



---

# **Informal Discussion by Members of Area East Committee**

**Wednesday 18th May 2022**

**9.00 am**

**A virtual consultative meeting via  
Zoom meeting software**

---

The following members are requested to attend this virtual consultation meeting:

Robin Bastable  
Hayward Burt  
Tony Capozzoli  
Nick Colbert  
Sarah Dyke

Henry Hobhouse  
Charlie Hull  
Mike Lewis  
Kevin Messenger  
Paul Rowsell

Lucy Trimnell  
William Wallace  
Colin Winder

Any members of the public wishing to address the virtual consultative meeting during either Public Question Time or regarding a Planning Application, need to email [democracy@southsomerset.gov.uk](mailto:democracy@southsomerset.gov.uk) by 9.00am on 17<sup>th</sup> May 2022.

The meeting will be viewable online at:

[https://www.youtube.com/channel/UCSDst3IHGj9WoGnwJGF\\_soA](https://www.youtube.com/channel/UCSDst3IHGj9WoGnwJGF_soA)

For further information on the items to be discussed, please contact:  
[democracy@southsomerset.gov.uk](mailto:democracy@southsomerset.gov.uk)

This Agenda was issued on Monday 9<sup>th</sup> May 2022.

**Jane Portman**, *Chief Executive Officer*

**This information is also available on our website  
[www.southsomerset.gov.uk](http://www.southsomerset.gov.uk) and via the mod.gov app**

## Information for the Public

In light of the coronavirus pandemic (COVID-19), Area East Committee will meet virtually via video-conferencing to consider reports. As of 7 May 2021 some interim arrangements are in place for committee meetings.

At the meeting of Full Council on 15 April 2021 it was agreed to make the following changes to the Council's Constitution:

- a) To continue to enable members to hold remote, virtual meetings using available technology;
- b) To amend Part 3 (Responsibility for Functions) of the Council's Constitution to allow those remote meetings to function as consultative bodies and delegate decisions, including Executive and Quasi-Judicial decisions, that would have been taken by those meetings if the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 had continued in force to the Chief Executive (or the relevant Director in the Chief Executive's absence) in consultation with those meetings and those members to whom the decision would otherwise have been delegated under Part 3 of the Constitution;
- c) The delegated authority given under (b) will expire on 31 July 2021 unless continued by a future decision of this Council;

For full details and to view the report please see -

<https://modgov.southsomerset.gov.uk/ieListDocuments.aspx?CId=137&MId=2981&Ver=4>

Further to the above, at the meeting of Full Council on 8 July 2021, it was agreed to extend the arrangements for a further 6 months to 8 January 2022. For full details and to view the report please see -

<https://modgov.southsomerset.gov.uk/ieListDocuments.aspx?CId=137&MId=3033&Ver=4>

Further to the above, at the meeting of Full Council on 16 December 2021, it was agreed to extend the arrangements for a further 6 months to 8 July 2022 for all meetings apart from Full Council - Full Council will be in person. For full details and to view the report please see -

<https://modgov.southsomerset.gov.uk/ieListDocuments.aspx?CId=137&MId=2991&Ver=4>

## Area East Committee

Meetings of the Area East Committee are usually held monthly, at 9.00am, on the second Wednesday of the month (unless advised otherwise). However during the coronavirus pandemic these meetings will be held remotely via Zoom.

Agendas and minutes of meetings are published on the council's website

[www.southsomerset.gov.uk/councillors-and-democracy/meetings-and-decisions](http://www.southsomerset.gov.uk/councillors-and-democracy/meetings-and-decisions)

Agendas and minutes can also be viewed via the mod.gov app (free) available for iPads and Android devices. Search for 'mod.gov' in the app store for your device, install, and select 'South Somerset' from the list of publishers, then select the committees of interest. A wi-fi signal will be required for a very short time to download an agenda but once downloaded, documents will be viewable offline.

## **Public participation at meetings (held via Zoom)**

### **Public question time**

We recognise that these are challenging times but we still value the public's contribution to our virtual consultative meetings. If you would like to participate and contribute in the meeting, please join on-line through Zoom at: <https://zoom.us/join> You will need an internet connection to do this.

Please email [democracy@southsomerset.gov.uk](mailto:democracy@southsomerset.gov.uk) for the details to join the meeting.

The period allowed for participation in Public Question Time shall not exceed 15 minutes except with the consent of the Chairman and members of the Committee. Each individual speaker shall be restricted to a total of three minutes.

If you would like to address the virtual consultative meeting during either Public Question Time or regarding a Planning Application, please email [democracy@southsomerset.gov.uk](mailto:democracy@southsomerset.gov.uk) by 9.00am on Tuesday 17<sup>th</sup> May 2022. When you have registered, the Chairman will invite you to speak at the appropriate time during the virtual meeting.

### **Virtual meeting etiquette:**

- Consider joining the meeting early to ensure your technology is working correctly.
- Please note that we will mute all public attendees to minimise background noise. If you have registered to speak during the virtual meeting, the Chairman will un-mute your microphone at the appropriate time.
- Each individual speaker shall be restricted to a total of three minutes.
- When speaking, keep your points clear and concise.
- Please speak clearly – the Councillors are interested in your comments.

### **Planning applications**

***It is important that you register your request to speak at the virtual meeting by emailing [democracy@southsomerset.gov.uk](mailto:democracy@southsomerset.gov.uk) by 9.00am Tuesday 17<sup>th</sup> May 2022. When you have registered, the Chairman will invite you to speak at the appropriate time during the virtual meeting.***

Consideration of planning applications at this meeting will commence no earlier than the time stated at the front of the agenda and on the planning applications schedule. The public and representatives of parish/town councils will be invited to speak on the individual planning applications at the time they are considered.

Comments should be confined to additional information or issues, which have not been fully covered in the officer's report. Members of the public are asked to submit any additional documents to the planning officer at least 72 hours in advance and not to present them to the Committee on the day of the meeting. This will give the planning officer the opportunity to respond appropriately. Information from the public should not be tabled at the meeting. It should also be noted that, in the interests of fairness, the use of presentational aids (e.g. PowerPoint) by the applicant/agent or those making representations will not be permitted. However, the applicant/agent or those making representations are able to ask the planning officer to include photographs/images within the officer's presentation subject to them being received by the officer at least 72 hours prior to the meeting. No more than 5 photographs/images either supporting or against the application to be submitted. The planning officer will also need to be satisfied that the photographs are appropriate in terms of planning grounds.

At the committee chairman's discretion, members of the public are permitted to speak for up to three minutes each and where there are a number of persons wishing to speak they should be encouraged to choose one spokesperson to speak either for the applicant or on behalf of any supporters or objectors to the application. The total period allowed for such participation on each application shall not normally exceed 15 minutes.

The order of speaking on planning items will be:

- Town or Parish Council Spokesperson
- Objectors
- Supporters
- Applicant and/or Agent
- District Council Ward Member

In exceptional circumstances, the Chairman of the Committee shall have discretion to vary the procedure set out to ensure fairness to all sides.

## **Recording and photography at council meetings**

Recording of council meetings is permitted, however anyone wishing to do so should let the Chairperson of the meeting know prior to the start of the meeting. The recording should be overt and clearly visible to anyone at the meeting, but non-disruptive. If someone is recording the meeting, the Chairman will make an announcement at the beginning of the meeting.

Any member of the public has the right not to be recorded. If anyone making public representation does not wish to be recorded they must let the Chairperson know.

The full 'Policy on Audio/Visual Recording and Photography at Council Meetings' can be viewed online at:

<http://modgov.southsomerset.gov.uk/documents/s3327/Policy%20on%20the%20recording%20of%20council%20meetings.pdf>

Ordnance Survey mapping/map data included within this publication is provided by South Somerset District Council under licence from the Ordnance Survey in order to fulfil its public function to undertake its statutory functions on behalf of the district. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey mapping/map data for their own use. South Somerset District Council - LA100019471 - 2022

# Informal Discussion by Members of Area East Committee

**Wednesday 18 May 2022**

## Agenda

### *Preliminary Items*

- 1. Apologies for Absence**
- 2. Declarations of Interest**

In accordance with the Council's current Code of Conduct (as amended 26 February 2015), which includes all the provisions relating to Disclosable Pecuniary Interests (DPI), personal and prejudicial interests, Members are asked to declare any DPI and also any personal interests (and whether or not such personal interests are also "prejudicial") in relation to any matter on the Agenda for this meeting.

Members are reminded that they need to declare the fact that they are also a member of a County, Town or Parish Council as a Personal Interest. Where you are also a member of Somerset County Council and/or a Town or Parish Council within South Somerset you must declare a prejudicial interest in any business on the agenda where there is a financial benefit or gain or advantage to Somerset County Council and/or a Town or Parish Council which would be at the cost or to the financial disadvantage of South Somerset District Council.

### **Planning Applications Referred to the Regulation Committee**

The following members of this Committee are also members of the Council's Regulation Committee:

Councillors Sarah Dyke, Paul Rowsell and William Wallace.

Where planning applications are referred by this Committee to the Regulation Committee for determination, Members of the Regulation Committee can participate and vote on these items at the Area Committee and at Regulation Committee. In these cases the Council's decision-making process is not complete until the application is determined by the Regulation Committee. Members of the Regulation Committee retain an open mind and will not finalise their position until the Regulation Committee. They will also consider the matter at Regulation Committee as Members of that Committee and not as representatives of the Area Committee.

- 3. Date of next Meeting**

Members are asked to note that the next scheduled meeting of the committee will be held virtually using Zoom virtual software on Wednesday 8<sup>th</sup> June 2022 at 9.00am.

- 4. Public Question Time**
- 5. Schedule of Planning Applications (Pages 7 - 8)**
- 6. Planning Application 21/01051/FUL - The Red Lion Inn , Main Street, Babcary, Somerton, TA11 7ED (Pages 9 - 35)**

7. **Planning Application 21/01052/LBC - The Red Lion Inn , Main Street, Babcary, Somerton, TA11 7ED (Pages 36 - 45)**
8. **Planning Application 21/01053/OUT - The Red Lion Inn , Main Street, Babcary, Somerton, TA11 7ED (Pages 46 - 75)**
9. **Planning Application 21/01054/DPO - The Red Lion Inn , Main Street, Babcary, Somerton, TA11 7ED (Pages 76 - 84)**

**Please note that members of the Area Committee will make a recommendation on the above reports. The decision will be taken by the Chief Executive.**

## Schedule of Planning Applications to be determined by Committee

Director: Kirsty Larkins, Service Delivery  
 Lead Officer: John Hammond, Lead Specialist Built Environment  
 Contact Details: John.hammond@southsomerset.gov.uk

### Purpose of the Report

The schedule of planning applications sets out the applications to be determined by Area East Committee at this meeting.

### Recommendations

Members are asked to note the schedule of planning applications.

**Planning Applications will be considered no earlier than 9.00am.**

The meeting will be viewable online by selecting the committee at:

[https://www.youtube.com/channel/UCSDst3IHGj9WoGnwJGF\\_soA](https://www.youtube.com/channel/UCSDst3IHGj9WoGnwJGF_soA)

Any member of the public wishing to address the virtual meeting regarding a Planning Application need to email [democracy@southsomerset.gov.uk](mailto:democracy@southsomerset.gov.uk) by 9.00am on Tuesday 17<sup>th</sup> May 2022.

SCHEDULE					
Agenda Number	Ward	Application	Brief Summary of Proposal	Site Address	Applicant
6	CARY	21/01051/FUL	Changes of use of the existing outbuildings	The Red Lion Inn , Main Street, Babcary, Somerton, TA11 7ED	Mr & Mrs C Garrard
7	CARY	21/01052/LBC	Partial re-building and partial re-alignment of front boundary wall	The Red Lion Inn , Main Street, Babcary, Somerton, TA11 7ED	Mr & Mrs C Garrard
8	CARY	21/01053/OUT	erection of 2no. detached new dwellings within the Red Lion Inn car park and adaptation of existing vehicular access	The Red Lion Inn , Main Street, Babcary, Somerton, TA11 7ED	Mr & Mrs C Garrard
9	CARY	21/01054/DPO	to vary the Section 106 Agreement dated 7th October 2011 between SSDC and The Red Lion Inn (Babcary) Ltd in association with planning permission 10/05151/FUL	The Red Lion Inn , Main Street, Babcary, Somerton, TA11 7ED	Mr & Mrs C Garrard



Further information about planning applications is shown on the following page and at the beginning of the main agenda document.

The Committee will consider the applications set out in the schedule. The Planning Officer will give further information at the meeting and, where appropriate, advise members of letters received as a result of consultations since the agenda has been prepared.

