provide the required evidence before proceeding with formal enforcement action or a prosecution.

When the breach of planning control has become 'established' i.e. immune from enforcement action by virtue of elapsed time the Council should make known the provisions for the application of a Certificate of Lawfulness which regularises and clarifies the situation (Section 192 the Town and Country Planning Act 1990 as amended by Section 10 the Planning and Compensation Act 1991).

## **6. Type and Incidence of Enforcement Problems**

### **i) Responding to complaints (Reactive)**

The Council receives on average 300-400 planning enforcement related complaints/enquiries a year.

The majority of complaints are dealt with within a relatively short period of time as following investigation it is determined that either there was no breach of planning control, or the breach was of a minor technical nature that did not warrant formal action. The remainder are either resolved through negotiation or lead to formal enforcement action being taken to resolve the breach.

A variety of breaches occur throughout the Borough from:-

- unauthorised development;
- non-compliance with planning conditions;
- unauthorised changes of use;

- unauthorised advertisements;
- works to listed buildings;
- works to protected trees; and
- untidy/unmaintained land or buildings.

ii) Taking the initiative (Proactive)

There are a number of areas where the Council instigates positive action to remedy breaches of planning control or to remedy harm to the environment. These include:

- Action under Section 215 to remedy the environmental harm caused by unsightly land and buildings.
- Monitoring of planning conditions to ensure that development is carried out in accordance with the approval issued (All major applications and others where appropriate will be proactively monitored).
- The active monitoring of tourist uses within the Tourist Accommodation Area (as defined in the Eastbourne Core Strategy Local Plan 2027) to ensure that relevant policies are upheld. The boundary of the Tourist Accommodation Area is being reviewed as part of the Seafront Local Plan. The monitoring of the uses within this area will commence after the adoption of the Seafront Local Plan.


## **7. Investigation of Suspected Breaches of Planning Control**

i) Service Standards

When a breach is reported there will be an acknowledgement issued within 5 days of receipt.

When reports are received by telephone or in person, the acknowledgement will be provided verbally at that time.

All other acknowledgements will be provided in writing via the complainants 'preferred method of contact' provided when making the complaint.



The acknowledgement will provide the name of the Officer investigating the matter and details of how they can be contacted.

To avoid the unnecessary use of resources anonymous reports of suspected breaches of planning control will not normally be pursued unless other evidence suggests that the breach is causing serious harm to the environment or the amenities of residents.

ii) Priorities

To make the most effective use of resources, all reports of suspected breaches of planning control will be investigated and progressed in accordance with a priority rating of Category 'A', 'B' or 'C', depending on the nature of the breach and the degree of harm caused. Individual cases may be re-prioritised as the investigation progresses.

Typically cases will fall into following categories, although this is not an exhaustive list:

**Category A:**

- Demolition or alterations to a Listed Building;
- Demolition in a Conservation Area that is causing immediate and irreparable harm;
- Works to trees subject to a Tree Preservation Order or within a Conservation Area;
- Development that is causing serious danger to public safety.

**Category B:**

- Unsightly buildings or untidy land that is causing serious harm to the amenity of neighbours;
- Development that causes serious harm to the amenities of neighbours or are contrary to significant policies in the Development Plan;
- Unauthorised development that has gone undetected and the statutory time limit for taking enforcement action will expire within the next six months;
- Disrepair of a Listed Building.

**Category C:**

- Advertisements causing serious harm to amenity;
- Businesses being operated from home;

- Minor works i.e. gates, walls, fences, domestic outbuildings and satellite dishes;
- Untidy land, except where it causes serious harm to the amenity of neighbours.

In most cases, a site visit will be required to establish whether or not a breach of planning control has occurred. The initial site visit will normally be undertaken by officers within the Neighbourhood First Team and be conducted within the following timescales:

- Category A – within one working day
- Category B – within ten working days
- Category C – within fifteen working days

On completion of the initial site visit, the findings will be assessed and a view taken as to how the investigation will proceed.

#### **Where no further action is proposed:**

When it is proposed to take no further action, either because no breach has occurred, a minor or insignificant breach has occurred, or there is insufficient evidence to pursue the matter, the person reporting the suspected breach of control will be notified either verbally or in writing within 15 working days of the initial site visit that no further action will be taken and an explanation provided of the Council's reason(s).

#### **Where further investigation is required:**

Where it is not possible to determine from the initial site visit whether or not a breach of planning control has occurred, the person reporting the suspected breach of control will be notified either verbally or in writing within 15 working days of the initial site visit that further investigation is required. Further investigation may involve additional site visits, documentary research, seeking advice from other Services or Agencies, seeking information from the person reporting the suspected breach of control, or the owner or other person responsible for the land or building.

In some cases, the Council may request the person reporting the suspected breach of planning control to assist with the investigation by providing a written log detailing the dates, times, duration and nature of the suspected breach. If the person reporting the suspected breach of

planning control is unwilling to assist, they will be advised that this may result in the Council not being able to pursue the investigation due to insufficient evidence being available.

Where it appears to the Council that a breach of planning control may have occurred, it will consider serving a Planning Contravention Notice to obtain information relating to the suspected breach.

In cases where further investigation is required, the person reporting the suspected breach of planning control will be notified either verbally or in writing within 15 working days of the Council determining whether or not a breach of planning control has occurred, and if so, what course of action the Council intends to take.

### **Where a breach of planning control is established:**

Where a significant breach of planning control is established, the person reporting the suspected breach will be notified which course of action the Council intends to take to secure regularisation of the breach of planning control. In most instances this will involve one of the three following options:

- Attempt to negotiate a solution;
- Invite the submission of retrospective application for planning permission;
- Consider formal enforcement action.

## **8. Consideration of Enforcement Action**

Where it is established that a significant breach of planning control has occurred, the Council will determine whether or not to take formal enforcement action and the nature of such action. In determining this, the Council will have regard to the level of harm resulting from the breach. In assessing the level of harm, the Council will have regard to the saved policies in the Eastbourne Borough Plan, the Eastbourne Core Strategy Local Plan 2027, the National Planning Policy Framework and other material considerations.

### **Negotiating a solution:**

The Council will normally try to negotiate a solution to regularise the breach of planning control without recourse to formal enforcement action. Such negotiations may involve the reduction or cessation of an unauthorised use or activity, or the modification or removal of unauthorised operational development.

Any negotiations will not be allowed to hamper or delay the consideration of enforcement action where the breach of control causes serious harm to amenity. It needs to be borne in mind however that formal action cannot be pursued whilst a planning application or appeal is under consideration. Where the Council is unable to negotiate an acceptable solution within a reasonable timescale, or it is clear at the outset that the breach is not capable of being remedied through negotiation, the Council will proceed with formal enforcement action where it is expedient and proportionate to do so.

