

APPEAL BY WADDETON PARK LTD

APPEAL REFERENCE: APP/Y1138/W/22/3313401

LAND AT HARTNOLLS FARM, TIVERTON

PROOF OF EVIDENCE OF DAVID SEATON
HOUSING SUPPLY

OUTLINE PLANNING APPEAL FOR THE EXTENSION TO
THE EXISTING BUSINESS PARK FOR UP TO 3.9HA OF
EMPLOYMENT LAND AND UP TO 150 RESIDENTIAL
DWELLINGS WITH ASSOCIATED OPEN SPACE AND
INFRASTRUCTURE (WITH MEANS OF ACCESS TO BE
DETERMINED ONLY).

AUGUST 2023



PLANNING

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1. Qualifications and Experience

- 1.1 My name is David Seaton. I am a Chartered Town Planner and I have been practising in the profession since 1987. I spent some 12 years in Local Government in development control, plan making and finally running a regeneration team. I left the public sector to join Midas Homes Limited (MHL) originally as a Strategic Land Manager. During my time at MHL I was appointed Planning & Development Director and I spent three years on the board of the company with full responsibility for procurement and delivery of sites through to the production team. I was also a member of the team that undertook the due diligence exercise for the acquisitions of Knapp New Homes and Linden Homes during this period. I left MHL at the end of April 2008 to found PCL Planning Ltd. MHL subsequently rebranded to become Linden Homes.
- 1.2 During my time with MHL I assisted in building and maintaining a business that delivered some 500 units per annum in the south west, including the delivery of a significant amount of affordable housing and numerous award-winning schemes. During this period, I represented the housebuilding industry on the steering group of the South West Regional Housing Board (SWRHB). I represented the SWRHB at the round table sessions during the Barker Review.
- 1.3 PCL Planning Ltd act for a wide range of clients across the south west. We have given evidence at a number of significant inquiries and examinations across the region.
- 1.4 The opinion given in this proof has been prepared, and is given, in accordance with the guidance of my professional institution the Royal Town Planning Institute (the RTPI). I confirm that the opinions expressed are my true and professional opinions

2. Introduction

- 2.1 This proof of evidence has been prepared on behalf of Waddeton Park Ltd to provide an assessment of Mid Devon District Council's five year housing land supply as part of the planning appeal in relation to land at Hartnolls Business Centre. It should be read with my main PoE, and Affordable Housing PoE.
- 2.2 This proof of evidence has been prepared in response to the approach to 'Maintaining supply and delivery' set out at paragraph 74 of the NPPF (and footnote 38 to that paragraph).
- 2.3 The Council have provided a 5 year Housing Land Summary and associated appendices for the period 2022 to 2027 in March 2023 (CD25). I understand that to comprise the Council's position.

3. The Housing Requirement

- 3.1 The housing requirement for the DP period (2013 – 2033) is 7,860 dwellings (as set out in policy S3 of the Mid Devon Local Plan). This equates to an annualised rate of 393 dwellings per annum (dpa).
- 3.2 Thus, the total requirement for the DP period to date (2013 – 2022) is 3,537 dwellings.
- 3.3 These two elements of the Council's 5 year land supply calculation are agreed. Unfortunately, other figures that feed into the 5YHLS calculation cannot be agreed.

Gypsy and Traveller Pitches

- 3.4 After receiving the council's 5YHLS information in March 2023 the sites included were analysed to determine their deliverability. During this process it became apparent that the delivery of Gypsy and Traveller sites were being categorised as housing, and counted towards the Council's 5YHLS figure, contrary to the provisions of footnote 38 to paragraph 74 of the NPPF which states:

"³⁸For the avoidance of doubt, a five year supply of deliverable sites for travellers – as defined in Annex 1 to Planning Policy for Traveller Sites – should be assessed separately, in line with the policy in that document."

- 3.5 Analysis of the Council's 5YHLS data established that G&T pitches have been included within their housing supply figures – both within the 'completions to date' element and the deliverable sites relied upon over the next 5 years (see CD 62, 64 and 65).
- 3.6 Therefore, despite the comment made by the appellant (in response to Council's putative RfR [ARtRfR] CD5, paragraph 2.10), I can no longer agree with the 5 year requirement figure identified by the council of 2,459.

- 3.7 I have therefore sought to establish the extent of the error that the Council has made by including Gypsy and Traveller pitches in the housing delivery data.
- 3.8 An FoI request (ref. FOI08895, CD31) established that the Council recorded 33 G&T completions between 2013 and 2022. The Council now acknowledge that this information was incorrect (see CD 64). This updated FoI response identifies that 42 G&T sites have been completed between 2013 and 2022.
- 3.9 A comparison with previous years has been carried out by a cross check with Housing Land Availability summaries for 2014-2018 (CD62). This check establishes that the Council's practice has been to count G&T pitch completions as part of their housing completions. Using this data (for the period 2014-2016) together with the FoI data for the period 2016-2022 (see CD64) gives a G&T 'completions to date' figure of 42 that has been wrongly included in the Council's assessment of 5YHLS.
- 3.10 Therefore, I have reduced the number of completions over the plan period (Table 1, box c) by 42 dwellings in order to correct this error.
- 3.11 A comparison of the Council's and my breakdown of 5YHLS requirement is set out overleaf.