---



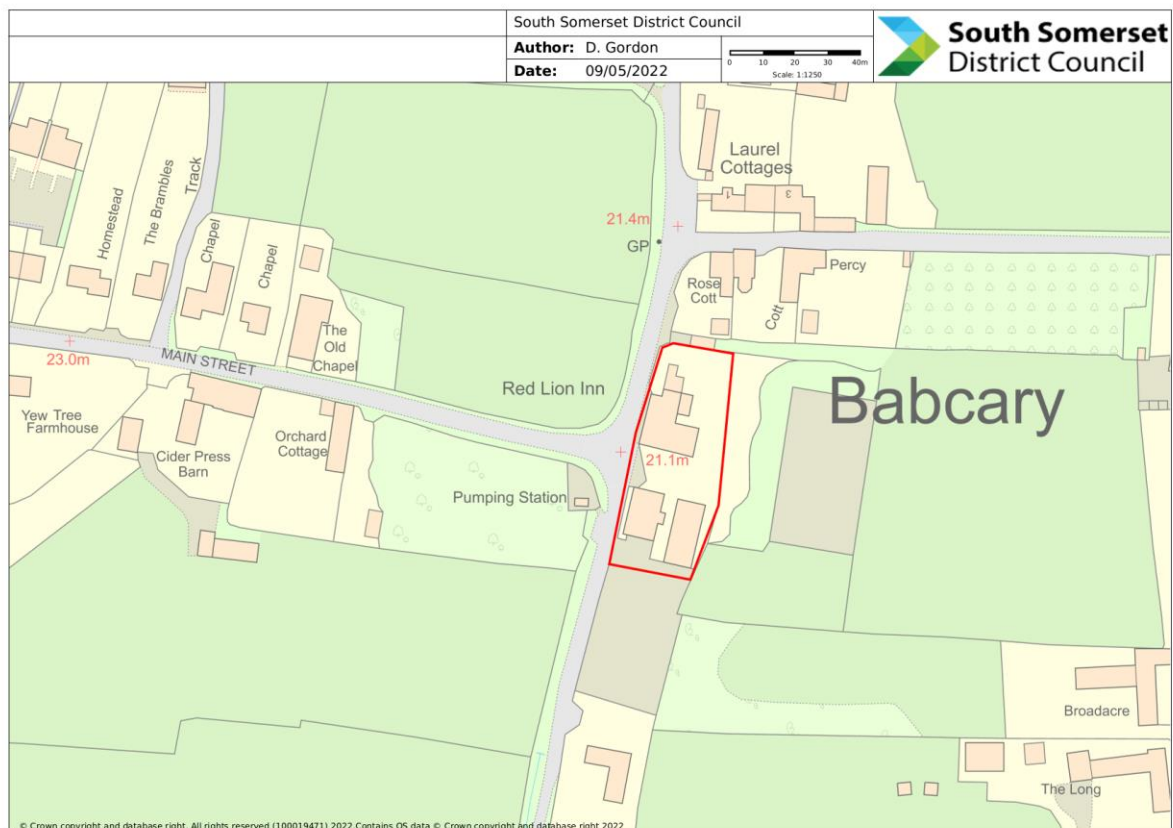
# Agenda Item 6

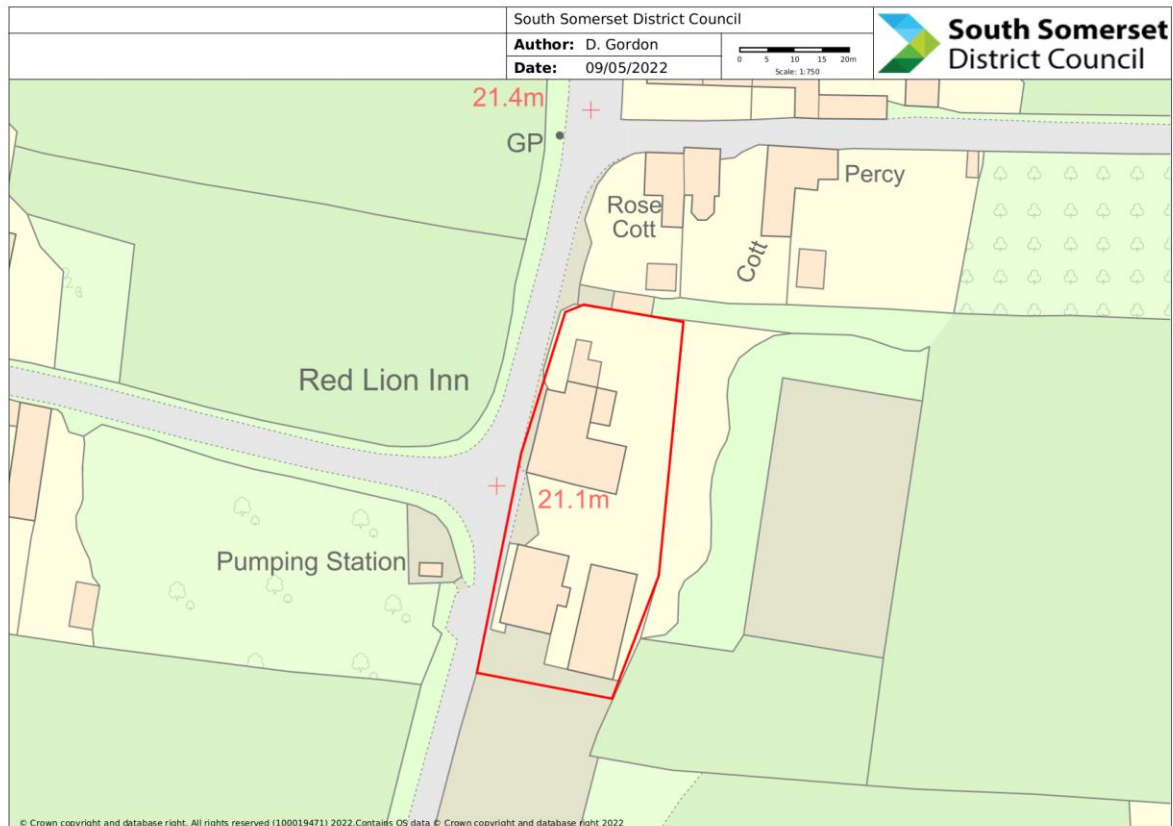
## Officer Report On Planning Application: 21/01051/FUL

<b>Proposal :</b>	Changes of use of the existing outbuildings from 6 short term letting units and garden/function room/store currently used in connection with the adjoining public house into a single independent, self-contained dwelling unit and ancillary annex accommodation to that dwelling unit, and provision of new vehicular access and relocation of public house car park to the rear of the public house.
<b>Site Address:</b>	The Red Lion Inn , Main Street, Babcary, Somerton, TA11 7ED
<b>Parish:</b>	Babcary
<b>CARY Ward (SSDC Member)</b>	Cllr K Messenger Cllr H Hobhouse
<b>Recommending Case Officer:</b>	David Kenyon (Principal Specialist) Tel: 01935 462091 Email: david.kenyon@southsomerset.gov.uk
<b>Target date :</b>	13th July 2021
<b>Applicant :</b>	Mr & Mrs C Garrard
<b>Agent: (no agent if blank)</b>	Mr Jonathan Lovelace Della Valle Architects Lake View Charlton Estate Shepton Mallet BA4 5QE
<b>Application Type :</b>	Minor Dwellings 1-9 site less than 1ha

### REASON FOR REFERRAL

This application is referred to the Ward Members as the officer recommendation is contrary to the views received from third parties in support of the proposal and does not fully reflect all the reasons set out by the Parish Council and those third parties who are raising objections to the application.





## SITE DESCRIPTION AND PROPOSAL

This application seeks full planning permission for the changes of use of the existing outbuildings which lie in close proximity to the Red Lion public house from 6 short term letting units and garden/function room/store currently used in connection with the adjoining public house into a single independent, self-contained dwelling unit and ancillary annex accommodation to that dwelling unit, and provision of new vehicular access and relocation of public house car park to the rear of the public house.

The Red Lion is designated as a Grade II Listed Building and lies at the eastern end of Bab Cary, opposite the junction of Main Street and North Street, which are the two main thoroughfares through the village. The western end of Main Street merges onto Church Street where the Church of the Holy Cross is located, a Grade II\* Listed Building.

Immediately to the east of the main public house building is the open 'beer garden' with a small timber shed in situ.

Immediately to the south, and in close proximity to The Red Lion Inn, are located two buildings, comprising a recently modernised building with letting rooms associated with the public house (known as 'The Barn') and another recently modernised building used to provide functions at the public house (known as 'The Den'). 'The Barn' is a two storey building with a pitched roof containing 6 bedrooms used as guest accommodation in association with the public house.. External finishing materials comprise a mix of natural stone and timber cladding with clay roof tiles. 'The Den' is a single storey building with a high, steeply pitched roof, with external finishing materials of timber clad walls over a low stone wall and clay roof tiles. A marquee has been pitched alongside 'The Den'.

Further to the south of these outbuildings lies the main public house car park with a compacted hardened surface, accessed off North Street, and to the south of the car park lies the dwelling known as 'Bab Cary House' which is resided in by the applicants.

There is a public right of way (public footpath L 2/21) recorded on the Definitive Map that runs from North Street immediately to the south of the two outbuildings to the eastern boundary of the site, then runs in a southerly direction along part of the eastern boundary before crossing the boundary and heading in an easterly direction.

To the north, the public house borders two residential garages while there is open land beyond the eastern boundary.

Immediately to the west of the car park on the opposite side of North Street lies open agricultural land. Outline planning permission (with all matters reserved except access) has been granted on 8th April 2020 for the erection of three dwellings on this land (application ref. 19/03381/OUT). At the time of compiling this report, a reserved matters application has been submitted pursuant to this grant of outline permission to include details of appearance, landscaping, layout and scale for the erection of three dwellings, but has yet to be determined (application ref. 20/03299/REM).

On 14th July 2020, Babcary Parish Council applied to the District Council to have the Red Lion Inn listed as an Asset of Community Value (ACV) under section 87 of the Localism Act 2011. Having assessed the nomination, the Council added the building and its associated land to its list on 3rd September 2020. An appeal against this listing by the applicants was subsequently dismissed on 1st July 2021, the Tribunal Judge concluding that The Red Lion Inn, including the public house, the Barn, the Den, the marquee area, the garden including the outside pizza area and the whole car park, was correctly listed as an ACV.

The application proposal comprises two specific elements, namely the conversion of 'The Barn' and 'The Den' to become a self-contained and separate dwelling with associated curtilage and parking/turning provision, and the relocation of the public house car park to the north with a new vehicular entrance.

The detached accommodation unit ('The Barn'), currently containing six letting rooms, would be converted into a 3-bedroom dwelling, and the existing detached function room ('The Den') would be converted into a garden room associated with that newly converted dwelling. The scale of the buildings would remain as existing, with no extensions to the footprint or volume proposed. Visual alterations to the surfaces of the buildings would be limited to the addition of a conservation rooflight to the rear east elevation roof pitch of 'The Barn' in order to provide additional natural light to the entrance hall. The marquee would be removed and the land used as a private garden for this proposed dwelling.

In addition, the public house car park would be repositioned to the north of the site, with a new vehicular access proposed off the Main Street immediately to the north of the public house building. The car park would be located in part of the existing beer garden and would provide for 12 car parking spaces and turning space. A further 4 parking spaces associated with the public house business would be created to the south of the main building, between that building and 'The Barn'. The access to the existing car park would be retained (but with visibility improvements carried out) and would be used to serve further parking spaces and turning area, comprising 4 spaces in association with the public house and 3 spaces associated with the proposed dwelling conversion. Also, a further 8 parking spaces would be provided in this area and served off the existing improved access; those 8 spaces would be associated with a separate planning application proposal for the erection of two new dwellings on the existing car park area (subject to a separate outline planning application ref. 21/01053/OUT).

Overall therefore, in respect of this particular application proposal, the public house would be provided with 20 parking spaces and the converted dwelling would be allocated three parking spaces.

The existing public footpath would be diverted and would run along the western and southern boundaries of the existing car park.

The site is not within a designated Conservation Area and is not subject to any specific protective designations, such as SSSI, SAC, Wildlife Site, Green Belt, AONB, Flood Zone, Special Landscape Area, nor are there any trees on the site itself which are subject to TPO designations.

Included within the application submission are the following documents:

Design and Access Statement (March 2021) prepared by Della Valle Architects  
A Heritage Statement (26 November 2020) prepared by C1 Context One Heritage and Archaeology  
Bat Roost Assessment (January 2021) prepared by Country Contracts  
Arboricultural Impact Assessment, Arboricultural Method Statement, Tree Protection Plan Revision A (August 2021) prepared by Hillside Trees Ltd, Arboricultural Consultancy F1574/ Tree Planting Schedule/ Rev.A (04.10.2021)  
Expert Witness Report (3 November 2020) prepared by Fleurets Ltd  
Phosphate Calculations  
Flood Risk Assessment (2 November 2021) prepared by RMA Environmental

The following drawings have been submitted:

Drawing no. F1574/LocPlan1: Location Plan  
Drawing no. F1574/001/A: Existing Site Survey  
Drawing no. F1574/002: Existing Plans and Elevations - The Barn  
Drawing no. F1574/003: Existing Plans and Elevations - The Den  
Drawing no. F1574/100/E: Proposed Site Plan and Street Elevation  
Drawing no. F1574/101A: Proposed Plans and Elevations - The Barn  
Drawing no. F1574/102B: Proposed Plan and Elevations - The Den  
Drawing no. F1574/013: Existing and Proposed Street Scene - New Entrance

Three other applications have been submitted in respect of the Red Lion Inn and its curtilage. Whilst each are to be considered on their own merits, they are nevertheless 'linked' in various ways. These other three concurrent applications are as follows, and are subject to separate officer reports and recommendations.

21/01052/LBC. Partial re-building and partial re-alignment of front boundary wall adjoined to the north end of the west elevation of the Red Lion Inn.

21/01053/OUT. Outline application for the erection of 2no. detached new dwellings within the Red Lion Inn car park and adaptation of existing vehicular access, with some matters reserved except for access, layout and scale.

21/01054/DPO. Application to vary the Section 106 Agreement dated 7th October 2011 between South Somerset District Council and The Red Lion Inn (Babcary) Ltd in association with planning permission 10/05151/FUL to remove the requirements for (i) the outbuildings to be used in connection with the adjoining public house, and (ii) for purposes solely limited to short term letting rooms and as a garden/function room/store.

## **HISTORY**

02/02225/FUL & 02/02228/LBC. The demolition of toilet blocks and the erection of an extension to form dining room and new toilet facilities  
Planning permission and Listed Building consent granted 29.10.2002.

09/01417/LBC: Listed building consent granted (21/05/09) for the re-thatching of front and side roof with combed wheat and re-ridge.

Listed Building consent granted 21.05.2009.

10/05151/FUL. Demolition and re-building of existing outbuilding to provide six en-suite letting rooms, construction of garden function room/store, and erection of staff/manager's dwelling. Planning permission granted 11.10.2011 subject to several conditions. Conditions 03, 04 and 05 state:

*03. The occupation of the dwelling hereby approved at the southern end of the site shall be restricted to those employed by the Red Lion public house, as part of the day to day running of the public house, and their dependents.*

Reason: To prevent unsustainable, permanent occupation that would be contrary to policy ST3 of the South Somerset Local Plan and the countryside policies as set out in PPS7.

*04. The occupation of the letting units hereby permitted shall be restricted to short term lets to bona fide guests of the public house and this accommodation shall not be occupied as a person's sole or main residence. The site operator or owner shall maintain an up to date register of the names of all occupiers of this accommodation, their main home addresses and the duration of their stay and shall make this information available at all reasonable times to the Local Planning Authority.*

Reason: To prevent unsustainable, permanent occupation that would be contrary to policy ST3 of the South Somerset Local Plan and the countryside policies as set out in PPS7.

*05. Upon first occupation of the managers dwelling hereby permitted the permanent residential use of the staff quarters on the first floor of the public shall cease and thereafter this accommodation shall be restricted to holiday purposes only. This accommodation shall not be occupied as a person's sole or main residence. The site operator or owner shall maintain an up to date register of the names of all occupiers of this accommodation, their main home addresses and the duration of their stay and shall make this information available at all reasonable times to the Local Planning Authority.*

Reason: To prevent unsustainable, permanent occupation that would be contrary to policy ST3 of the South Somerset Local Plan and the countryside policies as set out in PPS7.

To be read in conjunction with this permission is a Section 106 Agreement dated 7th October 2011. The Agreement requires, inter alia:

- the six letting rooms to be available for and not to be occupied at any time other than for short term lettings (defined as occupation by bona fide guests of the public house for individual periods not exceeding four weeks in total in any period of twelve weeks),
- the manager's dwelling shall not be occupied at any time other than by a person or persons solely or mainly employed to provide services in connection with the operational running of the business at the Red Lion Inn and his or her resident dependents,
- not to use any of the public house for residential use except this shall not prohibit the staff flat (i.e. the living accommodation located on the first floor of the public house) being used for short term letting,
- all buildings forming part of the property (defined as the public house with its staff flat, the letting rooms, the manager's dwelling and the garden function room/store) shall be used in conjunction with the business run from the property and for no other purpose whatsoever so as to prevent the sub-division of the property as a single planning unit run from the site,
- neither the staff flat, the letting rooms nor the manager's dwelling to be sold, let, occupied under licence or any other disposition made such that it would result in the staff flat, the letting rooms or the manager's dwelling being owned, occupied or used separately from the public house (unless otherwise agreed in writing with the Council), and
- an accurate register of all guests of the public house occupying the letting rooms and the staff flat for short term lettings shall be maintained and be made available for inspection by the Council at all reasonable times.

10/05155/LBC. Demolition and re-building of existing outbuilding to provide six en-suite letting

rooms, construction of garden function room/store, change of use of first floor staff flat to family letting suite and erection of staff/manager's dwelling.  
Listed Building consent granted 27.07.2011.

14/01868/FUL. Erection of a dwelling.

Refused 27.06.2014.

Subsequent appeal dismissed 7th November 2014. In essence this proposal sought the erection of a dwelling to the south of the public house car park as per the planning permission 10/05051/FUL but without any tie restricting occupation to the public house business. In dismissing the appeal, the Inspector stated:

*...given my conclusions as to the poor sustainability of the proposed development, I conclude that the proposed development would not meet the criteria of Policy SS2 of the emerging Local Plan and would not be sustainable in the wider terms set out by the Framework.*

In concluding as I have above, a fundamental and critical distinction must be drawn between the previous permission, tied as it was to the continued viability of the public house, and the current appeal which has no such explicit link. I acknowledge the appellant's future intention to live in the proposed dwelling. Nevertheless, without the tie provided by the condition as imposed on the previous permission and the subsequent s.106 agreement, the link that justified the previous proposal in terms of its community benefit cannot be guaranteed. A range of circumstances - even if unforeseen at present - could lead to the proposed development being severed away from the public house. The outcome would be a dwelling that would be contrary to existing and emerging planning policy and to the principles of sustainable development as set out in the Framework.

15/01007/FUL. Erection of a dwelling and village shop.

