

**EASTBOURNE**

**Borough Council**



**ENFORCEMENT  
POLICY  
STATEMENT  
2015**

# Enforcement Policy Statement 2015

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of £15 including p&p.

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# 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 reinforce the saved policies in the Adopted Borough Plan (2007) and the policies contained in the Eastbourne 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
- relevant planning policies and other material considerations

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 Council's 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 and
- works to protected trees.

### 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 a random sample of significant cases will be proactively monitored)
- The active monitoring of tourist uses within the Tourist Accommodation Area (as defined in the Eastbourne 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

Reports of suspected breaches of planning control if submitted via the web will be acknowledged instantly. Where a breach is reported via any other means 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 'preferred method of contact' and or by letter or e-mail.

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 'High', 'Medium' or 'Low' 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:

#### **High priority:**

- 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

**Medium priority:**

- 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

**Low priority:**

- 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:

- High priority cases – within one working day
- Medium priority cases – within ten working days
- Low priority cases – 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 regularization 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 Plan 2027, the National Planning Policy Framework and other material considerations.

### **Negotiating a solution:**

The Council will normally try to negotiate a solution to regularize 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 always 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 unauthorized 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.

Failure to comply with the Enforcement Notice is 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).

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 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 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. If the debt remains unpaid, the Council will take steps to register the charge at HM Land Registry.

#### **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 condition:-

*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 2015*

## **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, 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 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.

Local Government Ombudsman  
PO BOX 4771  
Coventry  
CV4 0EH

Tel: 0300 061 0614

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/>

# APPENDIX 1

## Legislative Framework and Government Guidance

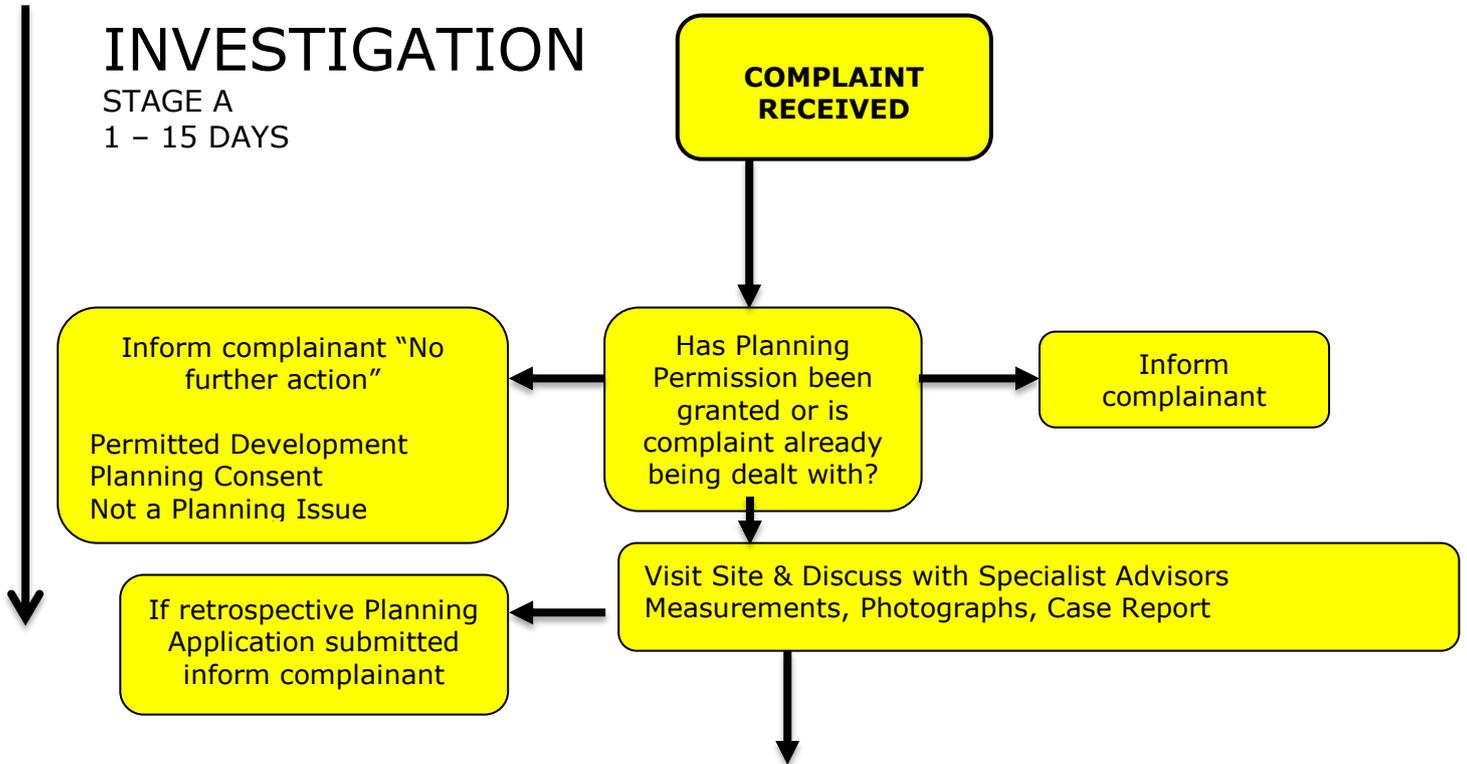
The Council's powers in relation to planning enforcement are set out in the following Acts of Parliament, Orders and Regulations:

