

Somerset West and Taunton Council Corporate Scrutiny Committee – 4 January 2023

Planning Services Performance

This matter is the responsibility of Executive Councillor Mike Rigby (Planning, Transportation and Economic Development)

Report Author: Alison Blom-Cooper

1. Executive Summary/Purpose of the Report

- 1.1 On 2 November 2022 Corporate Scrutiny Committee requested a report on planning performance including the status and processing of planning applications, the 5-year housing land supply in the District and on planning enforcement cases.
- 1.2 The report seeks to provide information on the current performance in the determination of planning applications, appeals and enforcement cases and the issues facing the service including the challenges arising from the need to provide phosphate mitigation in order to allow development in much of the former Taunton Deane area. It also provides an update on the 5 year housing land supply.

2. Recommendations

- 2.1 The Corporate Scrutiny Committee is asked to note this report.

3. Planning applications

- 3.1 Table 1 shows the number of planning applications received, determined, and withdrawn in 2021/22 and the first two quarters of 2022/23. Table 2 shows the other applications received during the same periods including Prior Approvals, non-PS applications and Pre-applications. The total number of applications received over the past 18 months is summarised in Table 3.

Table 1: Number of planning applications (PS2 applications: Major, Minors, other)

	2021/22				2022/23	
	Q1 (Apr-Jun)	Q2 (Jul-Sep)	Q3 (Oct-Dec)	Q4 (Jan-Mar)	Q1 (Apr-Jun)	Q2 (Jul-Sep)
On hand at start(a)	420	458	437	417	500	504
Received (b)	431	361	296	353	321	326
Determined (c)	345	338	281	236	269	248
Withdrawn (d)	18	27	20	23	34	35
On hand at end	458	437	417	500	504	525