Planning permission granted 19.01.2016.

To be read in conjunction with this permission is a Section 106 Agreement dated 13th January 2016. The Agreement requires, inter alia:

- not to occupy the dwelling until the shop has been completed and opened for business,
- the shop to be kept open for business, seven days a week for a minimum of two hours per day for so long as it is viable to do so,
- on the occasion of the business becoming unviable, details of accounts for the preceding twelve months to be provided to the Council, and
- if agreed by the Council the owner will be released from the obligation under this agreement.

NOTE: On 19th February 2018 the Council confirmed in writing that, following receipt of the profit and loss accounts and additional information requested by virtue of the Section 106 Agreement, it was satisfied that the shop was unviable. Therefore, as per the relevant paragraph of that Agreement, the owner was formally released from the obligations under that agreement.

16/00780/S73. S73 application to vary condition 2 of approval 15/01007/FUL, to allow the substitution of plans. Amendments to the design of the dwelling. Revision of the access way to ensure the orientation of the dwelling maximizes amenity space, and privacy for the pub users and occupants of the dwelling.

Planning permission granted 18.04.2016.

20/01967/OUT. Outline application with some matters reserved for the erection of 3 No. detached new dwellings within Red Lion Inn car park, conversion of 2 No. buildings into dwellings (5 No. total), provision of new vehicular access and relocating car park associated with Red Lion Inn.

Withdrawn.

20/03350/PREAPP. Proposed residential development of 3 dwellings (1 conversion and 2 new building), creation of replacement car park and new vehicular access and general consolidating of Public House.

21/01052/LBC. Partial re-building and partial re-alignment of front boundary wall adjoined to the north end of the west elevation of the Red Lion Inn.  
Pending consideration.

21/01053/OUT. Outline application for the erection of 2no. detached new dwellings within the Red Lion Inn car park and adaptation of existing vehicular access, with some matters reserved except for access, layout and scale.  
Pending consideration.

21/01054/DPO. Application to vary the Section 106 Agreement dated 7th October 2011 between South Somerset District Council and The Red Lion Inn (Babcary) Ltd in association with planning permission 10/05151/FUL to remove the requirements for (i) the outbuildings to be used in connection with the adjoining public house, and (ii) for purposes solely limited to short term letting rooms and as a garden/function room/store.  
Pending consideration.

#### *OTHER RELEVANT HISTORY*

19/03381/OUT. Outline application with all matters reserved except access for the erection of 3 dwellings. Land OS 3461, Adjacent North Street, Babcary  
Outline planning permission 08.04.2020.

20/03299/REM. Reserved Matters application (pursuant to Outline application 19/03381/OUT) to include details of appearance, landscaping, layout and scale for the erection of 3 dwellings.  
Pending consideration.

#### **POLICY**

Section 38(6) of the Planning and Compulsory Purchase Act (2004), and Paragraphs 2, 11, 12 and 47 of the NPPF state that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 imposes a general duty on local planning authorities when determining planning applications as respects listed buildings and states:

"In considering whether to grant planning permission, or permission in principle, for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

For the purposes of determining current applications the Local Planning Authority considers that the adopted development plan comprises the policies of the South Somerset Local Plan 2006-2028 (adopted March 2015).

#### **Policies of the South Somerset Local Plan (2006-2028)**

SD1 - Sustainable Development

SS1 - Settlement Strategy

SS2 - Development in Rural Settlements

EP15 - Protection and Provision of Local Shops, Community Facilities and Services

TA1 - Low Carbon Travel

TA5 - Transport Impact of New Development

TA6 - Parking Standards

EQ2 - General Development  
EQ3 - Historic Environment  
EQ4 - Biodiversity  
EQ7 - Pollution Control

### **National Planning Policy Framework - July 2021**

Chapter 2 - Achieving sustainable development  
Chapter 4 - Decision-making  
Chapter 5 - Delivering a sufficient supply of homes  
Chapter 6 - Building a strong, competitive economy  
Chapter 8 - Promoting healthy and safe communities  
Chapter 9 - Promoting sustainable transport  
Chapter 12 - Achieving well - designed places  
Chapter 14 - Meeting the challenge of climate change, flooding and coastal change  
Chapter 15 - Conserving and enhancing the natural environment  
Chapter 16 - Conserving and enhancing the historic environment

### **National Planning Practice Guidance, including National Design Guide - September 2019**

#### **Other material considerations**

Somerset County Council Parking Strategy (SPS) (September 2013) and Standing Advice (June 2017)

## **CONSULTATIONS**

### **Bab Cary Parish Council**

A very detailed response dated 30th June 2021 was received from the Parish Council following its meeting on 14th June 2021 to discuss this particular application as well as the separate applications 21/01052/LBC, 21/01053/OUT and 21/01054/DPO. The one comprehensive response from the Parish Council applies to all four applications and has been included in full on the District Council's website for public consideration. The full response will not be reiterated in this report but specific extracts will be set out below to provide an indication and explanation of the Parish Council's objections to this proposal.

The specific objections are as follows:

- No new housing needed
- Contrary to SS4 of the emerging South Somerset Local Plan Review 2016-2036
- Flood risk
- Mains drainage problems and capacity
- Loss of employment
- Sustainability - introduces a new dwelling, whilst removing two part time jobs in a village community with very little employment and no viable public transport. By removing the B&B, the most profitable part of the pub operation, it would appear that either many more jobs will have to go OR the pub will have to become significantly less profitable.
- Listed building - gross over development and seriously detrimental to the rustic character and setting of the listed building and would put at risk its future as a working pub. Moving the car park to the north of the pub moves the noise and light of the car park into the middle of the village and is detrimental to the adjoining houses including Percy House, also Grade II listed.
- Section 106 agreement- the ownership and occupation of the B&B, den marquee and car park is tied to the pub by a Section 106 agreement signed by the owners as per planning application 10/05151/FUL. Removing them would require a demonstration of their unviability over a period of time, not in relation to short term events, and removal of the conditions would also be against Planning Policy. The purpose of the S.106 agreement



was to prevent the various parts of the site being sold off for development profit at a later date to the detriment of the community. This is exactly what is proposed so the S.106 must be retained

- Asset of Community Value - the entire Red Lion premises are registered as an Asset of Community Value and therefore cannot be broken up and sold off piecemeal.
- Unsatisfactory B&B dwelling - the proposal to create a residential dwelling out of the B&B building and the Den/marquee area creates a house that would be unsuitable for residential occupation. The B&B house would be surrounded by beer garden on one side and pub car parking on the other with the chimney of the pizza oven very close to the bedroom windows.
- Phosphate levels increase
- Proposed car parking is inadequate, contrived and unsafe
- Loss of amenities - the plans reduce the beer garden by approximately 25%, remove the children's play area, remove the disabled parking facilities and remove the B&B rooms
- Detrimental to the viability of the pub

The conclusion put forward by the Parish Council:

*The Red Lion is the only pub in the village and is a vital community asset, central to village life. The village has only three public spaces; the church, the playing field and the pub. This plan would reduce the pub to a shadow of its former self as it could no longer function as a destination/gastro pub. The village itself is far too small to support the pub alone without outside visitors and, if this plan were allowed, the pub would inevitably spiral downhill and ultimately close. Once lost and built over the car park, B&B and marquee/den can never be replaced and the scaled down pub premises would make a highly desirable residential site were the pub to close.*

Both CAMRA and CPRE share the view that this plan will be detrimental to the future of the Red Lion as a thriving pub.

The Six Pilgrims parishes (Alford, Babcary, Hornblotton, Lovington, N&S Barrow) used to have two pubs until very recently but now 'The Pilgrims Rest' is closed and lost to development; so we are fighting to save the last one. Charlton Mackrell have battled against the development of the car park of 'The Greyhound' and now its closure. The applicants' previous pub, 'The Mandeville Arms' at Hardington is also now closed. The Red Lion is registered as an ACV and the pub is at serious risk of decline and closure.

A further detailed response dated 25th November 2021 was received from the Parish Council following notification about receipt of a viability assessment carried out by a consultant on behalf of the District Council (Mr John Keane of Thomas E. Teague, Licensed Property Valuers, Rating Surveyors, Auctioneers, Brokers and Stocktakers) and a Flood Risk Assessment submitted on behalf of the applicants.

- Viability Assessment for SSDC by John Keane - The independent Viability Assessment commissioned by SSDC from John Keane of Thomas Teague completely vindicates what the Parish Council has been saying all along; that this plan would fundamentally undermine the long term viability of the Red Lion. The report is thorough and perceptive and rightly highlights the dangers of reducing (for ever) from four income streams down to two, the loss of the most profitable part of the business and the risks to the business of inadequate and contrived parking arrangements. The plans remove the long term future proofing which a rural pub in a small village needs in these uncertain times. The conclusion of the report (Section 28) is absolutely clear and unambiguous and it concludes in 28.8, "The implementation of the proposed scheme would be detrimental to the long term viability and future of the Red Lion." Given the duty on planning authorities to safeguard the future of rural pubs these applications should be rejected outright immediately.
- Flood Risk Assessment - The FRA submitted by RMA Environmental on behalf of the applicants is weak and crucially does NOT provide sequential testing as required and nor does it explain how the known flooding problem in Steart Lane will be mitigated. The Parish Council sets out in much detail responses to various paragraphs within the FRA and concludes that the FRA as submitted is wholly inadequate and should be rejected.

### **County Highway Authority**

No objections subject to the imposition of conditions relating to the provision and retention of the parking and turning spaces and they being kept free from obstruction; no obstruction to visibility; provision for the accommodation of on-site surface water disposal so that none drains onto the highway and hardsurfacing of the proposed access.

As there are multiple applications on this site it will be imperative that the existing car parking for the commercial use is not lost prior to the creation of the new car parking area. The most appropriate way to secure this, given that the car parking and the residential elements are being sought under two different planning applications, would be by legal agreement.

### **County Public Rights of Way Team**

The current proposal will obstruct the footpath L 2/21. The proposal either needs to be revised to prevent any obstruction or a diversion order applied for.

The County Council does not object to the proposal subject to the applicants being informed that the grant of planning permission does not entitle them to obstruct a public right of way.

A condition will be required in this respect with regard to timing.

In addition, it appears that the public footpath L 2/21 is already obstructed on land owned by the applicants and it would be entirely logical that any diversion order should seek to address those obstructions at the same time.

The footpath L 2/21 crosses a small timber sleeper bridge. If the diverted route for path L 2/21 uses the same bridge, the bridge should be improved by widening it. If a new crossing is required at an alternative location, the new bridge should have a clear width of one metre and suitable handrails, no steps on or off the bridge (as at present) and a self-closing gate if necessary. The bridge should sit no lower than the current structure and the applicant should seek consent to carry out the works from the appropriate flood risk authority if necessary. In addition the design of the bridge should be agreed with the Authority prior to a diversion and installation.

### **SSDC Conservation Specialist**

Comments received from the Council's Conservation Specialist relate solely to that part of the proposal to allow the changes of use of the existing outbuildings from 6 short term letting units and garden/function room/store currently used in connection with the adjoining public house into a single independent, self-contained dwelling unit and ancillary annex accommodation to that dwelling unit. He concluded that the change would have no impact on heritage assets and offered no formal objection.

### **SSDC External Heritage Consultant**

An external Heritage Consultant was appointed to act on behalf of the Council due to the Council's own Conservation Specialist being absent on long-term sick leave. Comments were sought about the application proposal as a whole, including that part of the application relating to the proposed new access and parking area with due regard being given to the various heritage documents and comments submitted on behalf of the applicants and also by or on behalf of third party objectors, including a Heritage Appraisal and Impact Assessment that was submitted to the Council, as an objection to the proposal (and also the other concurrent applications) on 1st July 2021.

Following a site visit carried out by the Heritage Consultant on 25th October, a detailed response dated 15th December 2021 was submitted to the Council. The recommendation was that "great weight" should be given to the safeguarding of the designated and undesignated heritage assets and their settings in any planning balance, as required under the NPPF. It was considered that the proposed scheme would contribute to a high level of less-than-substantial harm and the Heritage Consultant was unable to offer support from a heritage impact perspective.

### **South West Heritage Trust**

There are limited or no archaeological implications to this proposal and therefore no objections

are raised on archaeological grounds.

### **County Ecologist**

'The Den' has been characterised as a confirmed bar roost, likely for Serotine bats. 'The Barn' has been characterised as providing high potential for roosting bats. The confirmed roost is situated within the loft void. No internal works are proposed in either of the buildings. Whilst raising no objections to the proposal, in order to avoid disturbing roosting bats during construction works, conditions are recommended relating to timing of works; exclusion buffer zone to be created around 'The Barn' and 'The Den' during construction activities; submission and agreement of an external lighting scheme; protection of retained hedgerows; and the submission and approval of a Biodiversity Enhancement Plan.

In terms of phosphates, the applicants are seeking to combine the nutrient impacts of both application proposals together with the argument that the decrease resulting from one dwelling instead of six holiday lets (application ref 21/01051/FUL) will compensate for the increase resulting from the two new dwellings (application ref 21/01053/OUT). In that respect it is suggested that the development achieves better than nutrient neutrality, so the matter of phosphates has been resolved. Provided a S106 could be used to legally 'tie' the two application proposals together along the lines of ensuring the 'phosphate decrease' application would commence or be completed prior to commencement or occupation of the 'phosphates increase' application, then no objections are raised.

### **Natural England**

If SSDC is confident that a S106 could be used to legally 'tie' the two application proposals together and ensure the 'phosphate decrease' application would be completed prior to commencement or occupation of the 'phosphates increase' application, in principle Natural England would be open to considering any appropriate assessment based off this approach. The applications would still need a Habitats Regulations Assessment, proceeding to an Appropriate Assessment to demonstrate that the requirements of regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) have been considered by the LPA. Natural England must be consulted on any appropriate assessment the LPA may decide to make.

### **SSDC Tree Officer**

Following receipt of an amended landscaping scheme and tree planting schedule, no objections are raised subject to the imposition of conditions relating to tree and hedgerow protection and implementation of the submitted revised landscaping scheme.

### **SSDC Environmental Health**

No objections are raised but it is acknowledged that the moving from temporary accommodation to that of permanent homes introduces the possibility of noise nuisance from the public house. The EHO would encourage the applicants to consider suitable acoustic insulation in the design of the new homes. Informatives to this effect are suggested relating to construction site noise, noise and dust control and statutory nuisance.

### **Environment Agency**

The EA confirms that its flood maps show this site to be in flood zone 1 at low flood risk. The sequential test and FRA requirements do not apply unless the site is over 1 hectare. If over 1 hectare, the FRA should relate to surface water only and the LLFA should advise on this. The site appears not to be over 1 hectare and the EA would have no comments to make on this proposal. Flood Zone 1 is the best place to develop in relation to flood risk.

### **SSDC Viability Assessor - Mr John Keane of Thomas E. Teague, Licensed Property Valuers, Rating Surveyors, Auctioneers, Brokers and Stocktakers**

Following the proposed development, The Red Lion would still be a viable business but with a significantly reduced turnover and at a lower level of profitability. However, the implementation of the proposed scheme would be detrimental to the long-term viability and future of The Red

Lion.

### **Pub Protection Officer, Somerset CAMRA**

An objection is raised because the proposal represents an overdevelopment of the site that would likely be severely detrimental to future viability of the Red Lion.

### **REPRESENTATIONS**

This application ref. 21/01051/FUL (and the three other concurrent applications refs 21/01052/LBC, 21/01053/OUT and 21/01054/DPO) have attracted many letters/emails of representation from residents both within the village and from elsewhere, raising objections and offering support for the development proposals as a whole. All representations received can be viewed on the Council's website but can be summarised as follows, in no particular order:

#### Support

- Covid restrictions have not helped the viability of pubs on a national basis. The proposals are more than reasonable solutions to help preserve the Red Lion Inn as an on-going commercial asset for the long term future and to avoid its premature closure.
- The viability report submitted with the application shows the pub would be sustainable without the letting rooms and 'The Den'.
- The proposals seek to conserve the listed character of the Red Lion Inn.
- All villages are having to accommodate extra housing - this development is small and in line with current housing policy and is not unjustified.
- The current car park is very unsightly - its relocation and development would be a visual improvement.
- The proposals would result in no worse impacts on visual appearance and highway safety than the approved new housing on the opposite side of the lane.