Table 1 – 5 year housing land supply requirement figure for 2022 - 2027

	Requirement	MDDC	PCL
A	Local Plan Review housing requirement – policy S3 (overall/pa)	7,860 (393 pa)	7,860 (393 pa)
B	Total requirement over plan period to date (2013 – 2022) [A(pa)*9]	3,537	3,537
C	Completions over plan period to date (2013 – 2022)	3,160	3,118
D	Shortfall over plan period to date (2013 – 2022) [B-C]	377	419
E	Basic 5 year requirement 2022 – 2027 [A(pa)*5]	1,965	1,965
F	5 year requirement with shortfall 2022 – 2027 [E+D]	2,342	2,384
G	5 year requirement with shortfall applying 5% buffer 2022 – 2027 [F*1.05]	2,459	2,503

3.12 By deleting the G&T completions, this results in an increase in the housing requirement (of 44 dwellings) [note that it is the addition of the 5% buffer to the figure of 2384 that results in an increase of the requirement figure by 44 units, not the 42 unit deduction of G&T pitches from the completions data].

4. Assessment of Five Year Land Supply

- 4.1 There are a relatively small number of sites whose deliverability status is disputed.

Relevant Government Policy and Inspector Decisions

- 4.2 In the Glossary (Annex 2) of the Framework, 'deliverable' is defined as:

"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years."

- 4.3 The NPPG provides further guidance on the policies set out in the National Planning Policy Framework. In relation to the consideration of what constitutes a 'deliverable' site, the NPPG states (at paragraph ID 68-007-20190722) that:

"In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions. Annex 2 of the National Planning Policy Framework defines a deliverable site. As well as sites which are considered to be deliverable in principle, this definition also sets out the sites which would require further evidence to be considered deliverable, namely those which:

- have outline planning permission for major development;*
- are allocated in a development plan;*
- have a grant of permission in principle; or*
- are identified on a brownfield register.*

Such evidence, to demonstrate deliverability, may include:

- *current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;*
- *firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;*
- *firm progress with site assessment work; or*
- *clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects"*

Windfalls

- 4.4 Specific government policy on the inclusion (or not) of a windfall allowance is set out at paragraph 71 of the NPPF which sets out that:

"Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends."

Relevant Inspector Decisions

- 4.5 This government policy approach to assessing evidence then falls to being applied by Inspectors on a case by case basis. I draw attention to the approach adopted by Inspector Stephens when assessing this matter in an appeal for up to 181 dwellings at land at Caddywell Lane / Burwood Lane, Great Torrington, Devon (ref. W/19/3238460, CD18) which I think is the correct approach to take. The Inspector concluded that the Council could not demonstrate a five year housing land supply. Paragraphs 56 and 57 of the appeal decision state:

"56. I have also had regard to the updated PPG advice published on 22 July 2019 on 'Housing supply and delivery' including the section that provides guidance on 'What constitutes a 'deliverable' housing site in the context of plan-making and decision-taking.' The PPG is clear on what is required:

'In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions.'

This indicates the expectation that 'clear evidence' must be something cogent, as opposed to simply mere assertions. There must be strong evidence that a given site will in reality deliver housing in the timescale and in the numbers contended by the party concerned.

57. Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are the planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed pro-forma from a developer or agent does not in itself constitute 'clear evidence'. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward"
(my underlining)

4.6 At Woolpit (Suffolk 18/3194926, CD19) the same Inspector considered (at paragraphs 63-73 of his decision) that, in that case, the Council:

"has not even come close to discharging the burden to provide the clear evidence that is needed for it to be able to rely upon those sites" (paragraph 68) and that:

"An assessment of the Council's AMR against the updated PPG reveals that the AMR falls substantially short of producing the evidence that a LPA is expected to produce." (paragraph 69) and that:

"It is wholly inadequate to have a land supply based upon assertion and then seek to justify the guesswork after the AMR has been published." (paragraph 70).

4.7 In my opinion these criticisms also apply to the Council's 5YHLS analysis in this case. In particular I characterise the final/right hand column of the Council's spreadsheet analysis as assertion that is unsupported by any

evidence. If there is any evidence that underpins those assertions then the Council have not produced it, and therefore they have failed to assess deliverability with any robustness or transparency.

- 4.8 A more recent decision found that another Council similarly failed to carry out residential land supply analysis with sufficient rigour. I point to Yatton (North Somerset Council 21/3286677, CD20) where (at paragraphs 18-37) the Inspector found that:

"The burden of including in the supply sites other than those which do not involve major development and have planning permission, or have detailed planning permission, is placed on the Council who must provide the clear evidence to meet the realistic prospect test." (paragraph 28); and determined that:

"I am satisfied that the Council's supply evidence is conspicuously weak and severely lacking in substance. There is no clear evidence before me that would suggest that the Council's assumptions would deliver the completions suggested in the trajectory in the next five years and meets the realistic prospect test. Much of the Council's evidence constitutes mere assertions and does not come anywhere close to what is envisaged by the PPG." (paragraph 34).

- 4.9 In my opinion a similar conclusion can be drawn in relation to the material that the Council have provided in this case. The final column of the spreadsheet cannot be considered any more than unsubstantiated assertion and, in the examples where I disagree with the Council, those opinions are unrealistic and unsupported by any evidence.