#### **Retrospective application for planning permission:**

Where a significant breach of planning control has occurred, but no harm is being caused, or any harm caused might be removed or alleviated by the imposition of conditions on a planning permission, the person(s) responsible will be invited to submit a retrospective planning application within a specified time scale. In such circumstances it will be made clear that the invitation to submit a retrospective application is made without prejudice to any final decision the Council may take in the matter. If such an application is not submitted, the Council will consider whether or not it is expedient to take formal enforcement action. Generally this will be dependent on whether or not it is considered likely that had a planning application been submitted, permission would have been granted.

## **9. Powers available to the Local Planning Authority**

Where it has been established that a significant breach of planning control has occurred the Council will consider using its statutory powers to take action to remedy the breach. The use of these powers is discretionary but they will generally be used when it is considered expedient to do so.

The Decision to take enforcement action or commence a prosecution will be taken in accordance with the delegation arrangements detailed in the Council's Constitution.



## **Requisition for Information Notices:**

Under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 the Council can require the recipient of a requisition for information notice to supply in writing details of their interest in a property and provide details of anyone else having an interest in the property. A reply must be supplied within 14 days. A person who fails to comply with the requirements of a notice or makes a false statement in a reply is guilty of an offence punishable by a fine of up to £5,000.

Under section 330 of the Town and Country Planning Act 1990 the Council can require the recipient to state in writing the nature of their interest in a property and to state in writing the name and address of any other person known to them as having an interest in the property, as a freeholder, mortgagee, lessee or otherwise. Failure to return the form or to provide a misstatement is an offence punishable of up to £1,000.

## **Planning Contravention Notice (PCN): (S171C of the T&CP Act 1990)**

A PCN can be served on the owner or occupier of the land in question or a person who is carrying out operations in, on, over or under the land or is using it for any purpose and where a suspected breach of planning is believed to exist. This notice may be issued under S171C of the T&CP Act 1990. The PCN will require the recipient to provide the information requested within 21 days relating to the breach of planning control alleged. Failure to comply with any aspect of the PCN is an offence for which the recipient can be prosecuted with the maximum fine being £1,000. To knowingly provide false information on a PCN can result in a fine of up to £5,000.

## **Breach of Condition Notice (BCN): (S187A of the T&CP Act 1990).**

In cases of a significant breach of planning conditions it may be appropriate to serve a Breach of Condition Notice (BCN) (S187A of the T&CP Act 1990). Consideration should be given to the type of condition and the steps required to remedy the breach. Once issued and served the Notice does not take effect for 28 days although there is no appeal against a BCN. The failure to comply with the notice is dealt with by a prosecution in the Magistrates Court. The maximum fine is £1000. This may not be a sufficient deterrent in the more serious cases. The BCN is ideal for matters where the steps to be taken are relatively simple and can be readily achieved.

Where the breach of planning control relates to non-compliance with a condition on a planning permission or a limitation on a deemed planning permission has been exceeded, the Council will consider the expediency of serving a BCN.

The Breach of Condition Notice will specify the steps required to comply with the condition(s) or limitation(s), the date that it takes effect and the time period for compliance.

### **Enforcement Notice: (S172 of the T&CP Act 1990)**

The Council will consider the service of an Enforcement Notice (S172 of the T&CP Act 1990) where unauthorised operational development or change of use has taken place and it is considered expedient to do so.

Where a breach of planning control exists and any harm caused would be removed or alleviated by the impositions of conditions on a planning permission, but the invitation to submit a retrospective planning application or rectify the breach voluntarily has been declined, the Council will consider the expediency of serving an Enforcement Notice.


The Enforcement Notice will specify the reason(s) for its service, the steps required to remedy the breach, the date that it takes effect and the time period for compliance.

The Notice shall be issued by the Council after authority has been given by the Senior Specialist Advisor (Planning). Service of an Enforcement Notice shall be made on any person with an interest in the land. The Notice will come into effect after a minimum period of 28 days. There is a mechanism for an appeal against the Notice. Once the Planning Inspectorate holds an appeal valid, the Enforcement Notice has no effect until the appeal has been heard and a decision published.

The offence of failure to comply with the Enforcement Notice carries a maximum fine on summary conviction of £20,000

### **Listed Building Enforcement Notice and Conservation Area Enforcement Notice: (S38-46 of the Planning (Listed Buildings and Conservation Areas) Act 1990)**

If the breach of planning control relates to a Listed Building or the demolition of an unlisted building in a Conservation Area the Council will



consider the expediency of serving a Listed Building Enforcement Notice and where appropriate, commencing a prosecution in the Courts.

### **Stop Notice: (S183 of the T&CP Act 1990)**

Where a breach of planning control is causing very serious harm to public amenity and the environment, and this harm could not be removed or alleviated by the imposition of conditions on a planning permission, the Council will consider the expediency of serving a Stop Notice (at the same time or after the service of an Enforcement Notice).

This will be necessary in cases where urgent action is necessary to bring about a cessation of a relevant activity before the expiry of the period of compliance of the related Enforcement Notice.

The Stop Notice will refer to the Enforcement Notice to which it relates, specify the activity or activities that are required to cease and the date that it takes effect. Failure to comply with the notice is an offence. The maximum fine on summary conviction is £20,000.

### **Temporary Stop Notice (S171E of the T&CP Act 1990)**

A temporary Stop Notice can be served without the service of and Enforcement Notice. Failure to comply with the temporary stop notice is an offence. The maximum fine on summary conviction is £20,000.

### **Section 215 Notice: (S215 of the T&CP Act 1990)**

In cases where the amenity of an area is adversely affected by the condition of land or buildings, the Council will consider serving a Notice under s.215 of the Town and Country Planning Act 1990.

The Notice will specify the steps required to be taken to remedy the condition of the land or buildings, the time period within which the steps must be taken and the date that it takes effect. The Council will firstly write to the owner of the land or building requesting improvements to be made before considering the service of a formal notice.

As S215 Notice takes effect after 28 days service during which time an appeal can be made in the Magistrates Court. Failure to comply with the S215 notice is an offence. The maximum fine on summary conviction is

£1,000 for initial non-compliance and £100 for each day following the first conviction.

### **Prosecution:**

The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the following Notices where the date for compliance has passed and the requirements have not been complied with.