Figure 1: Planning application workload trends during 2022

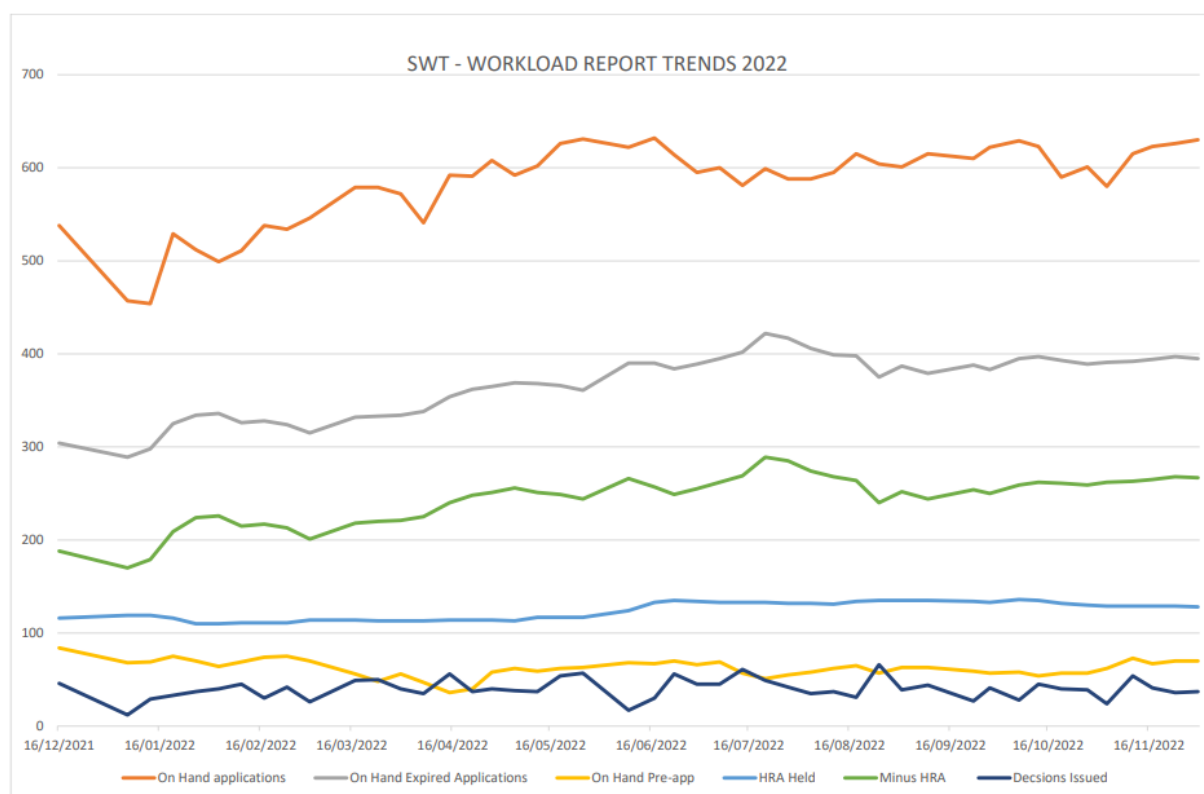


Table 2: Number of Prior Approvals, non-PS applications and Pre-apps submitted

	2021/22 (Q1-Q4)	2022/23 (Q1 & Q2)
Prior Approval applications.	46	28
Non PS applications e.g discharge of conditions	370	175
Pre-application enquiries	339	182
TOTAL	755	385

Table 3: Total number of all types of planning applications received over the past 18 months

	2021/22 (Q1-Q4)	2022/23 (Q1 & Q2)
Planning applications (Table 1)	1,441	647
Prior approval, Non PS applications and pre-apps (Table 2)	755	385
TOTAL	2,196	1,032

3.2 Regarding Planning Performance Agreements, we had 5 in operation during Q1-4 2021/22 and 4 during Q1-Q2 2022/23.

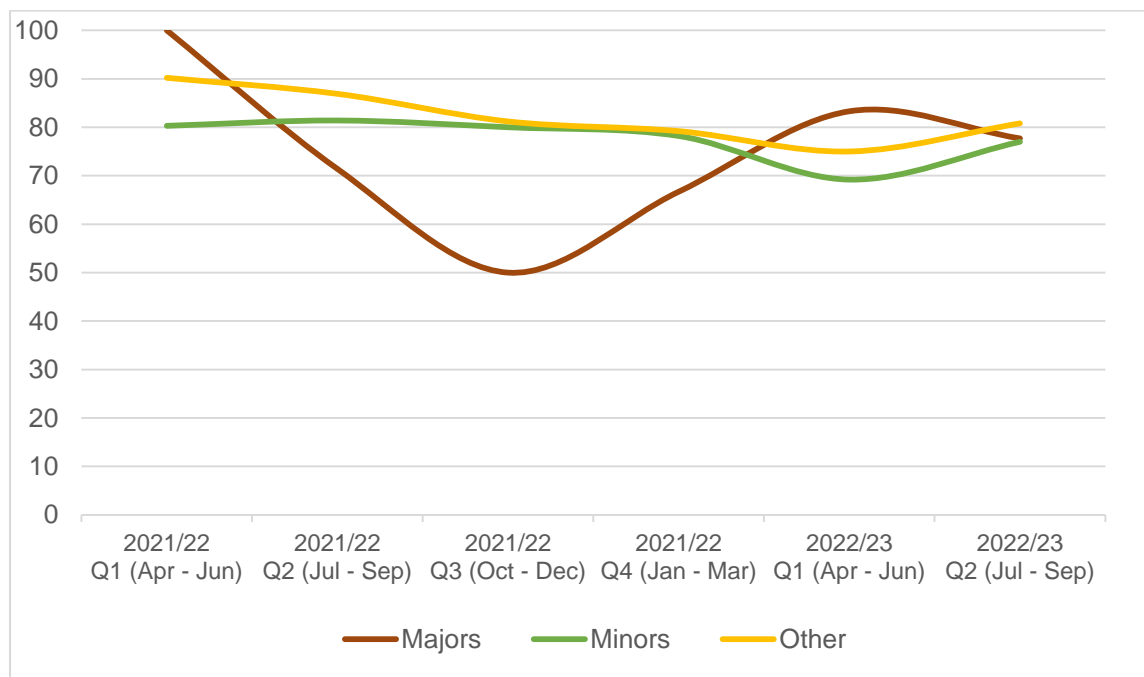
3.3 A request was made for the “time waiting for a decision for those planning applications not on hold”. Providing a time (such as an average waiting time) would be skewed by the small number of cases that have been within the system for a significant amount of time so this would not be representative of the overall performance of the Council. A more useful approach is to use the Government’s approach to performance targets as also requested and is shown in Table 4. This information is regularly reported to Scrutiny Committee.