#### Objections

- The Red Lion Inn is an important village asset and its viability and retention must be protected and preserved at all costs. The proposals would result in a material adverse impact on the viability of the public house business.
- The existing signed S106 Agreement must be honoured and retained to ensure continued viability of the public house.
- Reduction in size of the beer garden would be unacceptable and be less attractive to customers.
- The proposals will result in detriment to the character and appearance of the Listed Building and would detract from its significance.
- Overdevelopment of the site as a whole.
- There would be a material loss of employment.
- Unacceptable resultant impact on highway safety - poor visibility, insufficient on-site turning.
- Insufficient on-site parking being proposed. No safe on-street parking nearby.
- Unacceptable resultant impact on flooding and flood risk in the immediate and wider area.
- Inadequate sewerage system in village. Increased foul sewage problems as a result.
- Adverse resultant impact on residential amenities of neighbouring properties - construction traffic, additional noise, spill-over of cars, headlights and door slamming by users of proposed car park.
- Unsatisfactory living conditions for occupiers of the proposed converted dwelling due to proximity to public house.
- Adverse resultant impact on the local ecosystems and possible harm to habitats of protected species.
- Unacceptable diversion of public footpath.
- No need for further housing in the village.
- Non-compliance with economic, social and environmental objectives of sustainable

development.

- Phosphate restrictions.

## **CONSIDERATIONS**

### **Principle of Development**

The Council is required to make a decision in line with the Development Plan, unless material considerations indicate otherwise (Section 38(6), Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990). The National Planning Policy Framework (NPPF) is a key material planning consideration.

In policy context, national guidance contained within the NPPF sets out a presumption in favour of sustainable development. Paragraph 79 of the NPPF states that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.

Policy SD1 of the Local Plan also recognises that, when considering development proposals, the Council will take a proactive approach to reflect the presumption in favour of sustainable development contained in the NPPF and seek to secure development that improves the economic, social and environmental conditions within the District. Planning applications that accord with the policies in the Local Plan will be approved without delay, unless material considerations indicate otherwise.

Policy SS1 highlights the areas where new development is expected to be focused, grouping certain towns and villages into a hierarchy, of settlements including the Strategically Significant Town (Yeovil), Primary Market Towns, Local Market Towns and Rural Centres. All other settlements are 'Rural Settlements', which Policy SS1 states "will be considered as part of the countryside to which national countryside protection policies apply (subject to the exceptions identified in Policy SS2)".

Policy SS2 states:

"Development in Rural Settlements (not Market Towns or Rural Centres) will be strictly controlled and limited to that which:

- Provides employment opportunities appropriate to the scale of the settlement; and/or
- Creates or enhances community facilities and services to serve the settlement; and/or
- Meets identified housing need, particularly for affordable housing.

Development will be permitted where it is commensurate with the scale and character of the settlement, provides for one or more of the types of development above, and increases the sustainability of a settlement in general.

Proposals should be consistent with relevant community led plans, and should generally have the support of the local community following robust engagement and consultation.

Proposals for housing development should only be permitted in Rural Settlements that have access to two or more key services listed at paragraph 5.41"

Those key services referred to in paragraph 5.41 of the Local Plan are local convenience shop, post office, pub, children's play area/sports pitch, village hall/community centre, health centre, faith facility and primary school.

Babcary is defined in the Local Plan as a Rural Settlement, where development will be strictly controlled. It has access to a church, a public house and a children's play area. As noted above, Policy SS2 restricts development in rural settlements other than in a limited number of circumstances and only where it is commensurate with the scale and character of the settlement. Policy EQ2 seeks to ensure new development, amongst other things, promotes

local distinctiveness, conserves, or enhances, local landscape character and respects local context.

However, elements of Policy SS2 must be considered out of date, as SSDC cannot currently demonstrate a five year supply of housing land. It is noted that Babcary is a broadly sustainable location, with basic facilities contained within the settlement. It has reasonable transport links. The principle of some limited residential development within the village must therefore be considered acceptable. As stated above, the Council accepts that it cannot currently demonstrate a five-year supply of deliverable housing sites and that, pursuant to paragraph 11 of the Framework, the weighted presumption in favour of sustainable development is engaged. The proposed development would make a contribution towards meeting the housing shortfall within South Somerset. This would be a social and economic benefit. There would also be a limited and temporary economic benefit during the construction phase. However, due to the small scale of the development, such benefits would be moderate in scale.

The Parish Council has cited Policy SS4 of the emerging Local Plan and has stated that this proposal is contrary to said emerging policy. However, as the emerging Local Plan Review is still at an early stage in its preparation and representations have yet to be considered, only extremely limited weight can be attached to it, as reflected in the guidance in paragraph 48 of the NPPF.

### **Viability of Public House**

In considering proposals that would result in a significant loss of a site and/or premises currently used as a public house, Local Plan Policy EP15 is relevant.

Policy EP15 states " *Proposals that would result in a significant or total loss of site and/or premises currently or last used for a local shop, post office, public house, community or cultural facility or other service that contributes towards the sustainability of a local settlement will not be permitted except where the applicant demonstrates that:*

- *alternative provision of equivalent or better quality, that is accessible to that local community is available within the settlement or will be provided and made available prior to commencement of redevelopment; or*
- *there is no reasonable prospect of retention of the existing use as it is unviable as demonstrated by a viability assessment, and all reasonable efforts to secure suitable alternative business or community re-use or social enterprise have been made for a maximum of 18 months or a period agreed by the Local Planning Authority prior to application submission."*

The NPPF makes reference to the need for building a strong, competitive economy. To support a prosperous rural economy, paragraph 84 advises that planning decisions should enable various scenarios to occur, including the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship. This is re-emphasised in Chapter 8 of the NPPF "Promoting healthy and safe communities"; paragraph 93 d) stating that planning decisions should ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community.

Having regard to the important material consideration relating to future viability of the public house, the application submission is accompanied by an 'Expert Witness Report' dated 3rd November 2020 prepared by Mr Stuart Parsons of Fleurets Ltd. Within that Report, reference is made to economic viability, the impact of coronavirus, the background and style of trade, the property (its location, description and accommodation, condition, rateable value, premises licence), trade potential, marketability of the Red Lion, and considerations of third party comments. Mr Parsons offers the following conclusions:

*The Red Lion i.e. without the letting bedrooms and marquee/Den is a well configured business*

*with scope to provide c.90 covers, excellent ancillary facilities, accommodation for live-in owners or staff, external trading area and parking facilities for approximately 20 vehicles.*

The Red Lion should be capable of providing an owner/occupier with an economically viable and sustainable business.

The reduced scale of the business will make it more marketable and as a consequence improve the long term sustainability.

By reducing the debt against the existing business the economic viability of the business for the applicants is improved.

It is not denied that the loss of the letting bedrooms and marquee/den will make the business less profitable at an operational level. However, when regard is had to the servicing of debt the reduced scale of the business and reduced debt improves the sustainability of the business.

In response to this Expert Witness Report prepared by Fleurets, another 'Expert Witness Report' dated 26th June 2021 has been prepared by Mr Michael Hughes of MJD Hughes Ltd on behalf of "concerned residents of Babcarry". That report sets out similar issues and considerations as in the Fleurets Report, but provides a different conclusion. In his executive summary, Mr Hughes concludes:

*The selling of the plot or developing the area with planning permission is a short-term gain for the current individual operator, offering no benefit to the business and creating only dangers to the long-term viability of the business. The expert witness report by Mr Parsons has failed to confirm the future viability of the Red Lion Inn and so cannot be considered as providing answers as to the suitability of the planning applications to not endanger the viability of the public house and ensure the long-term survival of the Red Lion Inn.*

Comments have been sought from the Somerset Branch of CAMRA, and after due consideration, the Pub Protection Officer has registered an objection to the proposal, based on the following extracts of his submitted representation:

*We consider that these proposals, should they be approved, would inevitably cause the pub to become unviable in the near future. A planning application for change of use of the public house premises to residential status would no doubt follow in short order. CAMRA believe the long-term future for pubs such as this is assured. The facilities at the Red Lion put them in an enviable position to survive and trade profitably in the short and medium-term. To consider removing very significant income streams at this stage is clearly detrimental to viability. CAMRA is finding growing evidence throughout the UK that the Covid situation is being cited as good reason for planning change to many licensed premises. We have requested that all LPAs be wary of these applications and believe this to be one such example. Planning considerations need to be decided for the long-term good of our communities, not for the benefit of short-term individual gain. This case is particularly important as it is the only public house extant within a significant district, namely the Six Pilgrims parishes. CAMRA were disappointed to hear of closure of the nearby Pilgrims Rest recently, although this would have had a beneficial effect for the Red Lion in that an element of the former's clientele will have migrated.*

*S106 arrangements relating to ownership and occupation of the B&B facilities tied to the pub (ref 10/05151/FUL) are a most important consideration and should not be deviated from. Similarly maintaining the existing planning conditions and clauses relating to the B&B, den and marquee are considered crucial protection to ongoing viability of this CAMRA-recognised and respected public house. As a destination hospitality business, accommodation facilities are a key element of their offer. The number of past B&B clients responding to this consultation is evidence of the popularity of the rooms.*

*I would also draw your attention to the National Planning Policy Framework 2019, specifically paragraph 92, requiring the Local Planning Authority to plan positively for provision and use of public houses (among other entities). LPAs must 'guard against unnecessary loss of valued facilities, particularly where this would reduce the community's ability to meet its day to day*

*needs', and ensure that 'established facilities are retained for the benefit of the community'. These principles should be considered all-encompassing when considering such applications, particularly in instances such as this where the premises in question are rightly recognised as an Asset of Community Value. The ACV correctly relates to the business as a whole, including essential accommodation and function facilities.*

*We do not consider proposed changes and upgrades to the A303 layout to be potentially detrimental to future viability of the Red Lion. This is very much a destination pub that folk will find their way to, as long as it remains the attractive, complete and intact business the owners/operators have successfully created.*

Instructed to act on behalf of SSDC, a detailed viability assessment dated 20th October 2021 has been provided by Mr John Keane of Thomas E Teague, having due regard in his assessment to the Expert Witness Report dated 3rd November 2020 prepared by Mr Stuart Parsons of Fleurets Ltd on behalf of the applicants, and also the detailed observations relating to future viability issues which have been raised by the Parish Council, third parties, CAMRA Somerset branch, CPRE and MJD Hughes Ltd, the latter having been given instructions by local residents to prepare a report on the viability of the Red Lion Inn in response to the Expert Witness Report provided by Mr Stuart Parsons.

Mr Keane has offered the following conclusions:

*Following the proposed development, The Red Lion would still be a viable business but with a significantly reduced turnover and at a lower level of profitability.*

The new site layout would be inferior to the current one with inadequate and poorly arranged parking provision - part of which would be shared with the occupants of the proposed new housing - and reduced external trade space, which could have a detrimental effect on the business.

The letting rooms are currently the highest profit generating part of the business and their loss would be keenly felt.

Whilst less core, the function side of the business is a useful profit centre that also provides an additional customer base for the letting rooms.

The reduced facilities, site and buildings at The Red Lion would compromise the pub's ability to adapt to changing market preferences, take advantage of new opportunities and make it less future-proof.

The personal circumstances of the current operator should not be conflated with how the market would view the pub and its proposition post-development. Neither the current owners' off-site living accommodation nor parking space would now be available to a new owner and they would need to be provided for out of the post-development pub.

The current planning condition restricting the occupation of the first floor of the main pub building to holiday purposes only could compromise the marketability of the pub and upgrade/renovation costs, subject to the grant of satisfactory planning permission, would need to be factored in.

The implementation of the proposed scheme would be detrimental to the long-term viability and future of The Red Lion.

The LPA gives due consideration to the assessment and conclusions offered by its own appointed viability assessor, Mr Keane, whose report has taken into account of and has regard to the various conflicting reports and representations submitted in support of or objecting to the application proposal in respect of whether the proposals would or would not ensure the long term viability of the public house. Mr Keane's report has been considered to be an important material consideration when determining this application proposal, having due regard to his conclusion that "The implementation of the proposed scheme would be detrimental to the long-term viability and future of The Red Lion.

Having due regard to that conclusion, it is considered that the proposed development would result in a significant or total loss of the premises currently used as a public house that



contributes towards the sustainability of the village of Babcary. As such the proposal would be contrary to Policy EP15 of the South Somerset Local Plan and relevant guidance in the NPPF.

In addition, the proposed development would not provide employment opportunities appropriate to the scale of the settlement, would not create or enhance community facilities and services to serve the settlement, or meet an identified housing need (particularly affordable housing), nor would it increase the sustainability of the settlement. As such the proposed development would be contrary to Local Plan Policies SD1 and SS2 and relevant NPPF guidance.

### **Impact on Designated Heritage Asset**

The policy framework is as follows:

Section 66(1) of the of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that when considering whether to grant planning permission for development which affects a listed building or its setting, the LPA shall have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.

The National Planning Policy Framework Chapter 16 'Conserving and enhancing the historic environment' requires us to assess the impact that development will have on a heritage asset.

Paragraph 197 states:

In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 199 states:

When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

In particular paragraph 202 states:

Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

Local Plan Policy EQ3 reflects the NPPF guidance. Heritage assets must be conserved and where appropriate enhanced for their historic significance and important contribution to local distinctiveness, character and sense of place. In addition Policy EQ2 requires all new development proposals to be designed to achieve a high quality which promotes the District's local distinctiveness and preserves or enhances the character and appearance of the District.

The Council's appointed Heritage Consultant has visited the site and has offered detailed comments which are set out below.

In summary, the Heritage Consultant concludes that the proposed creation of the new access is in itself unjustified, as at present a well sized accessible car park is located at the southern end of the plot. However, this present facility would be highly compromised by a separate proposed development currently being considered under an independent outline application for the subdivision of curtilage for new dwellings, which is outside of the content and considerations of this planning permission (and the linked Listed Building consent application

21/01052/LBC).

Therefore, considering the impact of the proposed access and wall alignment in its own right, it is considered that the form, scale and location of the proposed opening and associated loss of front boundary enclosure to the plot would impact detrimentally on the Historical, Aesthetic, Evidential and Group value of the Grade II Red Lion Inn and the setting of the neighbouring heritage assets, whose rear elevations will be clearly seen juxtaposed with this development from North Street.

Despite the former loss of the most northern section of the stone wall (as evidenced from comparison with the archive photos) having already occurred and the previous construction of a similar visibility splay in the street, these works appears to have been carried out a number of years ago, prior to the introduction of the NPPF and subsequent changes in national and local policy and guidance, and cannot be considered to act as a benchmark. Instead today, following the development of the understanding of significance, the existing "layby" and loss of historic boundary is considered to be of a negative feature within the lane.

The new opening would not be seen in isolation but instead to combine with the existing highway construction, exacerbating the level of impact on the setting of an overly suburban and engineered appearance, which together with the widened pavement of 2m would be out of keeping with the rural village scene. In addition, there are concerns relating to the facilitation of the relocated car parking, the new access providing direct views into the carpark, which again will be viewed in connection with the main heritage asset, rather than in its present detached position to the south and will also bring added impact of noise, smell, light from traffic movement into much closer contact with the main listed building and its associated listed stone privy at the rear, and the settings of the neighbouring listed building and undesignated cottages.

Therefore, the scheme is not considered to safeguard the setting of the various heritage assets, and to impact on special architectural character and historic interest of the Red Lion, due to the changes to the appearance of the frontage and the extensive loss of the historic enclosure.