- i) Enforcement Notice
- ii) Listed Building Enforcement Notice
- iii) Conservation Area Enforcement Notice
- iv) Breach of Condition Notice
- v) Section 215 Notice
- vi) Stop Notice (including temporary stop notice)

The Council will also consider commencing a prosecution in the Courts where:

- a) unauthorised works have been carried out to trees subject to a Tree Preservation Order, or in a designated Conservation Area
- b) an advertisement is being displayed without the necessary consent and the Council's request to remove it within a specified timescale has been declined or ignored
- c) unauthorised works have been carried out to a Listed Building
- d) unauthorised demolition has been carried out in a Conservation Area
- e) the recipient of a Planning Contravention Notice has failed to provide a response within the prescribed time period or has supplied false or misleading information

Before commencing any legal proceedings the Council will be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

### **Injunction:**

"Where an Enforcement Notice has not been complied with and, because of the special circumstances of the case, neither direct action or prosecution would be an effective remedy, the Council will consider

applying to the Court for an Injunction under s.187B of the 1990 Act. An injunction can also be applied for where there is clear evidence that a breach of planning control is apprehended but has not actually occurred. Such action will only be considered if the breach, actual or apprehended, is particularly serious and is causing or likely to cause exceptional harm".

**Direct Action:**

In order to ensure that the Council is able to resolve breaches of planning consent as a result of non-consented works in a timely manner there are a range of methods which the Council can secure compliance with the requirements of an enforcement notice (inc S215 notices).

This includes direct action which offers the opportunity for the Council to take action to resolve a breach of planning control through remedial action.

Where any steps required by an Enforcement Notice or s215 Notice have not been taken within the compliance period (other than the discontinuance of the use of land), the Council will consider whether it is expedient to exercise its power under s.178 & S219 of the Town and Country Planning Act 1990 (as amended) to:-

- (a) enter the land and take the steps to remedy the harm; and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

Direct action may either be in isolation of or in conjunction with Prosecution/injunction action. The Council may choose to take action as follows:

- Where the requirements of an Enforcement Notice have not been complied with by the compliance date and:
- Where the Council considers that direct action is necessary in the light of significant amenity considerations caused by a Planning Breach

Assessment Criteria for Direct Action:-

The Council will consider the following impacts when assessing whether it is expedient and proportionate to take direct action:


- Whether the harm or impact amenity of the development is significant to occupiers of neighboring properties or the wider locality and community; in accordance with adopted planning policy.
- Whether personal circumstances of the occupier or owner/responsible party(s) would be adversely affected by the Council taking Direct action.
- Whether taking Direct action would prejudice the statutory duties of the Council.
- Assessment of the cost of taking Direct Action and the likelihood of recovering these costs.
- Health and safety of the Council employees, contractors or other individuals in taking Direct action.
- Whether taking Direct action would prejudice the Councils reputation or other priorities.
- Whether the costs of taking direct action would outweigh the benefits.

#### Relevant Direct Action Procedure:-

Once the date to comply with the requirement of an Enforcement Notice expires the Council will visit the site to check compliance. If following the site visit it is confirmed that the noticed has not been complied with in full, the Council will undertake an assessment as to whether it is expedient to take action, including prosecution, an injunction and or direct action.

If officers consider the use of direct action to be expedient, the *Assessment Criteria for Direct Action* (above) will be used to justify the case for Direct action in each instance. This decision will be agreed with the Senior Specialist Advisor (Planning).

The Council will write to the owner/responsible parties to advise of the intention to take Direct action, at least 28 days before works are due to take place.



In order to access the property the Council may need to liaise with other services including the police, bailiffs and/or a locksmith or other internal departments.

In taking Direct action the Case Worker will project manage the works on site (in connection with other Council colleagues and contractors) to ensure that the steps in the notice are complied with.

It should be noted that any materials, debris or other items that are removed from the premises throughout the course of undertaking Direct action will be stored securely for a minimum of three days. The Council will take steps to advise the owner (s) of these items and how to recover such possessions. After this time the Council may choose to dispose of this material or sell these on to recover the expenses in Taking Direct action.

### **Costs Recovery:**

In accordance with the provisions of Section 178 & S219 of the Town and Country Planning Act 1990 (as amended) the Council will undertake all reasonable endeavours to recover expenses incurred in undertaking Direct action.

A charge will be applied to the land and an invoice sent to owners/responsible party (s) this charge is binding on successive owners of the land to which the original Notice relates. This charge will take effect on the date that the Council undertakes Direct action to comply with the Notice.

The expenses recoverable will include such sums as the Council considers being reasonable in respect of its establishment charges. An establishment charge is the reasonable charge that the Council incurs from administering the Direct action procedure.

The Council will take all reasonable steps to recover the expenses as a debt and will raise an invoice in accordance with its existing practice and procedures.

As a matter of priority, the Council's Land Charge department will be notified of the recoverable sums that will be entered as a record against the property in the Register of Local Land Charges.

### **High Hedges:**

From the 1 June 2005 Local Authorities have had the power, under Part 8 of the Anti-Social Behaviour Act 2003, to adjudicate on disputes over high hedges. In cases where the Council finds in favour of the complainant the Council will ensure, through enforcement action if necessary, that any specified schedule of remedial works is carried out.

### **Monitoring of Conditions:**

The following informative will be imposed on all approval decision notices where there are conditions precedent:-

The Council actively monitors conditions to ensure that development is carried out in accordance with a planning permission. Failure to comply with a planning condition will be viewed seriously and appropriate action taken in accordance with the powers outlined with the Councils Enforcement Policy Statement 2016.

## **10. The Council's Policies for Enforcing Planning Control**

### **POLICY EN1: General Enforcement Policy 1**


The Council recognises the importance of establishing effective controls over unauthorised development, to assist in the preservation and enhancement of the qualities of both the built and natural environment, and to protect public amenities and will vigorously exercise its enforcement powers to ensure that development takes place in accordance with the appropriate legislation or conditions and limitations imposed on any planning permission.

### **POLICY EN2: General Enforcement Policy 2**

The Council will exercise all reasonable powers granted under the provisions of the Town and Country Planning Act 1990 (as amended), including all other subordinate legislation, to control unauthorised development effectively having regard to the significance and seriousness of the breach, the policies in Development Plan and all other material considerations.

### **POLICY EN3: General Enforcement Policy 3**





In considering enforcement action, the Council will assess whether the breach of planning control unacceptably affects public amenity or causes harm to land or buildings.

**POLICY EN4: Serious Breaches of Planning Control**

The Council will immediately commence planning enforcement action against any unauthorised development which has a seriously adverse impact on public amenity or causes unacceptable harm to land or buildings.