- 4.10 My analysis of the deliverability of these sites, having regard to relevant Government policy, and the practice of Inspectors, on the matter is set out in sections 5, 6 and 7 of this PoE.

5. Comments on The Council's Evidence Base

5.1 The information that the Council rely upon in this case is limited and falls well short of what Government policy requires. It is not possible to discern what, if any, methodology has been adopted to the assessment of deliverability. No correspondence with landowners/ developers has been disclosed (apart from the summary notes in the right hand column of the appendices to the Housing Land Supply Summary titled 'Deliverability Evidence/Other Comments', see CD25). Thus, there is no evidence of analysis of site issues, or the availability of necessary resources. What is clear is that, in relation to the disputed sites, there is evidence of failure to appreciate the implications of identified issues – for example keeping Area B in the trajectory despite the acknowledged problems with the delivery of that part of the TEUE.

5.2 Specific government policy on the inclusion (or not) of a windfall allowance is set out at paragraph 71 of the NPPF which sets out that:

"Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends."

5.3 This policy is clear and stringent. In order to rely on windfall sites "compelling evidence" is needed that they "will provide a reliable source of supply" . This is forward looking. Whilst regard to historic delivery rates is permissible, it is not sufficient, the assessment must take account of 'expected future trends'. Furthermore, the past is no guide to the future in this matter since:

- most larger brownfield sites within Mid Devon have already been redeveloped so there is little potential future supply from this source.

- double counting – the SHLAA process seeks and identifies such sites whereas historically many SHLAA sites would be recorded as windfalls (therefore inflating historic rates).
- ‘Taxation’ of residential development (via affordable housing quotas and S106) cumulatively means that existing uses are more viable in comparison (since they are not subjected to the same financial costs and redevelopment costs do not need to be incurred).
- Similarly redevelopment for other uses (such as employment/retail etc) are not ‘taxed’ in the same way.

5.4 In my opinion the Council's HELAA methodology (CD27) does not constitute ‘compelling evidence’ of the windfall allowance that they rely upon. There is no evidence that the methodology used has considered the above points (at all). The burden of proof is on the Council to demonstrate the robustness of that methodology. My scrutiny of it leads me to conclude that it amounts to little more than a method of projecting past trends forward (as opposed to a detailed scrutiny of the above trends). For example the Council have not compared the historic costs burden imposed on residential development to the current cost burden that it seeks from residential development. There is no reference to relating historic windfall trends to achieved land values (which would illuminate the Council's understanding of what future trends are likely to be).

5.5 I therefore conclude that the Council's evidence base falls some way short of ‘compelling evidence’ and, consistent with Government policy, I have removed the windfall allowance from my assessment of 5YHLS.

6. Disputed Sites

- 6.1 A summary of key differences between my, and the Council's assessment, of the 5YHLS position is set out overleaf (Table 2). The final column in the table records where the burden of proof in relation to evidence lies (A is the appellant and B is the Council, in accordance with the definition of deliverability set out in Annex A of the NPPF, page 66).

Table 2 –5YHLS Disputed Sites

LPA ref:	Address	LPA 5YHLS	PCL 5YHLS	Difference	Burden of Proof A/B
Unconsented allocations					
CU1-CU6	North West Cullompton; Phase 2: Codex 315 dwellings	50	0	-50	B
TIV10	Roundhill	14	0	-14	
TIV16	Blundell's School	75	0	-75	
TIV9	Howden Court	6	0	-6	
Sub-total				-145	
Consented allocations					
14/00881/MOUT * (see note below)	TV1-TIV5 Eastern Urban Extension, Tiverton (Area A – 'Chettiscombe Trust Land')	98	0	-98	B
17/00348/MOUT & 22/00063/MARM	CRE5 Pedlerspool, Exhibition Road, Crediton (Creedy Bridge)	180	145	-35	A
Sub-total				-133	
Consented windfalls (1-4 dwellings)					
	1 – 4 dwellings	393	368	-25	A
Consented windfalls (4+ dwellings)					
15/01822/MFUL	Alexandra Lodge, 5 Old Road, Tiverton	45	0	-45	A
20/02128/FULL	Pleasant Streams, Uffculme, Cullompton	6	0	-6	
Sub-total				-51	
Windfall allowance					
Windfall	N/A	274	0	-274	B
	Total	1171	513	-628	

* Outline planning permission was granted in June 2017 for up to 700 dwellings. Only one RM application has been granted pursuant to this permission (ref. 21/00454/MARM) which has been counted separately in the 5YHLS data (and is not disputed by the Appellant). This leaves up to

536 dwellings outstanding pursuant to this outline application, with 98 dwellings counted in the 5YHLS period. The appellant disputes the deliverability of these 98 dwellings. Furthermore, in years 6 – 11 (with year 11 being 2033, the final year of the plan period), the Council's delivery schedule identifies that 300 dwellings will be delivered. The appellant disputes this. The residual 138 dwellings pursuant to this outline permission are expected, by the Council, to be delivered outside the current plan period (2033+). The appellant agrees with this element of the Council's analysis. A map showing these sites is included as appendix 1.