Table 4: Performance of the Council against the Government and local targets for the last 18 month recording period

2022/23														
Indicator	National Target	SWT Target	Q1	On time	Total	Q2	On time	Total						
% of major planning applications determined within 13 weeks or within agreed extension of time**	60%	75%	83%	5	6	80%	12	15						
% of minor planning applications determined within 8 weeks or agreed extension of time**	70%	65%	69%	63	91	72%	110	152						
% of other planning applications determined within 8 weeks or an agreed extension of time**	80%	80%	75%	130	173	78%	282	361						
2021/22														
Indicator	National Target	SWT Target	Q1	On time	Total	Q2	On time	Total	Q3	On time	Total	Q4	On time	Total
% of major planning applications determined within 13 weeks or within agreed extension of time**	60%	75%	100%	5	5	100%	10	10	100%	12	12	100%	14	14
% of minor planning applications determined within 8 weeks or agreed extension of time**	70%	65%	80%	61	76	81%	131	162	80%	185	232	80%	229	287
% of other planning applications determined within 8 weeks or an agreed extension of time**	80%	80%	90%	236	263	88%	447	506	86%	611	712	84%	752	890

*Quarterly figures show performance from 1st April to the end of each quarter.

Figure 2: Percentage decisions in time against national targets for Major, Minor and Other planning applications



4. Phosphates

- 4.1 As at 1 December 2022, 127 planning applications were held in abeyance due to the requirement to provide mitigation following the advice received from Natural England in August 2020 and the requirement for development to be nutrient neutral. These applications total 2,272 dwellings. There are in addition also 40 planning permissions awaiting discharge of a condition which represents an additional 901 dwellings.
- 4.2 The Council is bringing forward a range of short term interim measures which will unlock between 174-871 units of 'implementable development'. The number of dwellings which will be unlocked by the interim measures is dependent on the location of development and the efficiency of the wastewater treatment works the development drains to. The housing delivery from P credits is anticipated to be at the upper end given the likely cost to developers of purchasing P credits in areas feeding into wastewater treatment works with a 5mg/l phosphate discharge permit level. The majority of planned housing developments in the River Tone catchment feed into wastewater treatment works with an existing permit level of 1mg/l phosphate discharge (i.e. Taunton 8,561 dwellings or Wellington with 558 dwellings where the wastewater treatment works will be upgraded to 1mg/l discharge by 2024).
- 4.3 The typical cost per dwelling to purchase credits through the interim strategy is likely to be in the region of £5,500 where development is feeding into a wastewater treatment works with a 1mg/l phosphate discharge permit level (e.g. Taunton or Wellington post 2024). Where a development feeds into a poor performing wastewater treatment works, the cost per dwelling will be significantly higher per dwelling.
- 4.4 We are also aware that some applicants will only need to purchase a smaller number of P credits for them to achieve nutrient neutrality because the P credits operate alongside their on-site phosphate mitigation measures.
- 4.5 The Council has in conjunction with the other Somerset authorities (and input from Natural England and the Environment Agency published guidance on small scale *de minimis* sites, Package Treatment Plants and Septic Tanks, which will enable small sites to progress their own solutions.
- 4.6 The Council has also brought in additional staff resource to help progress the P credits scheme and clear those applications that are eligible for P credits or are progressing their own phosphate mitigation solutions. To streamline this approach the Council has prepared a template project level appropriate assessment for applicants to complete and a standard S106 agreement which are available on the website. The frequently asked questions section on the website has been updated to provide information on the scheme.
- 4.7 Officers are continuing to support the Somerset wide phosphate work with updates to the Somerset Phosphate calculator to take account of the recently published Natural England calculator and to incorporate new guidance on sustainable urban drainage measures to assist phosphate mitigation.
- 4.8 We understand that Wessex Water have identified a further 588 dwellings that could be unlocked in the Taunton area with additional chemical dosing up to 2030.