There is insufficient justification for the works, no Options Appraisal has been submitted to confirm that all other options have been assessed against their related impact on the significance of the heritage asset or that the one submitted is the one of least impact.

As such, the proposals are considered to contribute a high level of impact on the significance of the Red Lion and its curtilage listed boundary wall, and to a lesser degree on the adjacent heritage assets.

In terms of the rest of the development proposal, the subject of this application, in overall terms the subdivision of the historic curtilage for a separate residential dwelling lacks the thorough justification required under the NPPF. There is no evidence of a business or building under threat and no options appraisal has been submitted to demonstrate all alternatives have been assessed in terms of impact on the various heritage assets significance and the one of least impact proposed.

The proposed implications of the proposal in terms of the cumulative erosion of the curtilage, loss of relationship between the elements of the tight knit traditional building group, changes to architectural hierarchy on the site that impact directly on the primacy of the Inn, the relocation of the service area of the site for purposes of parking from the more detached location to the south to the far more confined position closer to northern residential development and necessitating demolition of a curtilage wall and modern alteration to historic building line, as well as the potential for conflicting uses due to the domestication of the former patio area, are considered together to result in overwhelming detriment to the heritage asset.

As such, "*great weight*" should be given to the safeguarding of the Aesthetic, Historical, Evidential and Communal Value of a heritage asset and its setting in any planning balance, as required under the NPPF (para 199-203), as the proposed scheme as a whole is considered to contribute a high level of less-than-substantial harm.

### **Impact on Visual Amenity**

Local Plan Policy EQ2 refers to development in general and requires development proposals to preserve and enhance the character of the district. Development proposals must, amongst other criteria, seek to conserve and enhance the landscape character of the area, reinforce local distinctiveness and respect local context and have due regard to site specific considerations.

As stated previously, the application proposal comprises two specific elements, namely the conversion of 'The Barn' and 'The Den' to become a self-contained and separate dwelling with associated curtilage and parking/turning provision, and the relocation of the public house car park to the north with a new vehicular entrance.

In respect of the first part of the proposal, the scale of the buildings would remain as existing, with no extensions to the footprint or volume proposed, and visual alterations to the buildings would be limited to the addition of a conservation rooflight to the rear east elevation roof pitch of 'The Barn'. The existing marquee would be removed and the land used as a private garden for this proposed dwelling. Other than the 'main' car park to be relocated to the north of the site, the other parking and turning arrangements would be carried out on existing hardened areas in close proximity to the buildings with no wide encroachment into open countryside. There would be some visibility improvements to the existing car park access. However, detailed landscaping proposals have been submitted, together with tree and hedge protection measures. No objections to such details have been raised by the Council's Tree Officer. As such it is considered that these parts of the application proposal would not result in a significant adverse impact on visual amenity and could be considered to conserve the existing appearance and character of the area.

However, the second part of the proposal, involving the creation of the new vehicular access and relocated car park and the resultant removal of stone walling, would neither conserve nor enhance the character and appearance of the locality, by reason of the further erosion of an historic, rural street scene, and as such would be contrary to the aims and provisions of Local Plan Policy EQ2 and relevant guidance within the NPPF. The existing wall which is to be removed and partly reconstructed has been previously modified, presumably to secure visibility splays for the adjacent access. The wall along with others, creates a sense of enclosure to the street which is a positive characteristic. The existing wall even in its partly reconstructed form, with cock and hen capping is an attractive feature to the street and contributor to the setting of the listed building. The sense of enclosure has been impacted by the formation of accesses adjacent to the public house which create an unattractive feature within the street scene. The application proposal would further "open up" views into the site and lead to a loss of the existing wall and further loss of enclosure which is deemed to be detrimental to the character and appearance of the area. The new entrance, combined with the formation of a new car park at the side and rear of the public house in place of the existing landscaped garden area, would further erode the quality of the area and setting of the public house and thereby cause further harm.

### **Access and Highway Safety**

Local Plan Policy TA5 requires all new development to securing inclusive, safe and convenient access on foot, cycle, and by public and private transport that addresses the needs of all, and to ensure that the expected nature and volume of traffic and parked vehicles generated by the development would not have a detrimental impact on the character or amenity of the area and would not compromise the safety and/or function of the local or strategic road networks in terms of both volume and type of traffic generated.

Policy TA6 states that parking provision in new development should be design-led and based upon site characteristic, location and accessibility. The parking arrangements within SCC's Parking Strategy will be applied within the District.

Paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Paragraph 108 of the NPPF advises that maximum parking standards for residential and non-residential development should only be set where there is clear and compelling justification that they are necessary for managing the local road network.

The County Highway Authority notes that this application and the outline application 21/01053/OUT for the erection of two detached dwellings within the existing Red Lion Inn car park are intrinsically linked and thus that Authority's one response has been provided with the aim of serving both applications proposals.

The proposed dwellings would be constructed on the current car park, with two buildings adjacent to the car parking area converted into a dwelling and ancillary annex, and a new car park created to the rear of the public house and a new access to the proposed car park to the north of the public house. The access to the dwellings would be from an unclassified highway and the new car park from a classified un-numbered highway, both subject to the national speed limit. There is no recorded injury collision data for either public highway.

A previous application had been submitted (application ref. 20/01967/OUT), which included more dwellings (erection of 3 new dwellings within Red Lion Inn car park and conversion of 2 buildings into dwellings (5 in total)). The Highway Authority commented on that application which, following discussions with the Local Planning Authority and the applicant's agent, was withdrawn. For that previous application the Highway Authority did not object to the available visibility splays from either the existing access which would serve the residential dwellings, and a small number of commercial parking spaces, or from the proposed new vehicular access.

Due to the nature of the highway and the subsequent speeds of passing vehicles this remains the case. The Highway Authority does have some concerns regarding the 4 commercial spaces to be accessed immediately from the public highway between the pub and the building known as The Barn as these spaces would require manoeuvring on the highway junction between the classified and unclassified highways. The previous application included some areas of parking for both elements that were considered contrived, the submitted drawing F1574/100/E has addressed these concerns.

Focusing on the residential element there are 3 dwellings proposed, one conversion and two 1.5 storey new builds. The converted building would also include an annex. The plan shows that Plot 1 (the conversion) would have three bedrooms, with three parking spaces, and Plots 2 and 3 would each have four bedrooms, with four parking spaces each. These parking spaces, along with four of the commercial spaces, are proposed to be accessed from the existing access and arranged in a courtyard type design. This proposal is unlikely to attract an objection from the Highway Authority. In order to comply with the Somerset Parking Strategy, access would need to be provided to Electric Charging Points and to secure, accessible and appropriate cycle storage at a level of one per bedroom for all new residential accommodation.

Turning to the commercial element and the relocation of the car park, the proposed new access would seem to have visibility splays suitable for the geometry and likely speeds of vehicles passing by the access. The submitted drawing, F1574/100/E, shows a total of 20 spaces being provided to serve the pub. Information provided by the applicant's agent on 17 December 2020 states that the publicly accessible areas of the pub are approximately 80.75sqm, taking into account the remaining outside space for the commercial use it is considered that this number of parking spaces would be sufficient. However as noted above, the Highway Authority

does have some concerns regarding some of them (4). The submitted drawing has also overcome the previously noted difficulties with access to/from the proposed cycle parking. A small number of the spaces within the proposed car park would still seem a little contrived or tight; however, the Highway Authority considers that it would be unreasonable to object to the application over the level of concern raised by these element.

As there are multiple applications on this site it will be imperative that the existing car parking for the commercial use is not lost prior to the creation of the new car parking area. The most appropriate way to secure this, given that the car parking and the residential elements are being sought under two different planning applications, would be by legal agreement.

Taking the above comments into account, the Highways Authority does not object to the proposal in this application. Conditions are recommended relating to provision and retention of parking spaces, visibility, surface water disposal, and hardsurfacing of access.

Overall, the application site is considered to be in a sustainable location, having regard to the scale of development proposed and the role and function of the settlement which benefits from a variety of local facilities and amenities. Whilst mindful of the various highways related objections raised by the Parish Council and third parties, nevertheless the proposed development does not give rise to an objection on traffic generation or highway safety grounds from the Highway Authority. As such, the proposal is deemed to be acceptable and in accordance with Local Plan Policies TA5 and TA6 and relevant guidance within the NPPF.

### **Residential Amenity**

Local Plan Policy EQ2 requires development proposals to protect the residential amenity of neighbouring properties. In addition Local Plan Policy EQ7 states that development that would result in air, light, noise, water quality or other environmental pollution or harm to amenity, health or safety will only be permitted if the potential adverse effects would be mitigated to an acceptable level by other environmental controls, or by measures included in the proposals.

Due to the application site's location, potential for residential amenity concerns are limited to impacts on existing residential properties on the northern boundaries of the site ('Rose Cottage' and 'Christmas Cottage'), and also the impact on future occupiers of the proposed converted unit having regard to its proximity to the public house.

In respect of the latter consideration, the Council's Environmental Health Officer has been consulted about the application but raises no objections, although comments are offered about the design of the proposed converted dwelling including acoustic insulation.

Objections have been raised by residents of the dwellings to the north of the application site relating to the proposed relocated car park having a significant negative impact on their enjoyment of those properties due to the noise, lights and pollution of vehicle traffic impinging on privacy, security, peace, health and sleep.

At present the rear gardens of those northern properties abut the existing beer garden of the public house, separated by a boundary fence. Whilst there would be noise emanating from customers using the beer garden, this would generally only be at times of good/ warm weather and during daylight hours. The proposal includes the provision of the main car park to serve the public house, catering for 12 car parking spaces and turning area. Such vehicular usage of this part of the site, all year round, would impact on the amenities of those northern neighbouring properties. The proposed use as a car park would introduce a different type of noise at all times (such as engine starting/revving, banging car doors) during the pub opening hours and also other issues associated with vehicles (such as exhaust fumes and headlights shining into upper floor windows of the neighbouring properties), not currently associated with the use of the land as a beer garden.

It is considered that the relocation of the car park in such close proximity to those neighbouring

properties would cause unacceptable detriment to the amenities currently enjoyed by those residents and, as such, would be contrary to Policies EQ2 and EQ7 of the Local Plan.

### **Flooding and Drainage**

The application site is at a low risk of flooding, lying as it does within Flood Zone 1. Nevertheless, local concern has been expressed about flooding of site and surrounds and that the application had not been accompanied by a Flood Risk Assessment, which is a requirement under the NPPF. Paragraph 167 of the NPPF advises that, when determining any planning applications, the LPA should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment.

A Flood Risk Assessment has been submitted on behalf of the applicants and the Environment Agency duly consulted. The FRA has concluded that future occupants of the development would be safe during the design flood event for the operational lifetime of the development and the FRA has also demonstrated that the proposed development would be safe and that it would not increase flood risk elsewhere.

The Environment Agency has confirmed that its flood maps show the application site to be in flood zone 1 at low flood risk. The EA wishes to raise no comments about this proposal, suffice to say that flood zone 1 is the best place to develop in relation to flood risk.

Taking into account the above, it is considered that the application accords with the requirements of Local Plan Policy EQ1 and relevant guidance within the NPPF.

### **Ecology**

Local Planning Authorities have a statutory duty to ensure that the impact of development on wildlife is fully considered during the determination of a planning application under the Wildlife and Countryside Act 1981 (as amended), Natural Environment and Rural Communities Act 2006, The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations 2017). Policy EQ4 of the Local Plan also require proposals to pay consideration to the impact of development on wildlife and to provide mitigation measures where appropriate.

To ensure appropriate mitigation for Protected Wildlife Species (particularly bats), a survey to search for bats, indication of bat use and potential for bats to roost has been commissioned by the applicants. The survey also checked for other protected wildlife. This survey was undertaken by Country Contracts.

In terms of landscape in general, the Red Lion and outbuildings are situated towards the centre of the village. The property has established residential village properties around it, but open countryside is nearby in all directions. The surrounding land is intensively farmed in fields which are a mix of pasture and rotational crops, separated largely by regularly flail cut connective hedgerows. There are significant areas of woodland within 0.5 of a kilometre to the southwest of the site. Some of the surrounding field hedgerows also support mature trees. This surrounding landscape offers bat foraging habitat of a range of qualities, from lower quality residential areas to a mix of arable and pastoral farmland with some mature trees in hedgerows, small woodland areas and patches of semi-natural vegetation.

There are existing outbuildings referred to as 'The Barn' (a recently modernised property which provides letting rooms associated with pub), 'The Den' (also recently modernised to provide bar facilities for outdoor functions at the pub), a timber garden shed, a small stone store and a storage shipping container. Survey results were as follows:

#### *Bats*

The Barn: No bats or signs of bat usage were found in the loft or on the exterior of the building. However, potential bat roosting opportunities exist externally behind the timber cladding, and gaps behind the fascia and tops of walls.

The Den: No bats or signs of bat usage were found in the loft or on the exterior of the building. However, potential bat roosting opportunities exist externally behind the timber cladding, and gaps behind the fascia and tops of walls.

The Timber Shed, Small Stone Store and Shipping Container: No bats or signs of bat usage were found.

The outbuildings were assessed for bat roost potential. The results are that both The Barn and The Den have a high suitability rating for bat roosts, whereas the Shed, Store and Shipping Container have negligible bat roost suitability.

#### *Trees*

No surveyed trees were found to have features which would provide potential bat roosting sites.

#### *Reptiles and amphibians*

There are no aquatic habitats within the site or immediate boundaries. The development area was considered unsuitable to provide refuge or suitable terrestrial habitat for reptiles and amphibians.

#### *Badgers*

No badger setts were found in the survey area. Animal paths through adjacent hedgerows were considered to be used by badgers.

#### *Dormice*

The boundary hedgerows/vegetation were considered to be species limited, of poor structure and sub optimal to support Dormice. The hedgerows/vegetation have very limited potential connectivity with suitable habitats off site.

#### *Nesting Birds*

No nesting birds, or indications that birds have nested, were found in or on any of the surveyed buildings. The trees and vegetation within the development do provide limited nesting opportunities for a variety of bird species.

The County Ecologist has raised no objections to the proposed development. Based on these findings, he has confirmed that 'The Den' has been characterised as a confirmed bat roost, likely for Serotine bats, and 'The Barn' has been characterised as providing high potential for roosting bats. The confirmed roost is situated within the loft void. No internal works are proposed in either of the buildings. However, to avoid disturbing roosting bats during construction works a condition is recommended relating to the timings of works with such works being carried out under the direction of a licenced bat ecologist. Other ecological mitigation and enhancement conditions are recommended, including provision of protective fencing, timing of works for vegetation removal in relation to nesting birds, implementation of an agreed lighting scheme, new planting, implementation of a Biodiversity Enhancement Plan, and reference to legal protection afforded to badgers.

With the incorporation of such conditions, it is considered that the proposed development would not conflict with the aims and aspirations of Policy EQ4 of the South Somerset Local Plan and relevant guidance within the NPPF.

#### **Somerset Levels and Moors: Phosphates**

The Somerset Levels and Moors are designated as a Special Protection Area (SPA) under the Habitats Regulations 2017 and listed as a Ramsar Site under the Ramsar Convention. The Ramsar Site consists of a number of Sites of Special Scientific Interest (SSSIs) within what is the largest area of lowland wet grassland and wetland habitat remaining in Britain, within the flood plains of the Rivers Axe, Brue, Parrett, Tone and their tributaries. The site attracts internationally important numbers of wildlife, including wildfowl, aquatic invertebrates, and is

an important site for breeding waders.

Natural England has written to various Councils in Somerset (including SSDC) advising about the high levels of phosphates in the Somerset Levels and Moors that are causing the interest features of the Ramsar Site to be unfavourable, or at risk, from the effects of these high levels. This is as a result of a Court Judgement known as the Dutch N case, which has seen a greater scrutiny of plans or projects by Natural England, regarding increased nutrient loads that may have a significant effect on sites designated under the Habitats Regulations 2017 (including Ramsar Sites).