- *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:

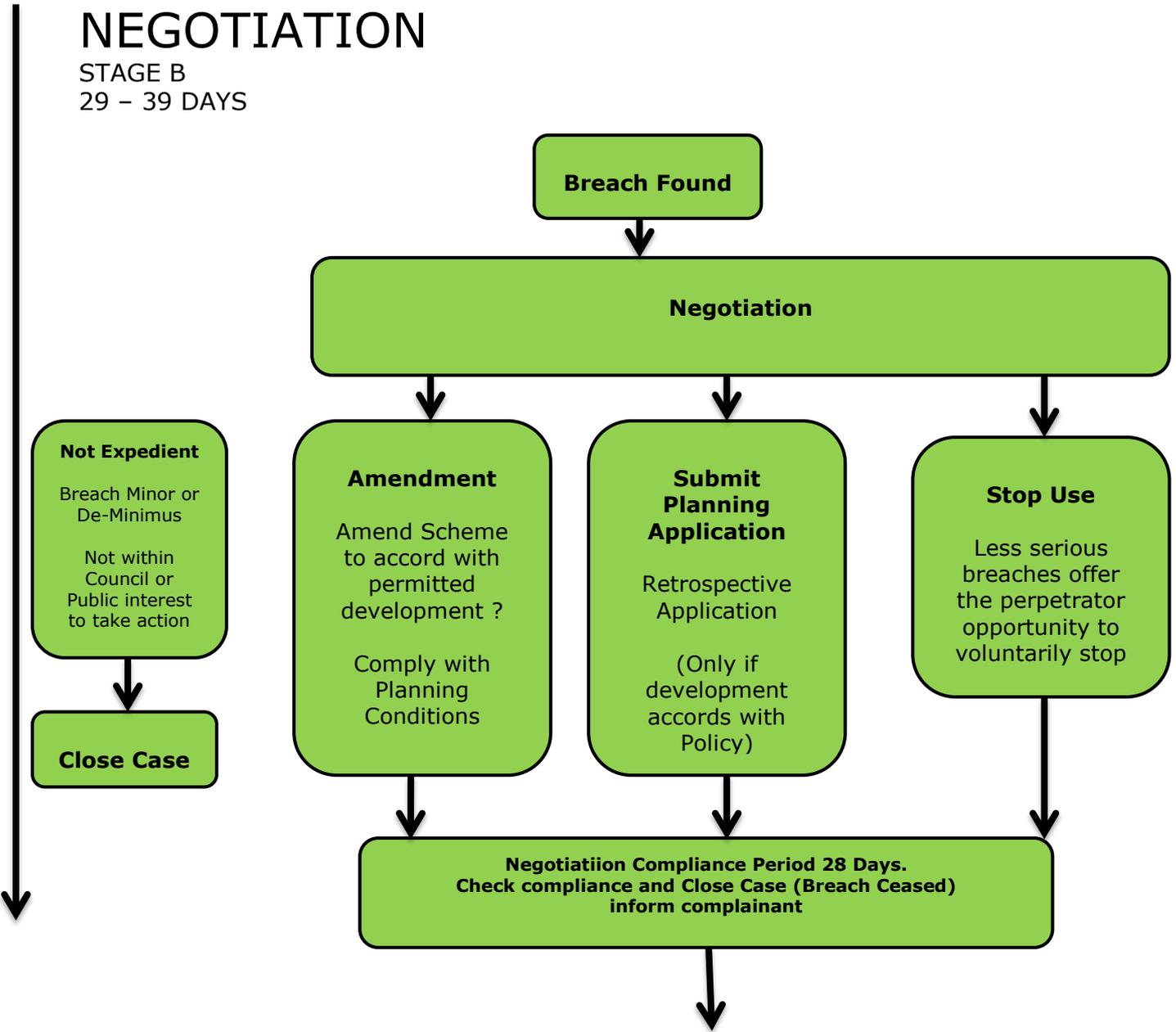
- *The National Planning Policy Framework 2012*  
<https://www.gov.uk/government/publications/national-planning-policy-framework--2>
- *Planning Practice Guidance 2012*  
<http://planningguidance.planningportal.gov.uk/>