6.2 Accounting for the above, my assessment of deliverable supply is 2,048 units, as set out below.

Table 3 – Breakdown of 5YHLS supply

5YHLS Requirement	2,459	2,503
Differences in Component of Supply	MDDC Supply	PCL Supply
Unconsented allocations	153	-145
Consented allocations	1605	-133
Consented windfalls (1-4 dwellings)	393	-25
Consented windfalls (5+ dwellings)	242	-51
Communal accommodation	9	-0
Windfall allowance	274	-274
Total	2,676	2,048
Housing Shortfall	-217	455
Supply Duration	5.44 Years	4.09 Years

7. Site Assessments

Unconsented allocations

CU1 – CU6 – North West Cullompton; Phase 2: Codex 315

Current status

- 7.1 The Phase 2 Codex sites have applications submitted for a total of 315 dwellings in Cullompton on 2 sites. These comprise a site with an outstanding outline application for up to 225 dwellings (ref. 19/01592/MOUT) and a site with an outstanding outline application for 90 dwellings (ref. 19/02058/MOUT).
- 7.2 Neither of the sites are subject to any form of planning permission. Both of the above outline applications were validated in 2019.
- 7.3 Furthermore, the MDLP contains a suite of policies pursuant to the North West Cullompton Urban Extension (NWCUE), including the requirement for a phasing strategy (Policy CU6). Part of this policy states that there should be:
- “Occupation of no more than 600 dwellings prior to the completion of the Cullompton Town Centre Relief Road”.*
- 7.4 Currently, 590 dwellings have been granted detailed permission. Therefore, only 10 dwellings from Phase 2 can be occupied prior to the completion of the Cullompton Town Centre Relief Road (CTCRR).
- 7.5 The CTCRR was granted permission in January 2021 (ref. 20/00876/MFUL). Housing Infrastructure Funding was secured in 2019 for part of the cost (approximately 1/3 of the overall projected £30M cost), however there remains a shortfall of circa £19M.
- 7.6 Two unsuccessful bids have since occurred for funding from the Levelling Up Fund, with the most recent bid confirmed as unsuccessful in January 2023. There is no certainty as to when (or if) the CTCRR will be delivered –

which was due to be completed by July 2023. Please note that this point also has significant implications for delivery from East Cullompton (between 2027-2033) and I explain this in section 8 of this PoE.

Assessment

- 7.7 The Council has not provided any “clear evidence” of the type referred to in paragraph 68-007 of the PPG. The available evidence indicates that it is unlikely that there will be any completions within the next 5 years. The site fails to meet the definition of “deliverable” as set out in Annex 2 of the Framework.
- 7.8 The site has not been subject to the grant of planning permission. Therefore, I do not consider that the current planning status comprises sufficient evidence to demonstrate deliverability.
- 7.9 Additionally, the site specific constraints due to the CTCRR prevents the occupation of almost all of Phase 2 for the foreseeable future.

TIV10 - Roundhill

Current status

- 7.10 The site is allocated in the development plan for 20 affordable dwellings.
- 7.11 No planning application for development on the site has been made.
- 7.12 The allocation policy identifies that the site is currently occupied by garages, and numerous dwellings have rights of access across the site (that must be maintained as part of the proposal). Retained, or replacement, parking spaces and garages must also comprise part of the application.
- 7.13 The allocation policy also identifies a risk of mineshafts in the area, so additional investigations must accompany any application.

Assessment

- 7.14 The Council has not provided any “clear evidence” of the type referred to in paragraph 68-007 of the PPG. The available evidence indicates that it is

unlikely that there will be any completions within the next 5 years. The site fails to meet the definition of “deliverable” as set out in Annex 2 of the Framework.

7.15 No planning application has been made on the site.

7.16 Additionally, due to the site specific constraints (namely, the existing uses and the risk of mineshafts in the area), I do not envision that this site will be delivered quickly.

7.17 Therefore, I do not consider that the current planning status comprises sufficient evidence to demonstrate deliverability.

TIV16 – Blundell’s School

Current status

7.18 There is an undetermined application for outline permission for up to 120 dwellings with all matters apart from access reserved (ref. 22/01098/MOUT) which was submitted in July 2022.

7.19 The application site is currently occupied by a metal recycling centre/scrapyard, as well as a fuel station, shop and car wash.

Summary

7.20 The Council has not provided any “clear evidence” of the type referred to in paragraph 68-007 of the PPG that housing completions will begin within the next five years. These parts of the site fail to meet the definition of “deliverable” as set out in Annex 2 of the Framework and should be removed from the supply.

7.21 The site does not have planning permission for residential development.

7.22 There is also the onerous task of relocating the recycling centre/scrap yard prior to residential development being able to be undertaken. Due to the nature of the current land use, I also envisage that substantial land remedial

works would have to be undertaken following the relocation of the recycling centre/scrap yard, causing further delay in the delivery of the site.

TIV9 – Howden Court

Current status

- 7.23 The site does not have a planning application for development, nor has permission been granted.
- 7.24 The comments provided on the Appendix to the LPA's 5YHLS states that the site is owned by MDDC, and sets out that the site "is still subject to feasibility work".

Summary

- 7.25 The Council has not provided any "clear evidence" of the type referred to in paragraph 68-007 of the PPG that housing completions will begin within the next five years. These parts of the site fail to meet the definition of "deliverable" as set out in Annex 2 of the Framework and should be removed from the supply.
- 7.26 Planning permission has not been granted on the site. Furthermore, no application has been made on the site. The application was undergoing feasibility work, which is generally early in the process. Therefore, I do not consider that the current planning status comprises sufficient evidence to demonstrate deliverability.