A significant area of South Somerset falls within the catchment. The application site is located within this catchment area. However, further to discussions with Natural England and the County Ecologist, the advice received is that the proposed development, together with the proposed outline application proposal for two new dwellings on the existing car park (application ref 21/01053/OUT) would be unlikely to add significantly to nutrient loading on the Somerset Levels and Moors Ramsar site.

The County Ecologist is mindful that the applicants are seeking to combine the nutrient impacts of both application proposals together with the argument that the decrease resulting from one dwelling instead of six holiday lets (current application ref 21/01051/FUL) would compensate for the increase resulting from the two new dwellings (application ref 21/01053/OUT). In that respect it is suggested that the development achieves better than nutrient neutrality, so the matter of phosphates has been resolved. Provided a S106 could be used to legally 'tie' the two application proposals together along the lines of ensuring the 'phosphate decrease' application would commence or be completed prior to commencement or occupation of the 'phosphates increase' application, then no objections are raised.

Natural England has advised that, if SSDC is confident that a S106 could be used to legally 'tie' the two application proposals together and ensure the 'phosphate decrease' application would be completed prior to commencement or occupation of the 'phosphates increase' application, in principle Natural England would be open to considering any appropriate assessment based off this approach. The applications would still need a Habitats Regulations Assessment, proceeding to an Appropriate Assessment to demonstrate that the requirements of regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) have been considered by the LPA. Natural England must be consulted on any appropriate assessment the LPA may decide to make.

Notwithstanding those comments about 'tying' both applications together by means of a S106 Agreement, each of the applications must be considered on its own merits. There is no guarantee that the other application for two new dwellings would be acceptable in planning terms, having regard to all material considerations. Taking this current proposal as a 'stand-alone' scheme, it is considered that the change the use of the existing outbuildings from 6 holiday letting rooms into a single dwelling unit would decrease the nutrient impact of the site. As such, it is not considered appropriate to raise an objection based on the issue of phosphates and impact on the Somerset Levels and Moors, and mindful that a satisfactory solution could be further achieved by means of tying both application proposals together with a S106 Agreement should both proposed development schemes be granted the appropriate planning permissions.

### **Heritage and Planning Balance**

The public benefits of the proposal include the delivery of market housing, which would contribute to the provision of homes in the District, in an accepted situation where there is a less than five-year housing land supply. The Government's objective is to significantly boost the supply of housing and the proposal would provide one dwelling in a location with good access to some services and facilities. Irrespective of the extent of the shortfall however, given the small scale of the proposal, the delivery of one dwelling would attract only moderate weight.



In addition, the proposal would enhance the local economy, including creating jobs associated with the conversion stage and new residents are likely to support existing services. These beneficial factors would be common to any such development and, with no evidence to suggest local services are in particular need of the proposal, they carry moderate weight.

However, considerable importance and weight attaches to the desirability of preserving the settings of listed buildings, of which one (The Red Lion Inn) would be harmed by the proposals. The public benefits associated with the proposal do not present cumulatively considerable weight to be added in the heritage balance set out in paragraph 202 of the Framework. Additionally, statutory duties to preserve the listed building and its setting have not been met. The less than substantial harm caused to the Listed Building and its setting would not be outweighed by the public benefits of the proposal. The great weight that this harm attracts outweighs the moderate benefits associated with the provision of one new dwelling

The proposals are not in accordance with Local Plan Policies EP15, EQ2, EQ3 and EQ7. There would be harm to the character and appearance of the site and the settlement of Babcary. Irrespective of an absence of harm in respect of highway safety, pedestrian access, flood risk, biodiversity and phosphates, the proposed development runs counter to the development plan, against which planning decisions should be made unless material considerations indicate otherwise.

The Council acknowledges that it is unable to demonstrate a 5-year supply of housing land, triggering the operation of footnote 8 of the NPPF and paragraph 11(d). However, in respect of the designated heritage asset, it is considered that there is a clear reason for refusing the development, thus the tilted balance does not apply. Even if it did, it is considered that, assessed against the policies in the NPPF as a whole, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

As such it is recommended that planning permission for the development proposal should not be granted.

## **Human Rights and Equality Issues.**

### Human Rights Act

The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance

### Equalities Act

In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

## **RECOMMENDATION**

Planning permission is refused for the following reasons:

## **SUBJECT TO THE FOLLOWING:**

01. The implementation of the proposed development would be detrimental to the long-term viability and future of The Red Lion Inn, resulting in a significant or total loss of the premises currently used as a public house that contributes towards the sustainability of the village of Bab Cary. In addition, the proposed development would not provide employment opportunities appropriate to the scale of the settlement, would not create or enhance community facilities and services to serve the settlement, or meet an identified housing need (particularly affordable housing), nor would it increase the sustainability of the settlement. As such the proposed development would be contrary to Policies SD1, SS2 and EP15 of the South Somerset Local Plan and relevant guidance in the National Planning Policy Framework (2021).
02. The proposed development would neither preserve nor enhance the character and appearance of the Listed Building and its setting and would cause less than substantial harm to the significance of the designated heritage asset. As such, the proposal conflicts with Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 and, in the absence of any public benefits that would outweigh such harm, is contrary to Policy EQ3 of the South Somerset Local Plan 2006-2028 and Chapter 16 of the National Planning Policy Framework (2021), in particular paragraphs 197, 199 and 202.
03. The proposed creation of the new vehicular access and relocated car park and the resultant removal of stone walling, would neither conserve nor enhance the character and appearance of the locality, by reason of the further erosion of an historic, rural street scene, and as such would be contrary to the aims and provisions of Policy EQ2 of the South Somerset Local Plan 2006-2028 and relevant guidance within the National Planning Policy Framework (2021).
04. The siting and vehicular use of the proposed car park at the northern part of the site, in such close proximity to neighbouring dwellings, would result in a form of development that would cause unacceptable detriment to the amenities currently enjoyed by the residents of those dwellings and, as such, would be contrary to Policies EQ2 and EQ7 of the South Somerset Local Plan 2006-2028.

## **Informatives:**

01. This decision has been taken having regard to the following submitted drawings and documents:

Drawing no. F1574/LocPlan1: Location Plan

Drawing no. F1574/001/A: Existing Site Survey

Drawing no. F1574/002: Existing Plans and Elevations - The Barn

Drawing no. F1574/003: Existing Plans and Elevations - The Den

Drawing no. F1574/100/E: Proposed Site Plan and Street Elevation

Drawing no. F1574/101A: Proposed Plans and Elevations - The Barn

Drawing no. F1574/102B: Proposed Plan and Elevations - The Den

Drawing no. F1574/013: Existing and Proposed Street Scene - New Entrance

Design and Access Statement (March 2021) prepared by Della Valle Architects

A Heritage Statement (26 November 2020) prepared by C1 Context One Heritage and Archaeology

Bat Roost Assessment (January 2021) prepared by Country Contracts

Arboricultural Impact Assessment, Arboricultural Method Statement, Tree Protection Plan Revision A (August 2021) prepared by Hillside Trees Ltd, Arboricultural Consultancy

F1574/ Tree Planting Schedule/ Rev.A (04.10.2021)

Expert Witness Report (3 November 2020) prepared by Fleurets Ltd

Phosphate Calculations

Flood Risk Assessment (2 November 2021) prepared by RMA Environmental

02. In accordance with the NPPF the Council, as Local Planning Authority, takes a positive and proactive approach to development proposals focused on solutions. The Council works with applicants/agents in a positive and proactive manner by offering a pre-application advice service, and as appropriate updating applications/agents of any issues that may arise in the processing of their application and where possible suggesting solutions. In this case, there were no minor or obvious solutions to overcome the significant concerns caused by the proposals.

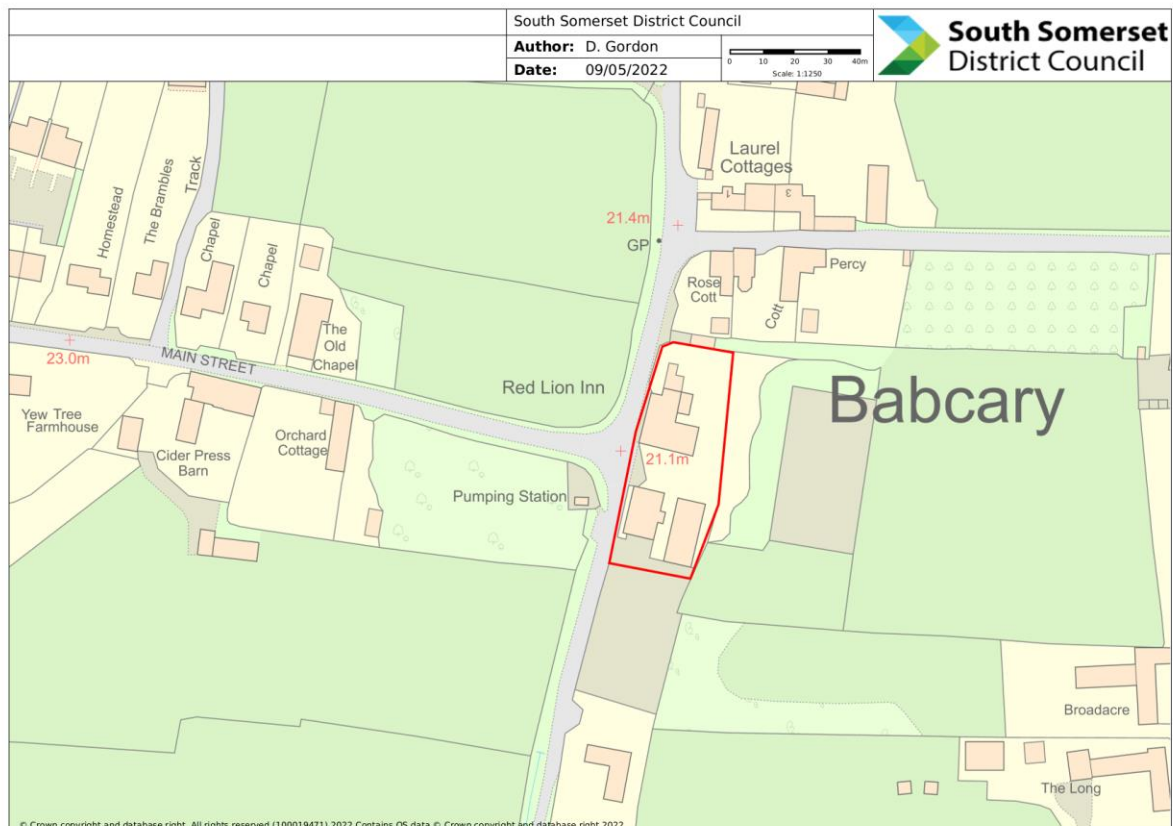
# Agenda Item 7

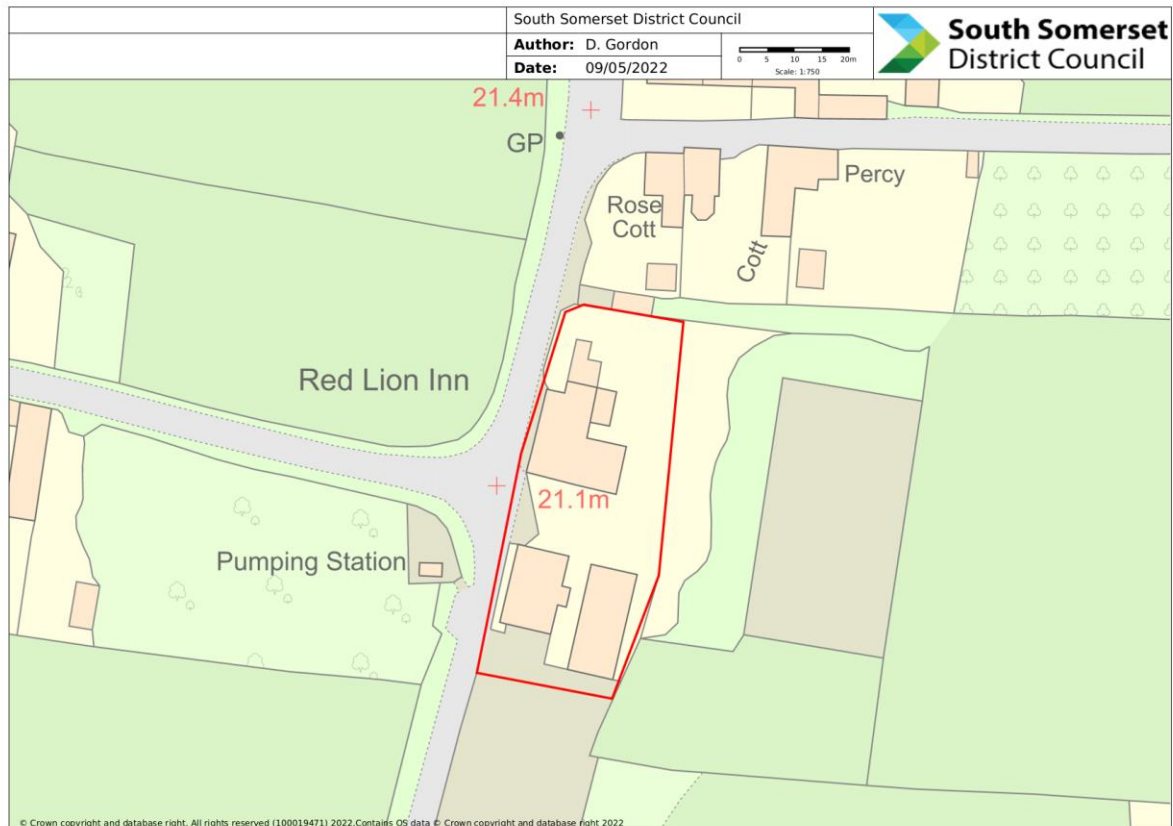
## Officer Report On Planning Application: 21/01052/LBC

<b>Proposal :</b>	Partial re-building and partial re-alignment of front boundary wall adjoined to the north end of the west elevation of the Red Lion Inn
<b>Site Address:</b>	The Red Lion Inn , Main Street, Bab Cary, Somerton, TA11 7ED
<b>Parish:</b>	Bab Cary
<b>CARY Ward (SSDC Member)</b>	Cllr K Messenger Cllr H Hobhouse
<b>Recommending Case Officer:</b>	David Kenyon (Principal Specialist) Tel: 01935 462091 Email: david.kenyon@southsomerset.gov.uk
<b>Target date :</b>	13th July 2021
<b>Applicant :</b>	Mr & Mrs C Garrard
<b>Agent: (no agent if blank)</b>	Mr Jonathan Lovelace Della Valle Architects Lake View Charlton Estate Shepton Mallet BA4 5QE
<b>Application Type :</b>	Other LBC Alteration

### REASON FOR REFERRAL

This application is referred to the Ward Members as the officer recommendation is contrary to the views received from third parties in support of the proposal and does not fully reflect all the reasons set out by the Parish Council and those third parties who are raising objections to the application.





## SITE DESCRIPTION AND PROPOSAL

This application seeks Listed Building consent for the partial re-building and partial re-alignment of the front boundary wall adjoined to the north end of the west elevation of the Red Lion Inn. In effect this seeks to allow the creation of a new vehicular access and visibility splay onto the County highway to serve a new car park to the rear of the public house.

The Red Lion is designated as a Grade II Listed Building and lies at the eastern end of Bab Cary, opposite the junction of Main Street and North Street, which are the two main thoroughfares through the village. The western end of Main Street merges onto Church Street where the Church of the Holy Cross is located, a Grade II\* Listed Building.

Immediately to the east of the main public house building is the open 'beer garden' with a small timber shed in situ.