However at the current time water companies maintain that they are unable to receive financial contributions from developers or Local Planning Authorities to enable additional nutrient stripping measures to be delivered.

- 4.9 Somerset West and Taunton Council is at the forefront of finding phosphate solutions to help unlock housing development. We are one of a few local authorities to develop an interim strategy, approved by Natural England, to facilitate the provision of P credits to unlock development.

5. Appeals

- 5.1 Appeals performance is regularly reported to Scrutiny Committee with the individual appeal decisions reported to Planning Committee. Figure 3 below shows the performance in relation to the performance target set by the Council of 33% appeals allowed which equates to the national average. The indicator for planning appeals measures the % of appeals that have had the decision overturned, out of all the appeals received. As the number of appeals are generally low, the corporate indicator looks at performance over a rolling 12 month time-frame, otherwise the small numbers each month would lead to a skewed view of performance open to misleading fluctuations. During the 2021/22 financial year, there were a total of 45 appeals received, 20 (44%) of which have had the decision overturned. Since the 1 April 2022 until the end of October 2022 there have been 35 appeals, 12 (34%) of which have had the decision overturned.

Figure 3: Percentage of appeals where the Council's decision was overturned measured against Key Performance Indicator (33% target)

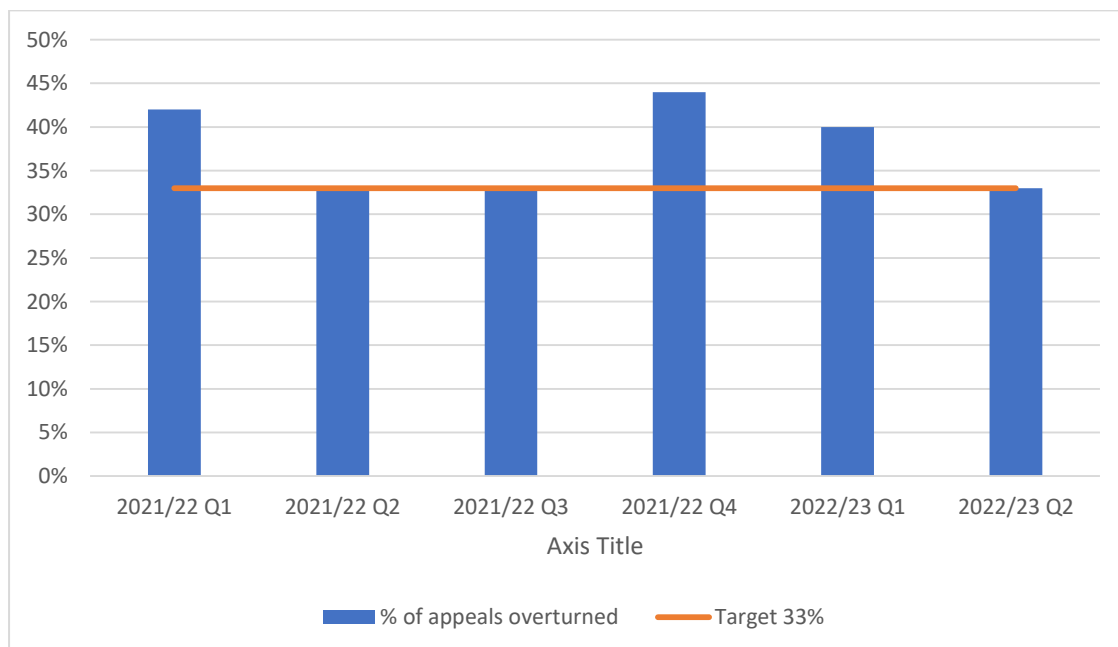


Table 5: Appeal decisions received during 2022 (to end of November 2022)