Consented allocations

14/00881/MOUT - TIV1 to TIV5 Eastern Urban Extension, Tiverton – Chettiscombe Trust Land

Current status

- 7.27 Outline planning permission has been granted for up to 700 dwellings and associated development in June 2017 (ref. 14/00881/MOUT, see CD63).
- 7.28 However, only 1 residential RM application (for 164 dwellings) pursuant to the outline permission has been granted (ref. 21/00454/MARM). This has

been counted separately in the 5YHLS data (and is not disputed). Work has commenced on site but no completions have yet been achieved.

7.29 This leaves the delivery of up 536 dwellings outstanding pursuant to the outline permission 14/00881/MOUT, with 98 dwellings included in the current 5 year period. Whilst a further RM submission has been made (Ref: 23/00394/MARM for 122 dwellings) this has not yet been determined.

7.30 The accompanying map (Appendix 1) identifies the sites that are considered deliverable, and the sites that are disputed in the Tiverton Eastern Urban Extension.

Summary

7.31 The Council has not provided any "clear evidence" of the type referred to in paragraph 68-007 of the PPG that housing completions will begin within the next five years. These parts of the site fail to meet the definition of "deliverable" as set out in Annex 2 of the Framework and should be removed from the supply.

7.32 There is no evidence that the 98 dwellings included in the 5YHLS can be delivered, as there is no detailed permission granted for these units.

17/00348/MOUT & 22/00063/MARM – CRE5 Pedlerspool, Exhibition Road, Crediton

Current status

7.33 Planning permission has been granted on site, with an outline approved in April 2021 (ref. 17/00348/MOUT) and reserved matters (ref. 22/00063/MARM) approved in March 2023. The RM permits the delivery of 257 dwellings and 5 Gypsy and Traveller pitches.

7.34 The 5YHLS Appendix identifies delivery of 60 dwellings per year from 2024/25 to beyond the 5YHLS.

Summary

- 7.35 I do not dispute the deliverability of the permission. However, I do not consider that the 60 dwellings per year trajectory is realistic.
- 7.36 Appendix 1 of the 2021 HELAA Methodology (CD27) identifies the standard build out rate for residential developments of between 10 and 500 dwellings. This sets out that 25 dwellings is the maximum to be expected in the 1st year, and 50 dwellings is the maximum to be expected for all subsequent years.
- 7.37 Therefore, I have reduced the delivery rate of this site to 50 dwellings per year, which reduces the number of dwellings in the 5YHLS by 30 dwellings.
- 7.38 Additionally, I have reduced the supply by 5 units, as 5 Gypsy and Traveller pitches have been incorrectly included in the overall supply.
- 7.39 This results in a total reduction of 35 dwellings pursuant to this permission from the 5YHLS.

Consented windfalls (1 – 4 dwellings)

Current status

- 7.40 Appendix A(3) Windfall 1-4 dwellings to the LPA's 5YHLS identifies a total of 393 permitted units of which 145 have commenced. I do not dispute the 145 commenced units.
- 7.41 This leaves 248 permitted dwellings that are unimplemented.

Summary

- 7.42 I have not reviewed the individual sites that are noted above, so do not dispute the overall figure of 248 dwellings not started. However it is normal for not all such permissions to be implemented – in practice there is a lapse rate (for numerous reasons). Some consents are renewed (and therefore they do not come forward), whilst some lapse upon further consideration (often of viability matters).

7.43 Therefore, I have applied a 10% lapse rate to the figure of 248. This results in 25 of the consented but unimplemented dwellings lapsing (a reasonable assumption), and therefore a total of 223 dwellings contribute towards the 5YHLS.

7.44 This results in a total of 368 consented windfall dwellings contributing to the 5YHLS (whereas the Council rely on a figure of 393).

Consented windfalls (4+ dwellings)

15/01822/MFUL – Alexandra Lodge, 5 Old Road, Tiverton

Current status

7.45 An application for the erection of 45 extra care apartments & associated communal facilities and infrastructure following the demolition of a former stable block was permitted in April 2016.

7.46 A decision notice dated July 2019 confirms that condition 1 (commencement of development) has been discharged, and specifies that the surface water attenuation system had been constructed on site and largely completed.

7.47 The deliverability evidence contained in the Appendix of the 5YHLS dwellings does not provide any further evidence.

Summary

7.48 Google maps street imaging from December 2022 (see appendix 2) shows that the site remains a building site, which is a period almost 3.5 years following the commencement of development.

7.49 Google Earth corroborates this position, with images for the period of September 2019 – July 2022 showing the site as a stalled construction site. A site visit conducted on 11/08/2023 confirms that no further progress with redevelopment has taken place (see appendix 2).

7.50 Due to the length of time that has passed since confirmation of commencement was published, and the lack of progress on site it appears

unlikely that the development will be completed in line with the timeframe contained in the Appendix to the 5YHLS.

- 7.51 Therefore, I consider there is clear evidence that the build out will not occur within the timeframe set by the LPA. I consider this will be delivered outside the current 5 year period. In accordance with Framework definition of deliverable, the site should not be considered in the 5YHLS.

20/02128/FULL – Pleasant Streams, Uffculme, Cullompton

Current status

- 7.52 A full application for the change of use of land for the provision of 6 gypsy and traveller family pitches was approved in September 2021 (ref. 20/02128/FULL).