**POLICY EN5: General Approach for Other Breaches of Planning Control**

The Council will attempt to persuade an owner or occupier of land to remedy voluntarily any harmful effects of unauthorised development. The Council will not, however, allow discussions to delay any necessary formal enforcement action to make the development more acceptable on planning grounds, or to make it cease.

**POLICY EN6: Derelict or Unsightly Land or Buildings**

Where a building or land is in a condition which seriously detracts from, or affects the visual amenity of an area, the Council will take the following measures:

- (a) the owner will be requested in writing to improve the appearance of the land or building(s);
- (b) where no improvement works are carried out within a reasonable time (as specified in writing), the Council will serve a Notice under Section 215 of the Town and Country Planning Act 1990;
- (c) where the Notice has not been complied with prosecution proceedings will be commenced and consideration will be given to entering the land and carrying out the works in default.

**POLICY EN7: Protection of Tourist Accommodation**

Within the Tourist Accommodation Area, designated in the Eastbourne Borough Plan and the Eastbourne Core Strategy Local Plan 2027, enforcement action will be taken against the unauthorised change of use of Tourist Accommodation to any other use unless it can be proven that

the change of use meets the viability criteria in the Council's Supplementary Planning Guidance: "Assessment of Financial Viability of Tourist Accommodation".

**POLICY EN8: Development Without Planning Permission**

Where development has been, or is in the process of being, carried out without planning permission and where immediate action under Policy EN2 would not be justified, the following steps will be taken:

- (a) an assessment will be made to establish if it is likely that unconditional planning permission could be granted;
- (b) If planning permission is likely to be granted, the submission of a retrospective planning application will be invited;
- (c) where a retrospective planning application has been requested but not submitted within a reasonable time, a planning contravention notice will be served;
- (d) where there is no specific planning objection to the development, further enforcement action will not normally be considered appropriate;
- (e) where the development is considered to cause demonstrable harm then formal enforcement action will be taken.

**POLICY EN9: Development Not in Accordance With Approved Plans**

- (a) Where development is carried out with planning permission, but it does not strictly accord with the approved plans, an assessment will be made to establish whether the changes from the approved plans are sufficiently material to constitute new development, requiring a separate planning permission or whether they can be dealt with under a non-material change application. Where the changes are of a very minor nature they may sometimes be considered as being "de-minimus" (i.e. so small that they are of no consequence) and no action will be taken;
- (b) where development is being carried out which is considered to be significantly different from the approved plans and the changes cause serious harm to public amenity, immediate enforcement action may be taken, including the issue of a Stop Notice or Enforcement Injunction to stop the unauthorised development.



**POLICY EN10: Imposition Of Conditions To Make Development More Acceptable**

Where development has been carried out without planning permission and the development could only be made acceptable by imposing conditions to overcome planning objections, the Council will request the submission of a retrospective application for planning permission. If after a reasonable period no application has been submitted, an Enforcement Notice will be issued. The notice will have the effect of granting planning permission subject to full compliance with those steps specified in the notice which will address any harm caused by the development.

**POLICY EN11: Non-compliance With Conditions**

Where conditional planning permission has been granted for development but conditions have not been complied with, a Breach of Condition Notice or Enforcement Notice will be served where demonstrable harm is caused by the development.

**POLICY EN12: Minor Variations To Works Carried Out Under 'Permitted Development' Rights**

Where development carried out under permitted development rights exceeds the limitations specified in the relevant Order the Council will not necessarily take enforcement action solely to counteract a slight variation over what would be permitted, unless the excess causes unacceptable harm to public amenity.

**POLICY EN13: Retrospective Applications**

Where unauthorised development has been carried out which causes serious harm to amenity, the submission of a retrospective application will not be encouraged and will not stop enforcement action being taken. When a retrospective application has been refused and enforcement action has not already been taken in accordance with the Council's enforcement policies, the applicant will be advised that an enforcement notice is to be issued.

**POLICY EN14: Refusal of Retrospective Applications**

Where retrospective planning permission has been refused, enforcement action will be taken and the appropriate Notices served even if an appeal has been lodged against the refusal of planning permission.



**POLICY EN15: Trivial or Technical Breaches of Planning Control**

Formal enforcement action will not normally be taken against trivial or technical breaches of planning control that cause no material harm to amenity.

**POLICY EN16: Unauthorised Works to Listed Buildings**

Where works without consent have been carried out to a listed building and they materially affect its character and appearance either internally or externally, consideration will be given to issuing a Listed Building Enforcement Notice and/or starting criminal proceedings.

**POLICY EN17: Unauthorised Development in Conservation Areas**

Where development has been carried out in a conservation area without planning permission or conservation area consent, and the development does not preserve or enhance the character and appearance of the area, enforcement action will be considered in accordance with the general enforcement policies EN1 to EN5.


**POLICY EN18: Unauthorised Business Development where Re-Location is feasible**

Where business development has been carried out without planning permission and it is unacceptable on the site, alternative acceptable sites, if available, will be investigated, with a timetable to allow for re-location. If the timetable is ignored, an Enforcement Notice may be issued giving a reasonable time to allow re-location to take place.

**POLICY EN19: Acceptable Unauthorised Development by Small Businesses**

Where development has been carried out by a small business without planning permission, consideration will be given to allowing the business to continue operating acceptably from the site or operate less intensively.

**POLICY EN20: Unauthorised Development by Small Businesses**



If unauthorised activity by a small business cannot be allowed to continue, an Enforcement Notice may be issued giving a realistic time to stop the activity and allow for re-location if necessary. Where it is clear to us that serious attempts are being made to comply with the requirements of the Enforcement Notice, consideration may be given to extending the time for compliance.

**POLICY EN21: Display of Illegal Advertisements**

Where an advertisement which has been displayed without express consent causes serious harm to amenity or public safety the Council will ask for it to be removed. Where the advertisement continues to be displayed, prosecution proceedings will be commenced.

**POLICY EN22: Fly Posting**

Where resources permit, all posters illegally displayed will be removed. Where fly-posting has been carried out on sensitive sites and it causes serious harm to the character or amenity of the area, prosecution proceedings will be commenced against all those responsible for its display.

**POLICY EN23: Advertisements on Listed Buildings**


Where an advertisement has been displayed on a listed building without consent, and that advertisement adversely affects the character and appearance of the building or compromises its setting, the Council will ask for it to be removed. Where the advertisement continues to be displayed, action will be taken to secure its removal.

**POLICY EN24: Retrospective Applications for Advertisement Consent**

Where a retrospective application for express consent has been refused, the applicant will be asked to remove the advertisement within a specified time. If the advertisement continues to be displayed, proceedings will be commenced even if an appeal has been lodged against the decision to refuse consent.