Allowed	7
Dismissed	21
Withdrawn	1
Total appeal decisions made	29

Table 6: Breakdown of appeal decisions received by type during 2022 (to end of November 2022)

Appeals against refusal of planning permission	22
Appeals against refusal of certificates of lawful development	1
Appeals arising from non-determination of applications	2
Appeals against refusal of reserved matters	1
Appeals against refusal (Prior Approval)	3
Total appeal decisions made	29

Table 7: Decision type when appeal allowed during 2022 (to end of November 2022)

Delegated decision	5
Committee decision	1
Committee decision (overturn against officer recommendation)	1
Total allowed appeals	7

6. Validation Statistics

- 6.1 The Business Support Team and the Validation Officer have an exceptional record of turn around regarding the downloading, setting up of new applications and the checking and validation of those applications received. The average amount of time taken to respond to an application once received (either by validation and sending consultations etc, or by sending an invalid letter) is 2 days. During November 2022 65% of cases received were either validated or sent invalid letters within one day.

7. Enforcement cases

- 7.1 Whilst planning enforcement is a discretionary function it is a high priority for residents and councillors. Failure to investigate alleged breaches of planning control leads to a high level of service complaints being submitted to the Council which takes

up officer time and resource and distracts them from undertaking their primary function which is not a good use of resources.

- 7.2 Furthermore, the Local Government Ombudsman (LGO) has held that Councils have a duty to investigate complaints received about unauthorised development and that timely action should be taken to investigate and that complainants should be kept informed. Failure to do any of these actions can lead to the LGO finding fault by the Council and to an award of compensation to the complainant(s).
- 7.3 SWT currently has 2 FTE enforcement officers on the establishment – one is experienced and the other less so thereby limiting the type of cases they can deal with. Both joined the team at the beginning of 2022. It was clear that during 2022 an increasing number of complaints were received and the closure rate has not kept up. A request for a new temporary position to provide additional expertise and capacity was therefore made to allow more existing and new cases to be dealt with and reduce the backlog. This was agreed by SMT with resource from within the overall planning budget and a temporary agency enforcement officer started on 28 November 2022.
- 7.4 An audit of cases was undertaken by the temporary enforcement officer and this revealed that of 29 November 2022 there were 498 open cases (Taunton 318 West 180). Since the audit, a further 108 cases have been closed (17 Taunton and 91 West) - these were largely cases identified from 15+ years ago which had been opened for administrative purposes or were incomplete cases created in error. This then gave a total of 394 open cases which are detailed below. These have been categorised in terms of priority as set out below:

Priority Category	Alleged Planning Breach
A	<p>This category is for development causing serious threat to public health and safety, or permanent, serious damage to the natural or built environment.</p> <p>Examples</p> <ul style="list-style-type: none"> • Activities that have the potential to cause irreparable harm to Conservation Areas, Sites of Special Scientific Interest, the Area of Outstanding Natural Beauty etc • Unauthorised development that represents a serious danger to members of the public • On-going unauthorised works to a listed building • On-going unauthorised works to a protected tree
B	<p>Less urgent than Priority Category A but considered harmful with the potential to get worse.</p> <p>Examples</p> <ul style="list-style-type: none"> • Unauthorised on-going construction • Breach of planning conditions precedent • Breach of an enforcement notice • Unauthorised advertisements that constitute a potential highway danger • Sub-standard living accommodation resulting from an unauthorised change of use

C	<p>This category covers the majority of cases, where there is a possible breach but one that is unlikely to get any worse.</p> <p>Examples</p> <ul style="list-style-type: none"> • Unauthorised construction • Unauthorised advertisements not covered in category B
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Table 8: Number of open enforcement cases at 8 December 2022

	Number of open cases 8 December 2022
Priority A (high)	58
Priority B (medium)	228
Priority C (low)	64
Cases to be closed as no breach or not expedient to take further action	44
TOTAL	394