## APPENDIX 2- ENFORCEMENT COMPLAINTS PROCESS FLOWCHART



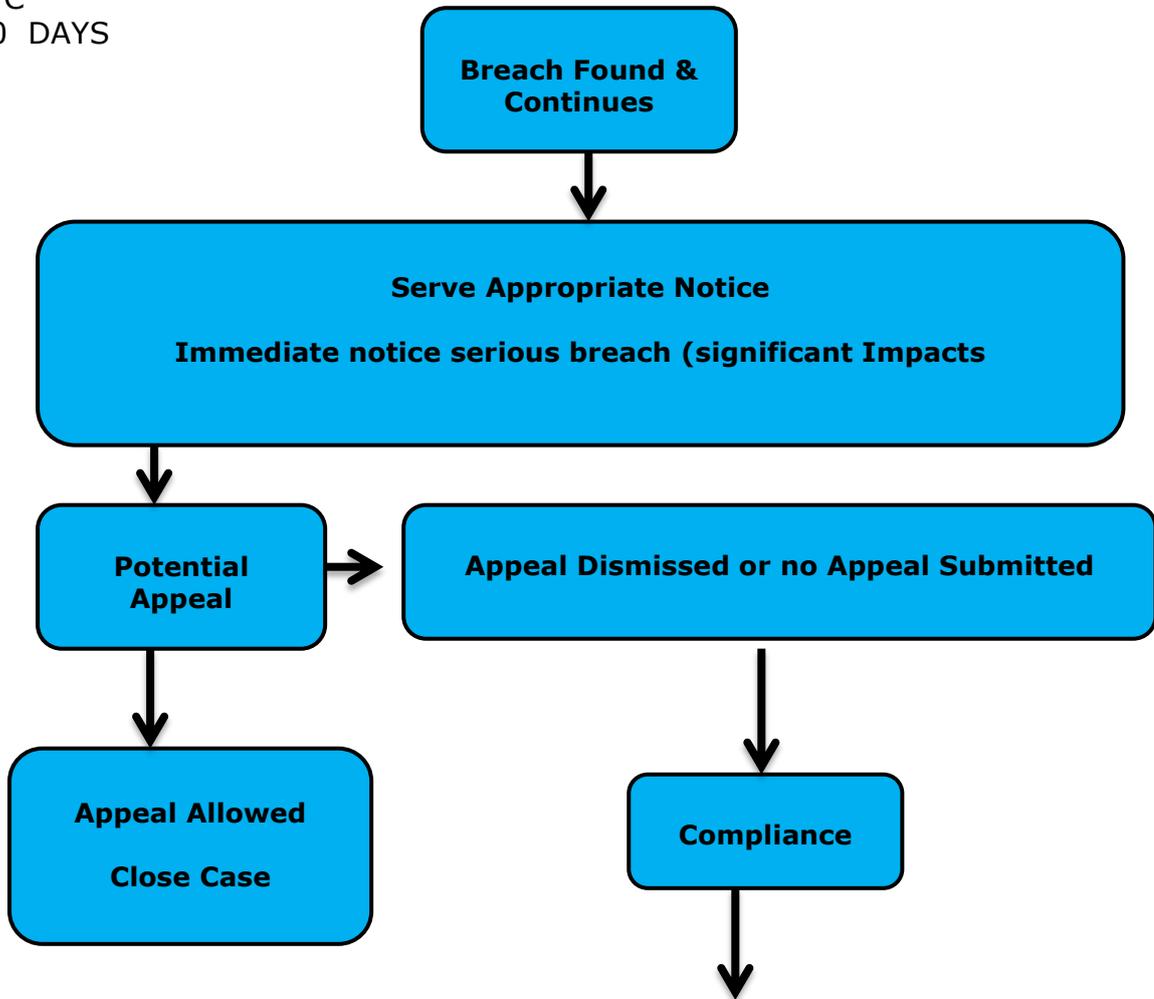
# NEGOTIATION

STAGE B  
29 – 39 DAYS



# ACTION

STAGE C  
30 - 40 DAYS



# COMPLIANCE & PROSECTUTION

STAGE D  
TIMEFRAME SUBJECT TO NOTICE