**POLICY EN25: Lawful Uses or Activities**

Where unauthorised development has taken place but it is claimed that the use or activity is lawful, the submission of an application for a lawful



development certificate will be invited. A lawful use or activity will not be conclusively accepted unless a certificate has been granted. Where a certificate has not been granted, enforcement action will be considered in accordance with the general enforcement policies EN1 to EN5.

**POLICY EN26: High Hedges Applications**

In cases where the Council finds in favour of the complainant the Council will pursue the necessary enforcement action to ensure that that the specified schedule of remedial works is carried out within a specified timescale.

**POLICY EN27: Resources for Effective Planning Enforcement**

The Council will commit reasonable resources to ensure effective implementation and maintenance of planning enforcement control.

## **11. Complaints About the Service**

If you are unhappy about the advice given, action taken or the level of service you have received from the Planning Service in relation to how it carries out its enforcement functions you can submit a complaint online using our online complaints form which is available on the Council's website at:

<http://www.eastbourne.gov.uk/about-the-council/complaints/make-a-complaint/>

Alternatively you may complain in person, on the telephone, by letter, by email or using the complaints form available in Council receptions.

Complaints will normally be handled by the Senior Specialist Advisor (Planning).

We will reply to you within ten working days of receiving your complaint. Most complaints will receive a full response within this time although some may take longer to investigate. If this is the case we will inform you within ten working days and explain the reasons for the delay.

If you are not satisfied by the manager's response you can lodge a formal complaint by writing to:

Customer First  
Eastbourne Borough Council  
1 Grove Road  
Eastbourne  
BN21 4TW

Again you will receive a response within working ten days. If you are still not satisfied you then have the option of taking your complaint to the Local Government Ombudsman. The Local Government Ombudsman's website has all the information and forms you will need to submit a complaint. The website address is: <http://www.lgo.org.uk/>

Local Government Ombudsman  
PO BOX 4771  
Coventry  
CV4 0EH

Tel: 0300 061 0614

# APPENDIX 1

## Legislative Framework and Government Guidance

The Council's powers in relation to planning enforcement are set out in the following Acts of Parliament, Orders and Regulations:

- The Town and Country Planning Act 1990 (as amended)
- The Planning (Listed Building and Conservation Areas) Act 1990
- The Town and Country Planning (Control of Advertisements) Regulations 1992 (as amended)
- Town and Country Planning (Trees) Regulations 1999
- The Town and Country Planning (General Permitted Development) Order 1995 (as amended)
- The Town and Country Planning (Use Classes) Order 1987 (as amended)
- Police and Criminal Evidence Act 1984 (as amended)
- Data Protection Act 1988.
- Freedom of Information Act 2000.
- Regulation of Investigatory Powers Act 2000.
- Criminal Procedure and Investigations Act 1996.
- Anti-social Behaviour Act 2003 (High Hedges legislation).

Advice from Central Government on planning enforcement is set out primarily in the following documents:

- The National Planning Policy Framework 2012  
<https://www.gov.uk/government/publications/national-planning-policy-framework--2>
- Planning Practice Guidance 2012  
<http://planningguidance.planningportal.gov.uk/>