Table 9: How long open enforcement cases have been on the system

	Taunton Deane	West Somerset	Total
2013	1	0	1
2014	1	1	2
2015	1	1	2
2016	1	0	1
2017	3	0	3
2018	6	3	9
2019	11	3	14
2020	12	2	14
2021	75	13	88
2022	194	66	256
TOTAL	305	89	394

Table 10: Number of enforcement cases resolved/closed

	Taunton Deane	West Somerset	Total
2021	203	71	274
2022	131	72	203

Table 11: Breakdown by reason for being resolved/closed (2022 only)

Reason for being resolved/closed	2022
No breach	47
Admin/duplicate	48
Not expedient/closed	39
Resolved	69 (22 by way of planning application)
TOTAL	203

8. Complaints, FOIs

8.1 The Planning Team have dealt with 18 Freedom of Information requests in 2022, 37 Stage One Complaints and 8 Stage Two Complaints in 2022. We have been monitoring the more complex Member Queries and we have had 18 of those since June 2022. Since 1 April 2022, there have been 504 corporate complaints of which 372 (74%) were responded to in 10 days. There have been 310 FOI requests, of which 270 (87%) have been addressed on time.

9. Five Year Housing Land Supply position

9.1 The Council is required to provide a five year housing land supply position (5YHLS) on an annual basis. It identifies the supply of housing land anticipated to come forward over the next five years as well as the stock of longer-term development opportunities. The National Planning Policy Framework (NPPF) paragraph 11 and footnote 8 require that where a local planning authority cannot demonstrate a five year supply of deliverable housing sites or where the Housing Delivery Test indicates that delivery of housing is below 75% of the housing requirement over the previous three years, the presumption in favour of sustainable development applies. In these circumstances the housing policies are effectively considered to be out-of-date and the decision taker should grant permission unless the NPPF provides 'a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies' in the NPPF.

9.2 This is published within the Strategic Housing and Employment Land Availability Assessment (SHELAA). It is a 'snapshot' of the supply of deliverable and developable housing sites in the Local Planning Authority administrative areas of the former Taunton Deane Borough Council (TDBC) and West Somerset Council (WSC). It does not include the Exmoor National Park area.

9.3 The 5YHLS methodology follows the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG). Until the Local Plan policies for the former Taunton Deane BC and West Somerset Council are replaced by an adopted Somerset-wide Local Plan or until the 5th anniversary of the Local Government reorganisation, our 5YHLS must be monitored separately for former WSC and TDBC.

9.4 The Council's most recent published SHELAA (May 2022) includes information gathered over the monitoring year 2021/22.

Table 12: Taunton Deane and West Somerset Five Year Housing Land Supply at the end of March 2022

		Taunton Deane	West Somerset
A	Large sites with planning permission	2,094	462
B	Small sites with planning permission	206	124
C	Other deliverable site opportunities	284	155
D	Windfall Allowance (excluding back gardens)	297	105
E	5 year supply of deliverable sites (A+B+C+D)	2,881	846
F	Total five year supply requirement	3,565	571
G	Five year supply result ((E/F) x 5)	<u>4.04</u>	<u>7.4</u>

9.5 In preparation for a public inquiry which took place in December 2022, officers have updated the 5YHLS position for the former Taunton Deane BC in terms of any change in the deliverability of sites. In recent months the Government has announced a package of measures to help address the impact of nutrient neutrality requirements on housing delivery. These measures, alongside our interim strategy of measures, provides confidence in our updated 5YHLS. Table 13 sets out the updated position for the former Taunton Deane area.

9.6 Our updated 5YHLS position and our approach to including phosphate credit applicable applications will be tested at the public inquiry which will provide clarity on our position going forward.

Table 13: Taunton Deane Five Year Housing Land Supply deliverability update at the end of November 2022

A	Contribution from windfalls (excluding back gardens, counted in Y3, 4 & 5)	288
B	Contribution from small sites with planning permission (Y1 & 2)	134
C	Contribution from deliverable large sites	2,886
D	Contribution from Phosphate credit applicable applications	365
E	Total five year supply of deliverable plots (A+B+C+D)	3,673
F	Total five year supply requirement	3,630
G	Fiver year supply ((E/F) x 5)	<u>5.06 years</u>

10. Planning team structure

- 10.1 The Strategic Place and Planning team structure chart is at Appendix 1. Six posts are vacant and currently have agency cover. There is a further one vacant post.

