Dear Councillor McNeill

Please find set out below response to the supplementary question(s) you posed at Council .

Supplementary Question

Please could the Leader advise when the Local Enforcement Plan was last reviewed or updated? In your answer you (Leader) refer to there being no practical way of knowing how many conditions there are outstanding or overdue. What does he mean by no practical way? Also, what assurance can be provided that planning conditions are not made that are impossible for applicants to fulfil, and that Officers only impose achievable conditions. Is there any external assurance on that?

Response

The Local Enforcement Plan was approved by Prosperous Communities Committee in 2018 and is due to come before committee again later in 2022. What we mean by "no practical way" relates to the resources and technical system support that would be needed in order to monitor and manage conditions.

There is currently no database for planning conditions and as per the response at Council, the number of entries into any system like this would be in the thousands. There are practical limitations as to how a "live database" of outstanding conditions would operate - we grant numerous planning permissions (subject to conditions) on every single working day – at the same time planning permissions will expire, or conditions be discharged, and so the database will constantly gain and lose entries on a daily (if not hourly) basis.

Every permission will have its own unique conditions. They will have different triggers – it may require an action prior to development (pre-commencement); during development; or after development. It may require the developer to submit further details to be agreed, which they must then apply to do. However, it may simply require the developer to adhere to previously agreed details. For instance – if the condition is simply that materials must match the existing building – the condition would remain "outstanding" unless, upon completion, the building has been physically inspected and a Council Officer has concluded that the materials met with the condition.

It is impracticable because it would require Council officers to monitor each and every site with planning permission to see whether it has commenced (we do not get notice of commencement); what stage the development is at; and, whether there are any conditions that have now been triggered that haven't yet been 'discharged'. Planning enforcement should only be taken in the public interest. The Local planning authority has ten years to enforce against a breach of condition. If ten years have passed without members of the public having raised any concerns, it becomes unenforceable – presumably as it has raised no public interest / concern. Likewise, even if a lesser number of years have passed the Council would assess any alleged condition breach in line with its Local Enforcement Plan and then determine the most appropriate course of action. Seeking compliance would be the overall aim.

The manner in which planning condition may be applied to planning permissions, is set out within planning law, national planning policy and planning practice guidance. Planning law states that where an application is made to a local planning authority for planning permission… they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or they may refuse planning permission.
National Planning Policy (paragraph 56 of the National Planning Policy Framework) sets out that planning conditions should be kept to a minimum, and only used where they satisfy the following tests: (1) necessary; (2) relevant to planning; (3) relevant to the development to be permitted; (4) enforceable; (5) precise; and (6) reasonable in all other respects. These are known as the "six tests" – and the Government has set out clear Planning Practice Guidance on the Use of Planning Conditions on the approach that should be taken to using conditions. The 'six tests' are applied every day by Planning Officers, and are routinely discussed at the Planning Committee.

Under Planning Law the Local Planning Authority may only impose pre-commencement conditions (that prevent any development beginning until the condition has been complied with) if they have the written agreement of the applicant to the terms of the condition. Finally, the applicant has a right of appeal to the Secretary of State against the grant of permission with conditions, and/or can apply directly to the Local Planning authority in order to develop land without compliance with conditions previously attached (a 's73 application').
And so, where an applicant now considers a condition is unachievable (i.e. they consider it doesn't meet the tests of being reasonable / precise / enforceable, for instance) then planning law gives them plenty of recourse through either appealing against the decision, and/or applying to remove/vary the condition under s73 (and if it was a pre-commencement condition, they would have had to have agreed to it in the first place).

Given the above, it is not to say that enhanced monitoring and assurance cannot be provided, however any proposals to do this would need to be developed separately to consider what additional benefits it may bring.

I trust this answers your questions.