Immediately to the south, and in close proximity to The Red Lion Inn, are located two buildings, comprising a recently modernised building with letting rooms associated with the public house (known as 'The Barn') and another recently modernised building used to provide functions at the public house (known as 'The Den'). 'The Barn' is a two storey building with a pitched roof containing 6 bedrooms used as guest accommodation in association with the public house.. External finishing materials comprise a mix of natural stone and timber cladding with clay roof tiles. 'The Den' is a single storey building with a high, steeply pitched roof, with external finishing materials of timber clad walls over a low stone wall and clay roof tiles. A marquee has been pitched alongside 'The Den'.

Further to the south of these outbuildings lies the main public house car park with a compacted hardened surface, accessed off North Street, and to the south of the car park lies the dwelling known as 'Bab Cary House' which is resided in by the applicants.

To the north, the public house borders two residential garages while there is open land beyond

the eastern boundary.

On 14th July 2020, Babcary Parish Council applied to the District Council to have the Red Lion Inn listed as an Asset of Community Value (ACV) under section 87 of the Localism Act 2011. Having assessed the nomination, the Council added the building and its associated land to its list on 3rd September 2020. An appeal against this listing by the applicants was subsequently dismissed on 1st July 2021, the Tribunal Judge concluding that The Red Lion Inn, including the public house, the Barn, the Den, the marquee area, the garden including the outside pizza area and the whole car park, was correctly listed as an ACV.

Included within the application submission are the following documents:

Design and Access Statement (March 2021) prepared by Della Valle Architects  
A Heritage Statement (26 November 2020) prepared by C1 Context One Heritage and Archaeology

The following drawings have been submitted:

Drawing no. F1574/LocPlan1: Location Plan  
Drawing no. F1574/001/A: Existing Site Survey  
Drawing no. F1574/100/E: Proposed Site Plan and Street Elevation  
Drawing no. F1574/013: Existing and Proposed Street Scene - New Entrance

Three other applications have been submitted in respect of the Red Lion Inn and its curtilage. Whilst each are to be considered on their own merits, they are nevertheless 'linked' in various ways. These other three concurrent applications are as follows, and are subject to separate officer reports and recommendations.

21/01051/FUL. Changes of use of the existing outbuildings from 6 short term letting units and garden/function room/store currently used in connection with the adjoining public house into a single independent, self-contained dwelling unit and ancillary annex accommodation to that dwelling unit, and provision of new vehicular access and relocation of public house car park to the rear of the public house.

21/01053/OUT. Outline application for the erection of 2no. detached new dwellings within the Red Lion Inn car park and adaptation of existing vehicular access, with some matters reserved except for access, layout and scale.

21/01054/DPO. Application to vary the Section 106 Agreement dated 7th October 2011 between South Somerset District Council and The Red Lion Inn (Babcary) Ltd in association with planning permission 10/05151/FUL to remove the requirements for (i) the outbuildings to be used in connection with the adjoining public house, and (ii) for purposes solely limited to short term letting rooms and as a garden/function room/store.

## **HISTORY**

02/02225/FUL & 02/02228/LBC. The demolition of toilet blocks and the erection of an extension to form dining room and new toilet facilities  
Planning permission and Listed Building consent granted 29.10.2002.

09/01417/LBC: Listed building consent granted (21/05/09) for the re-thatching of front and side roof with combed wheat and re-ridge.  
Listed Building consent granted 21.05.2009.

10/05151/FUL. Demolition and re-building of existing outbuilding to provide six en-suite letting rooms, construction of garden function room/store, and erection of staff/manager's dwelling.

Conditional planning permission granted 11.10.2011.

10/05155/LBC. Demolition and re-building of existing outbuilding to provide six en-suite letting rooms, construction of garden function room/store, change of use of first floor staff flat to family letting suite and erection of staff/manager's dwelling.

Listed Building consent granted 27.07.2011.

14/01868/FUL. Erection of a dwelling.

Refused 27.06.2014.

Subsequent appeal dismissed 7th November 2014.

15/01007/FUL. Erection of a dwelling and village shop.

Planning permission granted 19.01.2016.

16/00780/S73. S73 application to vary condition 2 of approval 15/01007/FUL, to allow the substitution of plans. Amendments to the design of the dwelling. Revision of the access way to ensure the orientation of the dwelling maximizes amenity space, and privacy for the pub users and occupants of the dwelling.

Planning permission granted 18.04.2016.

20/01967/OUT. Outline application with some matters reserved for the erection of 3 No. detached new dwellings within Red Lion Inn car park, conversion of 2 No. buildings into dwellings (5 No. total), provision of new vehicular access and relocating car park associated with Red Lion Inn.

Withdrawn.

20/03350/PREAPP. Proposed residential development of 3 dwellings (1 conversion and 2 new building), creation of replacement car park and new vehicular access and general consolidating of Public House.

21/01051/FUL. Changes of use of the existing outbuildings from 6 short term letting units and garden/function room/store currently used in connection with the adjoining public house into a single independent, self-contained dwelling unit and ancillary annex accommodation to that dwelling unit, and provision of new vehicular access and relocation of public house car park to the rear of the public house.

Pending consideration.

21/01053/OUT. Outline application for the erection of 2no. detached new dwellings within the Red Lion Inn car park and adaptation of existing vehicular access, with some matters reserved except for access, layout and scale.

Pending consideration.

21/01054/DPO. Application to vary the Section 106 Agreement dated 7th October 2011 between South Somerset District Council and The Red Lion Inn (Babcary) Ltd in association with planning permission 10/05151/FUL to remove the requirements for (i) the outbuildings to be used in connection with the adjoining public house, and (ii) for purposes solely limited to short term letting rooms and as a garden/function room/store.

Pending consideration.

#### *OTHER RELEVANT HISTORY*

19/03381/OUT. Outline application with all matters reserved except access for the erection of 3 dwellings. Land OS 3461, Adjacent North Street, Babcary

Outline planning permission 08.04.2020.

20/03299/REM. Reserved Matters application (pursuant to Outline application 19/03381/OUT) to include details of appearance, landscaping, layout and scale for the erection of 3 dwellings.

Pending consideration.

## **POLICY**

Section 16 (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states:  
"In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

For the purposes of determining current applications the Local Planning Authority considers that the adopted development plan comprises the policies of the South Somerset Local Plan 2006-2028 (adopted March 2015).

### **Policies of the South Somerset Local Plan (2006-2028)**

EQ3 - Historic Environment

### **National Planning Policy Framework - July 2021**

Chapter 16 - Conserving and enhancing the historic environment

### **National Planning Practice Guidance, including National Design Guide - September 2019**

#### **Additional Guidance**

HE Advice Notes 2: Making Changes to Heritage Assets

Conservation Principles

BS: 7913 Conservation of Historic Buildings

HE GPA 3: Setting of Heritage Assets

HE GPA 2: Managing Significance in Decision Taking

## **CONSULTATIONS**

### **Bab Cary Parish Council**

A very detailed response dated 30th June 2021 was received from the Parish Council following its meeting on 14th June 2021 to discuss this particular application as well as the separate applications 21/01051/FUL, 21/01053/OUT and 21/01054/DPO. The one comprehensive response from the Parish Council applies to all four applications and has been included in full on the District Council's website for public consideration. The full response will not be reiterated in this report but specific extracts will be set out below to provide an indication and explanation of the Parish Council's objections to this proposal.

The specific objection in respect of this particular proposal is as follows:

- Listed building - gross over development and seriously detrimental to the rustic character and setting of the listed building and would put at risk its future as a working pub. Moving the car park to the north of the pub moves the noise and light of the car park into the middle of the village and is detrimental to the adjoining houses including Percy House, also Grade II listed.

### **SSDC Conservation Specialist**

Comments received from the Council's Conservation Specialist relate solely to that part of the proposal to allow the changes of use of the existing outbuildings from 6 short term letting units and garden/function room/store currently used in connection with the adjoining public house into a single independent, self-contained dwelling unit and ancillary annex accommodation to that dwelling unit. He concluded that the change would have no impact on heritage assets and offered no formal objection.



### **SSDC External Heritage Consultant**

An external Heritage Consultant was appointed to act on behalf of the Council due to the Council's own Conservation Specialist being absent on long-term sick leave. Comments were sought about the application proposal as a whole, including that part of the application relating to the proposed new access and parking area with due regard being given to the various heritage documents and comments submitted on behalf of the applicants and also by or on behalf of third party objectors, including a Heritage Appraisal and Impact Assessment that was submitted to the Council, as an objection to the proposal (and also the other concurrent applications) on 1st July 2021.

Following a site visit carried out by the Heritage Consultant on 25th October, a detailed response dated 15th December 2021 was submitted to the Council. The recommendation was that "great weight" should be given to the safeguarding of the designated and undesignated heritage assets and their settings in any planning balance, as required under the NPPF. It was considered that the proposed scheme would contribute to a high level of less-than-substantial harm and the Heritage Consultant was unable to offer support from a heritage impact perspective.

### **South West Heritage Trust**

There are limited or no archaeological implications to this proposal and therefore no objections are raised on archaeological grounds.

### **REPRESENTATIONS**

This application ref. 21/01052/LBC (and the three other concurrent applications refs 21/01051/FUL, 21/01053/OUT and 21/01054/DPO) have attracted many letters/emails of representation from residents both within the village and from elsewhere, raising objections and offering support for the development proposals as a whole. All representations received can be viewed on the Council's website but can be summarised as follows, in no particular order:

#### Support

- Covid restrictions have not helped the viability of pubs on a national basis. The proposals are more than reasonable solutions to help preserve the Red Lion Inn as an on-going commercial asset for the long term future and to avoid its premature closure.
- The viability report submitted with the application shows the pub would be sustainable without the letting rooms and 'The Den'.
- The proposals seek to conserve the listed character of the Red Lion Inn.
- All villages are having to accommodate extra housing - this development is small and in line with current housing policy and is not unjustified.
- The current car park is very unsightly - its relocation and development would be a visual improvement.
- The proposals would result in no worse impacts on visual appearance and highway safety than the approved new housing on the opposite side of the lane.

#### Objections

- The Red Lion Inn is an important village asset and its viability and retention must be protected and preserved at all costs. The proposals would result in a material adverse impact on the viability of the public house business.
- The existing signed S106 Agreement must be honoured and retained to ensure continued viability of the public house.
- Reduction in size of the beer garden would be unacceptable and be less attractive to customers.
- The proposals will result in detriment to the character and appearance of the Listed Building and would detract from its significance.
- Overdevelopment of the site as a whole.

- There would be a material loss of employment.
- Unacceptable resultant impact on highway safety - poor visibility, insufficient on-site turning.
- Insufficient on-site parking being proposed. No safe on-street parking nearby.
- Unacceptable resultant impact on flooding and flood risk in the immediate and wider area.
- Inadequate sewerage system in village. Increased foul sewage problems as a result.
- Adverse resultant impact on residential amenities of neighbouring properties - construction traffic, additional noise, spill-over of cars, headlights and door slamming by users of proposed car park.
- Unsatisfactory living conditions for occupiers of the proposed converted dwelling due to proximity to public house.
- Adverse resultant impact on the local ecosystems and possible harm to habitats of protected species.
- Unacceptable diversion of public footpath.
- No need for further housing in the village.
- Non-compliance with economic, social and environmental objectives of sustainable development.
- Phosphate restrictions.

## **CONSIDERATIONS**

The main consideration is the impact of the proposal on the character and appearance of the public house, which is a Grade II Listed Building, and thus whether substantial or less than substantial harm is caused to the setting of this designated heritage asset.

Local Plan Policy EQ3 states that all new development proposals relating to the historic environment will be expected to:

- Safeguard or where appropriate enhance the significance, character, setting and local distinctiveness of heritage assets;
- Make a positive contribution to its character through high standards of design which reflect and complement it and through the use of appropriate materials and techniques;
- Ensure alterations, including those for energy efficiency and renewable energy, are balanced alongside the need to retain the integrity of the historic environment and to respect the character and performance of buildings, adopting principles of minimum intervention and reversibility.

The National Planning Policy Framework Chapter 16 'Conserving and enhancing the historic environment' requires local planning authorities to assess the impact that development will have on a heritage asset.

Paragraph 197 states:

In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 199 states:

When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

In particular paragraph 202 states:

Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

The Council's appointed Heritage Consultant has visited the site and has offered detailed comments which are set out below.

The proposal seeks to create a new 6 metres wide vehicular access within the wall to the northern end, close to the existing "layby" created by the previous loss of the continuation of the original historic wall shown in the archive photos and the setting back of two driveway gates serving the neighbouring unlisted properties. This would result in all of the wall from the far northern elevation of the Inn to the party boundary with the cottages being completely removed, including a short section to the west end of the party boundary, so as to amalgamate the existing layby and set back appearance of the new access with that of the existing neighbouring gateways into one large visibility splay.

Furthermore, the remaining section of stone wall along the street, is also to be demolished and realigned 1.2 metres back from its historic location to further extend the visibility splay, resulting in a wider pavement and increase width in the public domain and homogenised appearance of the frontage due to the loss of the present staggered building line of wall and inn.

The submission makes reference to the wall being in a poor state of repair, listing toward the street. However, NPPF paragraph. 196 states that *"Where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision."*

In this specific case it is not implied that deliberate neglect or damage has occurred but similarly a lack of maintenance or remedial repairs should not be given great weight in terms of justification for alteration, especially when considered to impact on the setting of the Listed Building and hence its significance, despite the true provenance of the wall being uncertain.

The setting of a heritage asset, as defined by Historic England, being not just the curtilage but all the land from which the heritage asset can be experienced, whether public or private land hence the street. Such "settings" are defined in the NPPF's Glossary as being a source of a heritage asset's significance.

Reference is also made to a former consent in regards to the siting of a five-bar gate (2/02225/FUL & 2/02228/LBC). From plans this shows the gate located within the existing alignment of the wall, with no setting back or associated visibility splays. It could be considered that, although this does constitute a visual change which may not be considered an enhancement, there is evidence of a historic gate and the level of impact is to a degree limited to this precise position and if executed appropriately, has no overall impact on the historic character of the street scene or the overall setting of the Listed Building.

The proposed scheme in contrast contributes a major alteration to both of these, and cannot be considered to have taken the opportunity for the development to preserve or enhance as required by the NPPF, but rather to introduce an overly modern highway arrangement that results in the cumulative erosion the historic, rural street scene, impacting on the wider setting of the Listed Building and the neighbouring undesignated heritage assets.

The creation of the new access is associated with the proposed creation of a relocated car park which, although not in itself requiring Listed Building Consent and will be considered in more detail under the linked planning application ref. 21/01051/FUL, will further exacerbate the detrimental impact on the more immediate setting of the Listed Building and that of the neighbouring heritage asset's amenity areas, due to the proximity to the party boundary.

## **Summary**

The proposed creation of the new access is in itself unjustified, as at present a well sized accessible car park is located at the southern end of the plot. However, this present facility would be highly compromised by a separate proposed development currently being considered under an independent outline planning application (ref. 21/01053/OUT) for the erection of two new dwellings, which is outside of the content and considerations of this Listed Building consent application and the linked planning application ref. 21/01051/FUL.

Therefore, considering the impact of the proposed access and wall alignment in its own right, it is considered that the form, scale and location of the proposed opening and associated loss of front boundary enclosure to the plot would impact detrimentally on the Historical, Aesthetic, Evidential and Group value of the Grade II Red Lion Inn and the setting of the neighbouring heritage assets, where their rear elevations will be clearly seen juxtaposed with this development from North Street.

Despite the former loss of the most northern section of the stone wall (as evidenced from comparison with the archive photos) having already occurred and the previous construction of a similar visibility splay in the street, these works appears to have been carried out a number of years ago, prior to the introduction of the NPPF and subsequent changes in national and local policy and guidance and cannot be considered to act as a benchmark. Instead today, following the development of the understanding of significance, the existing "layby" and loss of historic boundary is considered to be of a negative feature within the lane.