- 7.53 No residential dwellings have been approved as part of this permission.

Summary

- 7.54 Gypsy and traveller family pitches do not contribute to the 5YHLS. For this reason, 6 dwellings have been removed from the 5YHLS.

Windfall allowance

Current status

- 7.55 The 5YHLS contains a windfall allowance of 274 dwellings.

Summary

- 7.56 Paragraph 71 of the Framework sets out that:

“Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends.”

- 7.57 No compelling evidence has been provided to justify this windfall allowance. I have discussed those matters that point towards the inherent

overoptimism embedded within the Council's approach (at section 5 of this PoE). In particular the Council's methodology does not include any analysis of those factors that point towards a conclusion that historic rates are extremely unlikely to provide a reliable guide to future performance.

7.58 Therefore, the requirement to provide compelling evidence about a realistic source of supply as set out in the Framework has not been met, so the inclusion of a windfall allowance in the 5YHLS cannot be justified. The methodology used by the council is flawed, and therefore, 274 dwellings have been removed from the 5YHLS.

8. Deliverability over the Residual DP Period

- 8.1 In addition to my conclusion about the 5YHLS position it is important to consider where the Council are in relation to the deliverability of the DP and in particular that part of the DP that relates to Tiverton.
- 8.2 Tiverton is the main settlement within the plan area. It is, in my opinion, the most sustainable settlement in the plan area with the largest population, the largest base for the provision of goods and services, and the only settlement served by a rail station (Tiverton Parkway). Indeed, the primary reason that Cullompton was identified as the primary location for development in the local plan rather than Tiverton, was due to the perception that there were landscape constraints (see Local Plan Inspector's report, para 26). It is agreed that no such issues arise in respect of this proposal.
- 8.3 Unfortunately unrealistic expectations regarding the deliverability of the allocations not only affect the Council's 5YHLS position, but also the deliverability of key elements of the DP at both Cullompton and Tiverton.
- 8.4 At Cullompton there are significant infrastructure constraints that embargo delivery from the two main sites (North West Cullompton and East Cullompton (Culm Garden Village). Neither site can proceed without delivery of the town centre relief road, and there is no certainty of that (see previous section of this PoE and CD 66, page 126). Additionally East Cullompton is fettered by the need for capacity improvements to the existing motorway junction (that are neither agreed, nor programmed). Bearing these (and other constrained in mind) I consider that there is no prospect of delivery from East Cullompton by 2027, nor achievement of the Council's proposed trajectory from that site over the period 2028-2033 (which assumes delivery rates that are wildly optimistic).
- 8.5 This places a heavy emphasis on delivery from Tiverton if the plan strategy is to be delivered. At Tiverton those matters fettering deliverability are summarised below.

- 8.6 There has been little/no progress with Allocations TIV9, TIV10 and TIV16 (covered in the unconsented allocations section of this PoE).
- 8.7 The lack of progress with these sites puts more pressure/focus on the need to deliver the TEUE. Whilst part of the TEUE appears as a consented allocation that classification is misleading. Firstly it is only consented in part i.e. primarily the Chettiscombe Trust Land (14/00881/MOUT) and of that consented area only a small part has been subject to a disposal to a housebuilder and a reserved matters consent (21/00454/MARM). This element of the allocation is on site and delivery from this element is not disputed (see map provided as appendix 1).
- 8.8 But I dispute the additional 98 dwellings that have been included by the Council in the 5YHLS from the outline area (not subject to a grant of RM). I also dispute the projected delivery rate that the Council include in their trajectory (50 dwellings per annum from 2027-2033). The outline permission for 700 units has a residual amount of 536 dwellings that do not benefit from an RM permission (of which 98 are counted by the Council as 'deliverable'). To my knowledge there is no evidence that demonstrates any progress with the monitoring of the balance of this site in the foreseeable future. On the contrary the Council appear to be aware of deliverability issues, but are not entirely cognisant of the implications of those issues. The OR (CD1, paragraph 4.9, page 43) states that:

"there is a recognised access issue on the eastern side of the TEUE, due to land ownership and phasing, which will impact the development in the medium to long term. It is generally agreed that providing an eastern access as early on in the life of the EUE would be expedient to ensure the timely delivery of the EUE as envisaged within the Local Plan."

- 8.9 This statement fails to recognise the whole picture. It is the progress, or lack thereof, with the Chettiscombe Trust land (the residual 536 units) that currently controls the provision (or not) of a road access to 'Area B' of the TEUE (a further 550 units). As matters stand there is no incentive for the

Chettiscombe Trust to make provision for a road to serve Area B and this may well affect their decisions about land release for the balance of the consented site.

8.10 Secondly, the Council's current position recognises that 138 units (of the residual 536 units) will not be delivered by 2033 (the end date of the current DP – see Appendix A (2) of CD25) – therefore the Council recognise that planned delivery failure will occur. Whilst I concur with that conclusion I think the Council are too optimistic in relation to overcoming the significant obstacles to delivery that exist and that, by 2033 the plan failure figure from this element of the TEUE is likely to be in the region of 250 units (rather than the 138 deficit recognised by the Council) due to the delayed land release process and the need to resolve access provision issues prior to a road serving Area B.