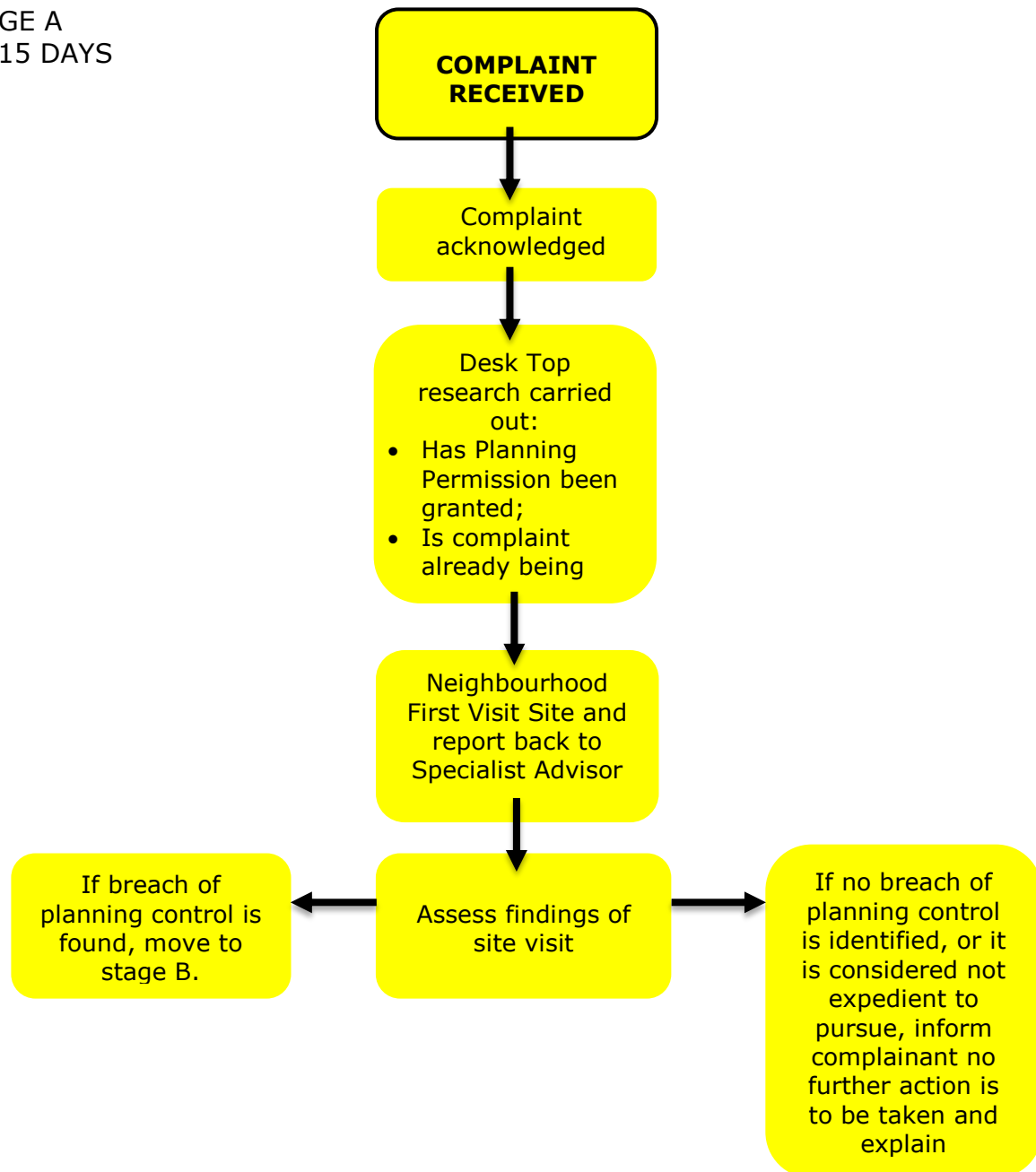


## APPENDIX 2

### ENFORCEMENT COMPLAINTS PROCESS FLOWCHARTS

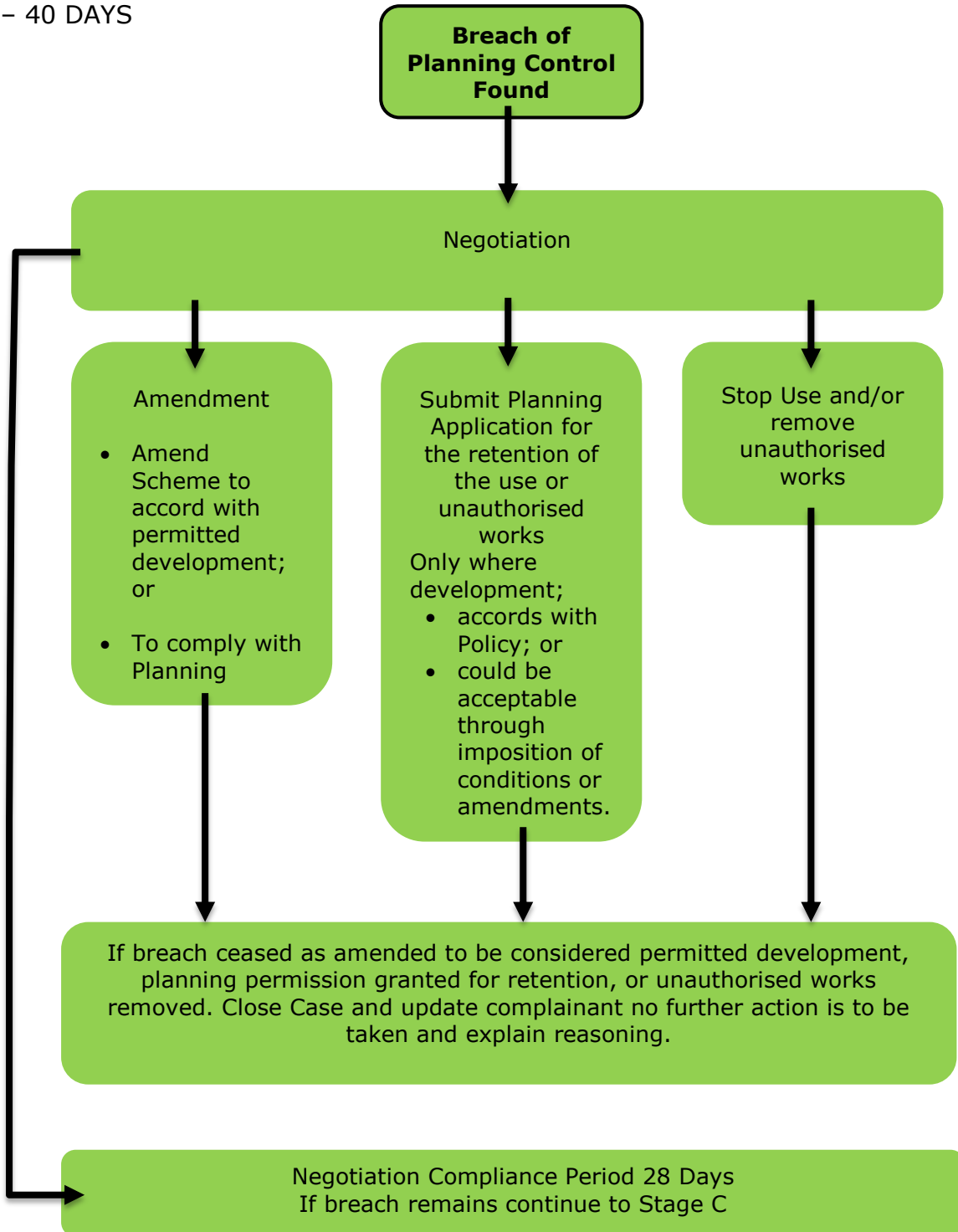
## INVESTIGATION

STAGE A  
1 - 15 DAYS



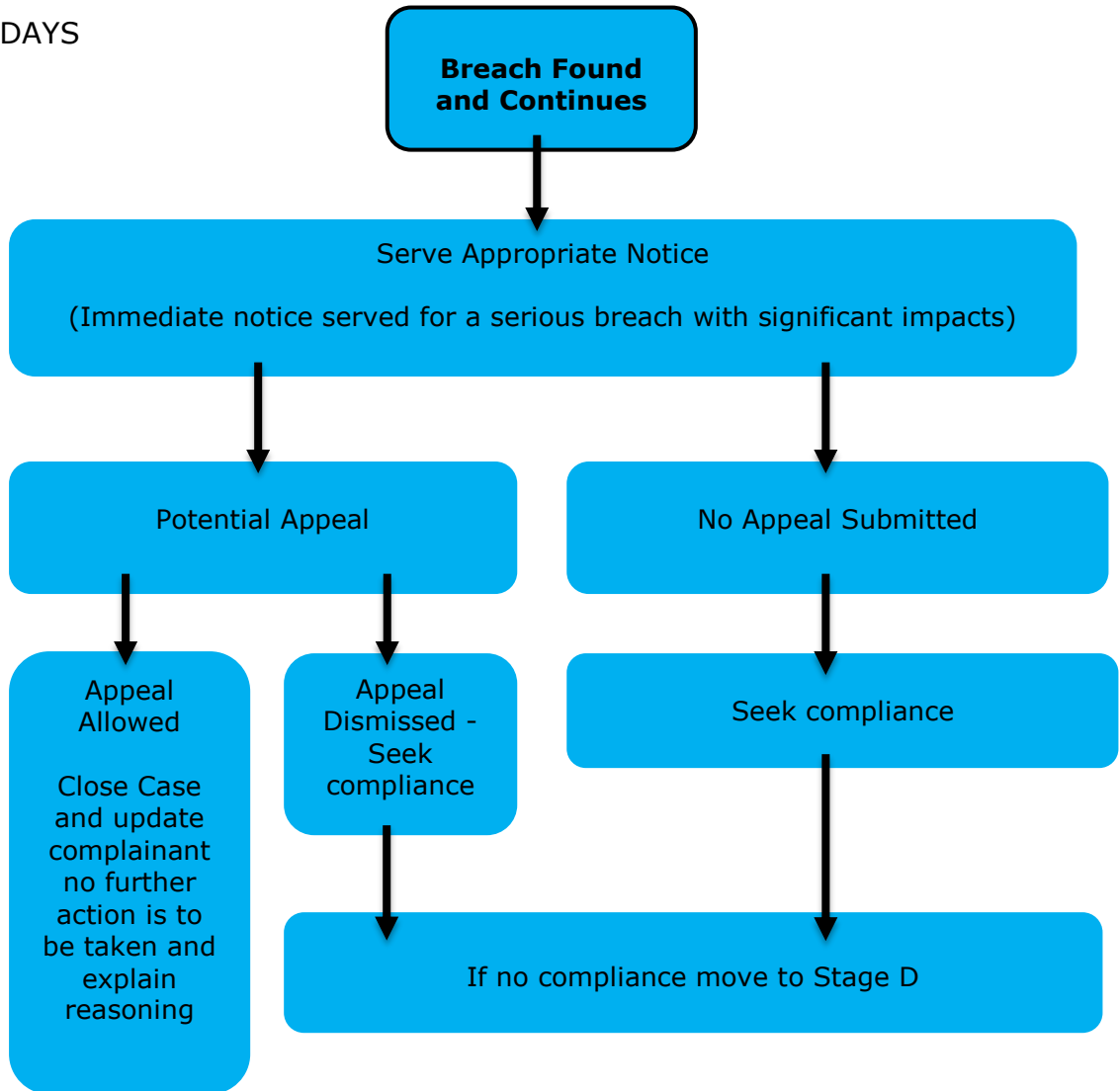
# NEGOTIATION

STAGE B  
16 - 40 DAYS



# ACTION

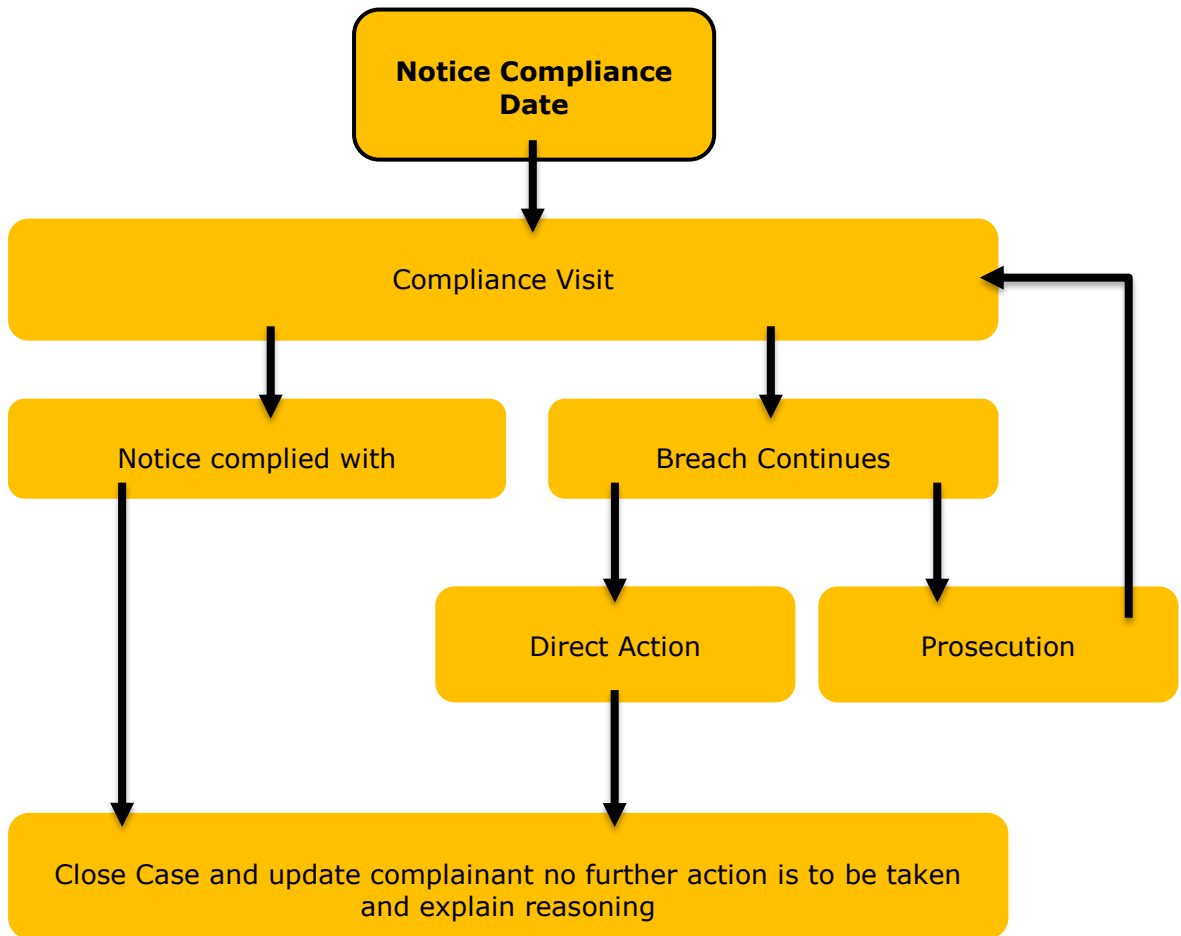
STAGE C  
41 - 60 DAYS



# COMPLIANCE & PROSECTUTION

STAGE D

TIMEFRAME SUBJECT TO NOTICE



<b>Body:</b>	<b>Cabinet</b>
<b>Date:</b>	<b>13th July 2016</b>
<b>Subject:</b>	<b>Housing and Economic Development Programme - Acquisition of housing by Eastbourne Housing Investment Company Ltd</b>
<b>Report Of:</b>	<b>Ian Fitzpatrick, Senior Head of Community</b>
<b>Ward(s)</b>	All
<b>Purpose</b>	This report sets out proposals for the Council's recently established asset holding company (Eastbourne Housing Investment Co Ltd) to purchase residential properties to provide accommodation to assist the Council meet its strategic housing agenda.
<b>Decision Type:</b>	Key decision.
<b>Recommendations:</b>	<b>(1) To agree that the Council makes a loan facility available of up to £5m on market terms to Eastbourne Housing Investment Company Ltd (EHICL) for the purpose of enabling the company to purchase residential accommodation.</b>  <b>(2) To delegate authority to the Snr Head of Community in consultation with the Cabinet Portfolio Holders for Community and Finance to agree the whole scheme lending parameters for purchases, to include types of property and financial viability.</b>
<b>Contact:</b>	Jess Haines, Housing Specialist E-mail address : jessica.haines@eastbourne.gov.uk

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## **1.0 Background**

- 1.1 In October 2014 Cabinet approved the establishment of a new asset holding company to help maintain progress on housing and economic development.
- 1.2 The Cabinet considered that setting up a new Asset Holding Company (AHC) would provide opportunities to sustain the Council's strategic housing aims including regeneration, economic development, and employment ambitions.
- 1.3 In approving the establishment of the new AHC Cabinet noted that this would create capacity to hold some of the Council's property portfolio in a separate vehicle and thereby differentiate between its general needs stock and other forms of housing and tenures. The AHC was incorporated as a wholly owned subsidiary of the Council on 1<sup>st</sup> May 2015 trading as Eastbourne Housing

Investment Company Ltd (EHICL).