11. Issues and challenges

- 11.1 The Planning Service has and continues to face a number of challenges which impact on the service performance and the quality of customer service delivered as well as the challenge of phosphate mitigation. These are set out below.

Recruitment and Retention

- 11.2 For some years the Royal Town Planning Institute has reported that there are shortages of town planners and enforcement officers across the whole of England. This has made recruitment of suitably qualified and experienced planners and enforcement officers exceptionally difficult. In October 2022 SOLACE identified planners as one of the top three professions that were most difficult to recruit to.
- 11.3 The Council has attempted in 2022 to recruit to permanently fill a variety of vacant planning posts but has often failed to attract suitably qualified and experienced applicants. Consequently, vacant posts are temporarily filled by agency staff. Reasons for failing to attract and employ planners varies but anecdotal evidence from candidates and recruitment agencies would suggest there are a variety of reasons including comparative salaries offered elsewhere, lack of a career grade scheme to provide a clear development path and uncertainties arising from LGR.
- 11.4 In terms of retention there will always be some churn of officers who move for personal or other reasons. Nevertheless, comparative caseloads, salaries or work conditions may have encouraged some to look elsewhere and given the overall shortage of planners and enforcement officers it is easy for most to secure alternative employment both in the public and private sectors.
- 11.5 The Service has taken steps to address some of these issues and it has a successful apprentice scheme which has enabled two planners to be supported through their professional training whilst working for the Council.
- 11.6 The issues regarding recruitment and retention have impacted on the service. Loss of permanent officers over time can impact on the corporate knowledge, especially in relation to some of the big, complex developments that may take many years to complete. The same can be true of the complex enforcement cases. This delays progressing of applications and enforcement complaints and as has occurred, led to an increase in customer complaints that in turn takes officers away from their casework.

No designated Footpath Officer for Section 257 work

11.7 There is no designated officer who deals with S257 work. Work related to the stopping up or diversions of footpaths and bridleways necessary to enable development to be carried out is currently undertaken by one of SWT development management team leaders. This is not part of their normal role and is done in additional to their normal duties. The time the footpath related work requires varies considerably depending on the developments that are being progressed, but it can be significant.

Statutory consultees – delays in response to applications

11.8 There is a legal requirement for certain types of planning applications to be referred to a variety of statutory consultees for comment prior to the determination of the application. Such consultees include a wide range of bodies such as Natural England, Environment Agency, National Highways, Highway Authority (SCC), Lead Local Flood Authority (LLFA) - SCC and Ecology Service – SCC.

11.9 Depending on the nature of the development proposal some consultations can be dealt with by way of surgery sessions. SWT officers hold regular surgeries with the relevant officers in respect of ecology, highways and flooding but these cannot deal with the more complex cases that require more detailed assessment and feedback. Unfortunately, the feedback on the more complex cases which is essential for the application to be progressed further has often been delayed by many months, and had to be chased by SWT. This had delayed the consideration and determination of the application by SWT and led to frustration by applicants and residents.

Information Technology

11.10 The Planning Service continues to work on two separate IT systems for the old Taunton Deane and West Somerset Areas. Both are Idox Acolaid but both have separate Document Management Systems, West Somerset using Idox DMS and Taunton using our in house Imaging System. This means Officers need to understand and access two separate systems which are still not identical.

List of Appendices

Appendix 1	Strategic Place and Planning team structure chart
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Contact Officers

Name	Alison Blom-Cooper, Assistant Director - Strategic Place and Planning	Name	Chris Hall, Director – Development and Place
Direct Dial	01823 217517	Direct Dial	01823 217578
Email	a.blom-cooper@somersetwestandtaunton.gov.uk	Email	c.hall@somersetwestandtaunton.gov.uk