8.11 Allied to the above is the inclusion by the Council (see Appendix A(1) of CD25) of 550 units from Area B between 2027 and 2032. I note that this latest projection by the Council differs from that set out at page 110 of the Area B SPD (CD13) which sets out a more optimistic delivery schedule (with completions occurring a year earlier i.e. 2026/2027). Therefore, in their latest assessment the Council acknowledge that there is a problem here. However, in my opinion the latest projection is not possible, at least without the grant of permission of the appeal proposals. As matters stand:

- Area B is not an assembled site (currently being in multiple ownership), it is potentially ransomed by the consented area to the east, and there is no developer interest in the site.
- The assumptions made about 3 developers and 150 units per annum are wholly without foundation and grossly unrealistic (it appears that all the Council have done is 'bumped back' the delivery schedule set out in the emerging SPD – and that projection is unevidenced and unrealistic).

- In my opinion none of the 550 units are likely to come forward unless the appeal proposals are granted (thus making a deficit of circa 800 units against the planned provision).

8.12 This would be a significant plan failure. The appeal proposals provide a method of unlocking access to the site, and that gives the Council a fighting chance to use that certainty to catalyse the (currently disparate) land ownership interests so that a developer could make applications and bring the site forward.

8.13 Even if that were to happen I very much doubt that the full 550 units would be delivered by 2033. My estimate would be circa 400 (and that may well be too optimistic).

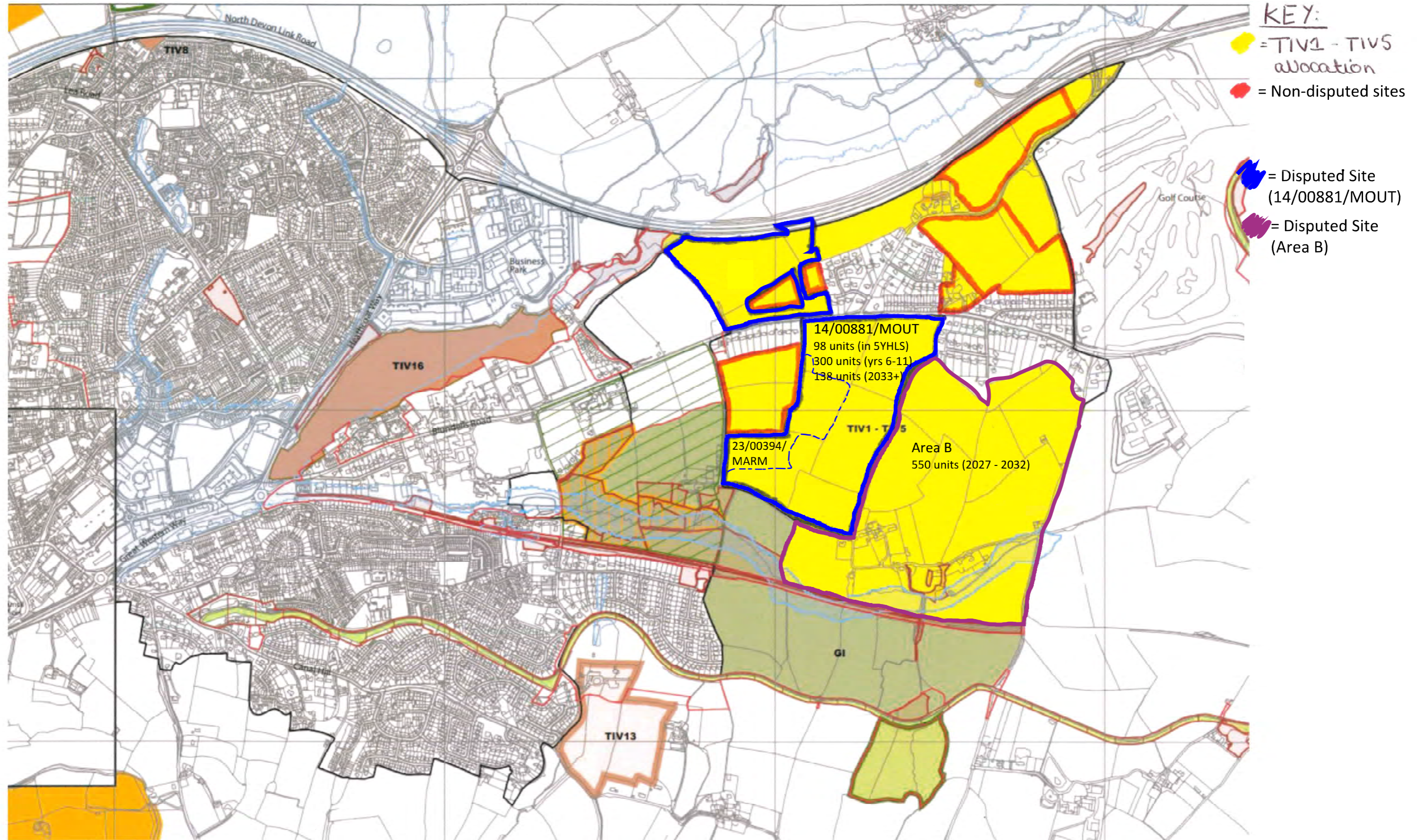
8.14 The 150 units that would be deliverable via the appeal proposals need to be seen in this context. I consider this matter more fully in my Planning PoE.