- 1.4 The proposed purchase of a portfolio of residential property follows the arrangements envisaged in October 2014 in that EHICL would take direct ownership of property on completion using funds loaned by EBC.
- 1.5 As an asset holding vehicle EHICL was not granted delegated authority to undertake property purchases or carry out developments. Such authority remains with EBC via Cabinet approval.
- 1.6 This report seeks approval for a loan facility up to £5m for EHICL to allow the acquisition of individual residential properties.
- 1.7 The loan facility would allow EHICL to purchase properties on the open market and Council homes sold as part of the future High Value Assets disposal programme being introduced under the Housing and Planning Act.

## **2.0 Meeting Strategic Housing aims - Housing demand, temporary accommodation and quality**

- 2.1 The Council has a statutory duty to provide advice and assistance to households in housing need. Over the past year the demand for accommodation has increased and placements in temporary accommodation have risen.
- 2.2 In addition to an increased demand for accommodation, officers report that it is becoming increasingly difficult to help households secure accommodation. Social housing (Council housing managed by Eastbourne Homes Ltd and housing managed by Registered Providers) is under significant pressure and locally the number of homes becoming vacant has reduced. In addition, officers report that the securing private rented accommodation is becoming significantly more difficult, particularly for those on benefits.
- 2.3 As noted above, the Council has a duty to provide advice and assistance to households that are facing housing difficulty. In certain circumstances this duty may extend to providing emergency or temporary accommodation. Recent changes to benefit regulation mean that the Council is unable to recover all of the costs of arranging accommodation for households that are placed in emergency accommodation.
- 2.4 The purchase of suitable residential properties by EHICL for rental (at market levels) will help assist households to secure accommodation and reduce costs to the Council's housing team by providing throughput to suitable rented accommodation.
- 2.5 Housing provided by EHICL will also assist the Council meet its wider economic and regeneration aims by ensuring that accommodation is kept in good condition. In addition, in certain circumstances it may support the purchase of accommodation in areas of deprivation or decline requiring investment through cross subsidy within the wider company property portfolio.

## **3.0 Viability for residential property purchases**

- 3.1 Modelling has been completed on a series of theoretical properties to assess the viability of purchases. This has been done across a range of property types and values using Local Housing Allowance (LHA) for the area as a rental benchmark.

3.2 Property viability has been financially appraised using the following assumptions:

- To model acquisitions, and for simplicity, all capital costs have been assumed in Year 1.
- Long term interest rate at 4.5%
- Management fee allowance £350 per unit per annum
- Maintenance allowance of £450 per unit per annum
- Two week void and bad debt allowance
- Rental income from the residential units at Local Housing Allowance levels

3.3 Each prospective acquisition will be assessed as a stand-alone project i.e. it is not reliant on any other financial factors such as grant. The following provides an example of a purchase:

<b>2 bedroom flat</b>	
Purchase price	£95,000
Works and purchase costs (Stamp duty/Legal/fees etc)	£5,000
Total Purchase cost	£100,000
Interest on loan @ 4.5%	£4,500
Management/ Maintenance	£800
Voids & bad debts	£300
Total rent (using guide Local Housing Allowance (LHA) rate of £151pw)	£7,852
Annual Surplus	£2,252

3.4 Using the above example, EHICL would make a surplus of £2,252 per annum on the purchase. At this stage, this report seeks approval for a maximum loan facility of £5m which would allow purchase of circa 30-40 properties.

## **6.0 Key Risks**

6.1 Under this proposal the Council would lend EHICL funds to purchase properties within set parameters to be defined by the Council as set out with the report recommendation. The Council's key risk relates to EHICL's ability to meet the loan payment.

6.2 Key risk for EHICL include:

- a) Rent collection
- b) Ability to let properties
- c) Management operating within the viability assumptions – i.e. repairs level, bad debt, and management costs as assumed

6.3 As noted above, demand for accommodation is strong. Rent levels, management and maintenance and void times will be set using local knowledge and experience obtained in managing the Council's housing stock. Each risk will be fully assessed as part of the finalisation of the lending parameters.

## **7.0 Staffing and resources**

7.1 There are no staff implications. Acquisition and future management of property will be within current resources. A fee is built into the financial modelling to meet management costs.

## **8.0 Environmental, Community Safety, Human Rights, Youth, Anti-Poverty.**

8.1 Acquisition of properties will give the Council greater ability to deliver its wider role of community wellbeing and promote a supply of good quality well managed accommodation. It will help address the low wage economy and the wider economy by encouraging investment in new businesses, homes and the environment.

## **9.0 Legal**

9.1 The proposal is that the Council makes a loan to the company so that the company can make the purchase of suitable properties direct. Section 1 of the Localism Act 2011 (the general power of competence) is sufficient to allow the Council to make such a loan. However, such loan must be made on market terms and comply with the Market Economy Investor Principle so as not to infringe State Aid Rules. (The Market Economy Principle is more fully explained in the Cabinet report dated 22 October 2014. Para 4.4.8)

9.2 In the same way that the Council has to resolve to make a loan, then the company, as a separate legal entity and acting through its Board of Directors, will need to resolve to take the loan and to use it to purchase properties. There will need to be a loan agreement between the Council and the company formalising the terms of the advance and repayment of funds.

9.3 Should suitable vacant properties be identified from within the Council housing stock for sale as part of disposal under the High Value Asset programme, approval to sell to EHICL would require Secretary of State approval.

## **10.0 Financial Implication**

10.1 Loans to EHICL are secured on the assets acquired and are at a commercial rate. This considerably exceeds the rates available to the Council in respect of cash deposits and benchmark PWLB rates.

10.2 Robust appraisals in respect of the company's individual asset purchases and continuous monitoring of demand for housing need is essential to mitigate voids and/or capital losses.

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