9. Conclusions

- 9.1 I assess that deliverable supply as 2,048 units (for the reasons set out in this PoE). Applying the corrected 5 year housing requirement figure, this equates to 4.09 years (Table 3).
- 9.2 There are errors embedded within the Council's data recording practice that has led to the inflation of completions to date (the recording of G&T pitches as part of HLS data).
- 9.3 There is also a large dose of unrealistic optimism within the Council's trajectory, both in relation to a windfall rate projection but also in relation to site specific trajectory proposals from key sites.
- 9.4 In my opinion the Council's approach is not consistent with relevant Government policy, nor is it realistic, nor credible.
- 9.5 I have identified very significant concerns in relation to plan failure at Tiverton. A very significant problem, which the Council only partially recognise (but they do recognise it). In my opinion the appeal proposals are necessary for the planned delivery from the TEUE to occur.
- 9.6 I have taken a realistic approach that is consistent with my experience in relation to these matters, reflective of the available evidence and consistent with the relevant tests set out in Government policy.

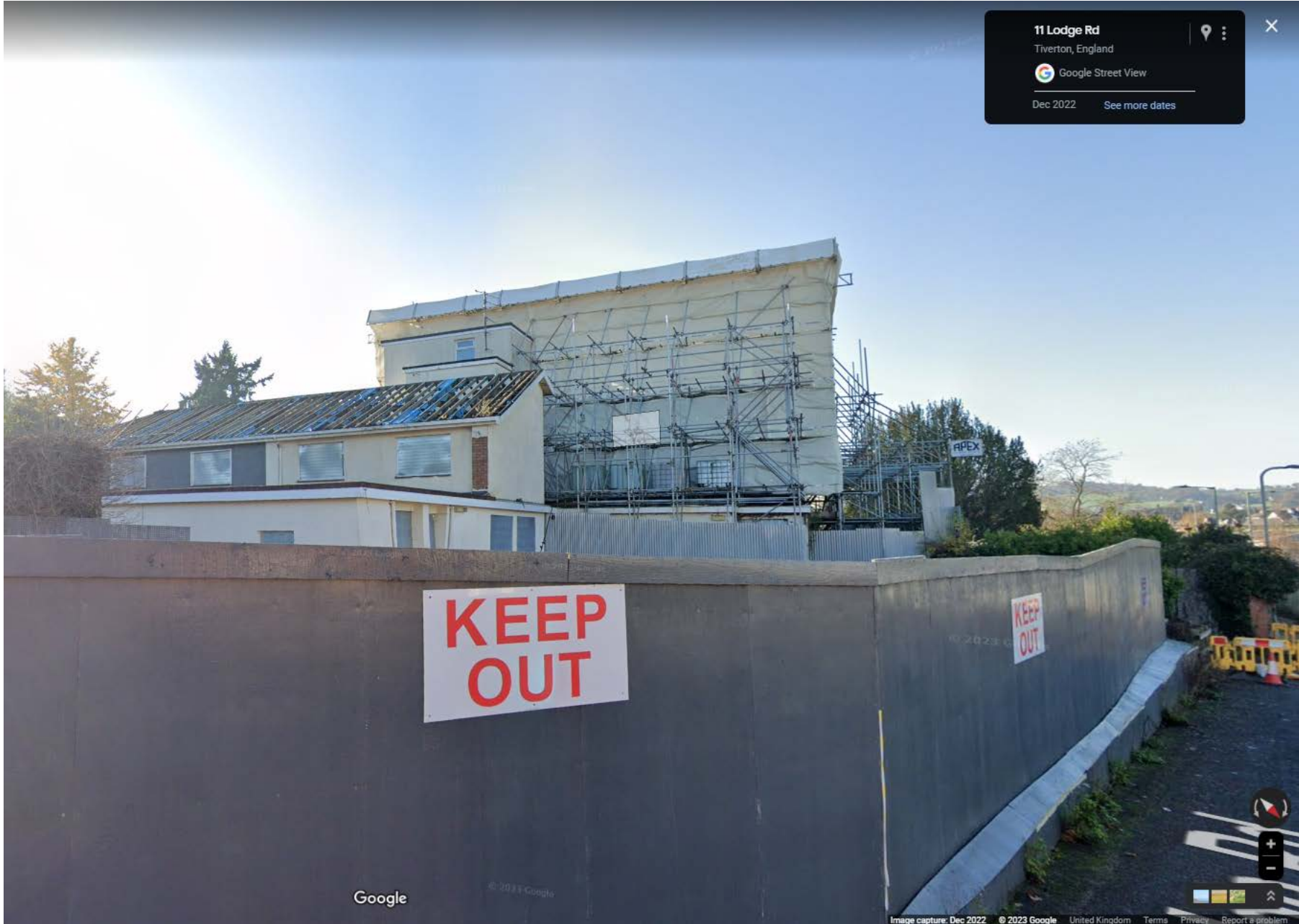
Appendix 1

Tiverton Eastern Urban Extension – Mid Devon Local Plan Review 2013 – 2033 Adopted Policies Map Extract



Appendix 2 – Alexandra Lodge, Tiverton - Images

December 2022 – Google Street View (View #1)



11th August 2023 – Site Visit (View #1)



December 2022 – Google Street View (View #2)



11th August 2023 – Site Visit (View #2)