The new opening would not be seen in isolation but instead to combine with the existing highway construction, exacerbating the level of impact on the setting of an overly suburban and engineered appearance, which together with the widened pavement of 2 metres would be out of keeping with the rural village scene. In addition, there are concerns relating to the facilitation of the relocated car parking, the new access providing direct views into the carpark, which again will be viewed in connection with the main heritage asset, rather than in its present detached position to the south and will also bring added impact of noise, smell, light from traffic movement into much closer contact with the main listed building and its associated listed stone privy at the rear, and the settings of the neighbouring listed building and undesignated cottages.

Therefore, the scheme is not considered to safeguard the setting of the various heritage assets, and to impact on special architectural character and historic interest of the Red Lion, due to the changes to the appearance of the frontage and the extensive loss of the historic enclosure.

There is insufficient justification for the works, no Options Appraisal has been submitted to confirm that all other options have been assessed against their related impact on the significance of the heritage asset or that the one submitted is the one of least impact.

## **Conclusion**

The proposals are considered to contribute a high level of impact on the significance of the Red Lion and its curtilage listed boundary wall, and to a lesser degree on the adjacent heritage assets. As such, "*great weight*" should be given to the safeguarding of the Aesthetic, Historical, Evidential and Communal Value of a heritage asset and its setting in any planning balance, as required under the NPPF (para 199-203), as the proposed scheme is considered to contribute a high level of less-than-substantial harm and officer support cannot therefore be forthcoming. The proposal is not in accordance with Section 16 of the Planning (Listed Building and Conservation Areas) Act 1990, Policy EQ3 of the South Somerset Local Plan and Chapter 16 of the NPPF.

## **RECOMMENDATION**

That Listed Building consent be refused.

**SUBJECT TO THE FOLLOWING:**

01. The proposed development would neither preserve nor enhance the character and appearance of the Listed Building and its setting and would cause less than substantial harm to the significance of the designated heritage asset. As such, the proposal conflicts with Section 16 of the Planning (Listed Building and Conservation Areas) Act 1990 and is contrary to Policy EQ3 of the South Somerset Local Plan 2006-2028 and Chapter 16 of the National Planning Policy Framework (2021), in particular paragraphs 197, 199 and 202.

**Informatives:**

01. This decision has been taken having regard to the following submitted drawings and documents:

Drawing no. F1574/LocPlan1: Location Plan

Drawing no. F1574/001/A: Existing Site Survey

Drawing no. F1574/100/E: Proposed Site Plan and Street Elevation

Drawing no. F1574/013: Existing and Proposed Street Scene - New Entrance

Design and Access Statement (March 2021) prepared by Della Valle Architects

A Heritage Statement (26 November 2020) prepared by C1 Context One Heritage and Archaeology

02. In accordance with the NPPF the Council, as Local Planning Authority, takes a positive and proactive approach to development proposals focused on solutions. The Council works with applicants/agents in a positive and proactive manner by offering a pre-application advice service, and as appropriate updating applications/agents of any issues that may arise in the processing of their application and where possible suggesting solutions. In this case, there were no minor or obvious solutions to overcome the significant concerns caused by the proposals.

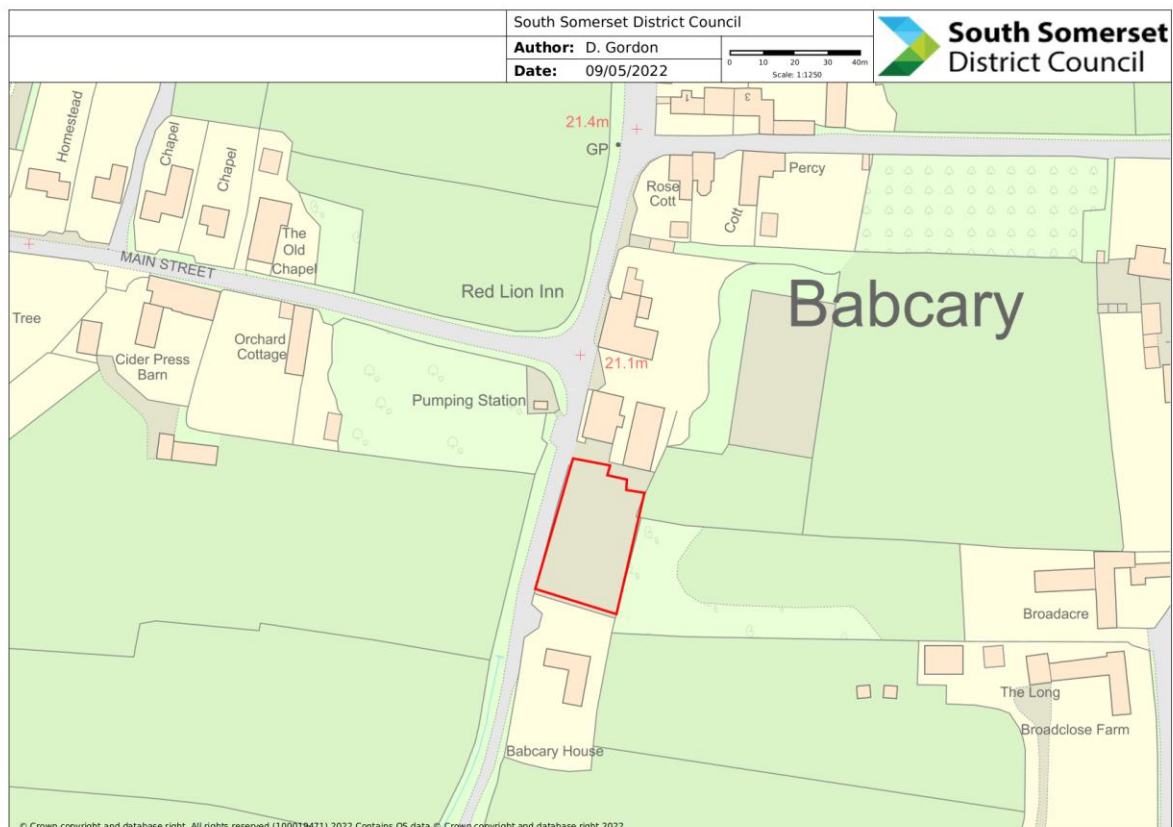
# Agenda Item 8

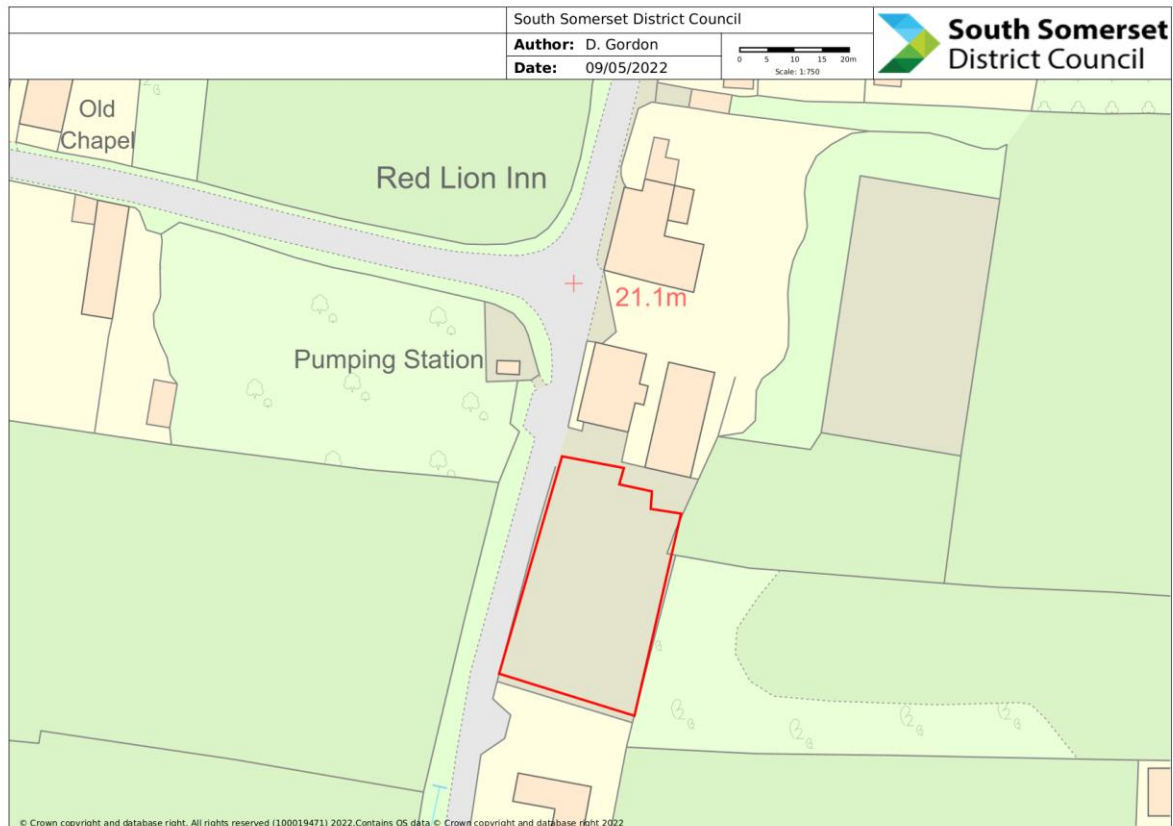
## Officer Report On Planning Application: 21/01053/OUT

<b>Proposal :</b>	Outline application for the erection of 2no. detached new dwellings within the Red Lion Inn car park and adaptation of existing vehicular access, with some matters reserved except for access, layout and scale.
<b>Site Address:</b>	The Red Lion Inn , Main Street, Babcarry, Somerton, TA11 7ED
<b>Parish:</b>	Babcarry
<b>CARY Ward (SSDC Member)</b>	Cllr K Messenger Cllr H Hobhouse
<b>Recommending Case Officer:</b>	David Kenyon (Principal Specialist) Tel: 01935 462091 Email: david.kenyon@southsomerset.gov.uk
<b>Target date :</b>	24th May 2021
<b>Applicant :</b>	Mr & Mrs C Garrard
<b>Agent: (no agent if blank)</b>	Mr Jonathan Lovelace Della Valle Architects Lake View Charlton Estate Shepton Mallet BA4 5QE
<b>Application Type :</b>	Minor Dwellings 1-9 site less than 1ha

### REASON FOR REFERRAL

This application is referred to the Ward Members as the officer recommendation is contrary to the views received from third parties in support of the proposal and does not fully reflect all the reasons set out by the Parish Council and those third parties who are raising objections to the application.





## SITE DESCRIPTION AND PROPOSAL

This application seeks outline planning permission for the erection of two detached new dwellings within the Red Lion Inn car park and adaptation of the existing vehicular access, with some matters reserved except for access, layout and scale.

The car park serving the Red Lion Inn lies to the south of the public house and ancillary outbuildings. The Red Lion Inn itself is designated as a Grade II Listed Building and lies at the eastern end of Babcary, opposite the junction of Main Street and North Street, which are the two main thoroughfares through the village. The western end of Main Street merges onto Church Street where the Church of the Holy Cross is located, a Grade II\* Listed Building.

Immediately to the south, and in close proximity to The Red Lion Inn, are located two buildings, comprising a recently modernised building with 6 letting rooms used as guest accommodation in association with the public house (known as 'The Barn') and another recently modernised building used to provide functions at the public house (known as 'The Den'). A marquee has been pitched alongside 'The Den'.

Further to the south of these outbuildings lies the main public house car park with a compacted hardened surface, accessed off North Street, and to the south of the car park lies the dwelling known as 'Babcary House' which is resided in by the applicants.

There is a public right of way (public footpath L 2/21) recorded on the Definitive Map that runs from North Street immediately to the south of the two outbuildings to the eastern boundary of the site, then runs in a southerly direction along part of the eastern boundary before crossing the boundary and heading in an easterly direction.

Immediately to the west of the car park on the opposite side of North Street lies open agricultural land. Outline planning permission (with all matters reserved except access) has been granted on 8th April 2020 for the erection of three dwellings on this land (application ref. 19/03381/OUT). At the time of compiling this report, a reserved matters application has been

submitted pursuant to this grant of outline permission to include details of appearance, landscaping, layout and scale for the erection of three dwellings, but has yet to be determined (application ref. 20/03299/REM).

On 14th July 2020, Babcary Parish Council applied to the District Council to have the Red Lion Inn listed as an Asset of Community Value (ACV) under section 87 of the Localism Act 2011. Having assessed the nomination, the Council added the building and its associated land to its list on 3rd September 2020. An appeal against this listing by the applicants was subsequently dismissed on 1st July 2021, the Tribunal Judge concluding that The Red Lion Inn, including the public house, the Barn, the Den, the marquee area, the garden including the outside pizza area and the whole car park, was correctly listed as an ACV.

The application proposal seeks outline permission for the erection of two dwellings on part of the car park land. All details in relation to appearance and landscaping are reserved for consideration at the detailed (reserved matters) application stage and are not to be considered as part of this outline application. Details are sought to be agreed for access, layout and scale as part of this application.

The purpose of this application (and the other concurrent applications associated with the Red Lion site) relate to the viability of the public house business. As stated in the Design and Access Statement dated March 2021 prepared by the agents, *"Crucial to the restructuring of the business and its future viability is the redevelopment of the surplus buildings and land to become i) 1no. dwelling and garden room converted from The Barn and The Den respectively (subject to separate application ref. 21/01051/FUL), and ii) 2no. new build dwellings in the southern part of the existing pub car park. The finance generated by these developments will directly reduce the debt on active business loans for these aspects of the business, and the success of these developments is directly linked to the success of the pub itself.*

The following information is taken from the Design and Access Statement dated March 2021 to describe the application proposal.

#### Amount

The application site is approx. 0.10ha, and the proposal seeks to provide 2no. one-and-a-half storey dwellings within the Brownfield site. Each dwelling would have 4 bedrooms. In addition, the public house car park would be reduced in capacity as part of a consolidating process, with a new vehicular access and car park proposed to the north (part of a separate concurrent application ref 21/01051/FUL).

#### Access

Access to the car park/ pub site is currently achieved via North Street. The existing access would be retained and would be enhanced by widening the access to the south approximately 7 metres to improve pedestrian links through the village. The access currently serves all traffic relating to the Red Lion Inn, with in excess of 30 car parking spaces available to use. The application area for this proposal of two new dwellings relates to a part of the pub car park which constitutes 19 parking spaces. As part of a separate but concurrent application (application ref 21/01051/FUL), the existing car park would be partly reduced in size and be relocated to the north of the site with a reduced parking provision and requirement of 20 spaces for the retained pub function.

The existing public footpath would be diverted and would run along the western and southern boundaries of the existing car park.

#### Layout

At this outline stage, the development could be sited as indicated on the submitted drawing no. F1574/100/E "Proposed Site Plan and Street Elevation". The proposed layout has been determined by the following existing and proposed aspects:

- The confines of the existing pub car park,



- The adjoining dwelling to the rear (Babcary House),
- The extant (but un-built) planning consent for three dwellings on the opposite side of North Street (ref. 19/03381/OUT),
- The built environment in the immediate vicinity (linear form of development along North Street) and the wider village (no particular type of dwelling orientation or relationship with the street),
- The proposed parking and turning provision, and
- External amenity space for the new dwellings.

The proposed two dwellings would be positioned within the location of the current car park with the aim of creating a more defined and focussed space between them and the ancillary pub buildings ('The Barn' and 'The Den' - which are subject to the separate application ref. 21/01051/FUL for residential conversion to a single self-contained dwelling and garden room). Their positioning would afford vehicular access to the new dwellings via an adapted existing vehicular access for additional pub car parking and the converted ancillary buildings. The two dwellings would front a newly landscaped parking and turning courtyard which would provide for 8 parking spaces to serve the two new dwellings, 3 new parking spaces for the converted dwelling ('The Barn'), 4 retained pub car parking spaces, and maintaining the existing plot boundaries of the pub car park.

Room layouts would be designed to afford views of the private gardens to the rear (south of the site) and ensuring views would not overlook the adjacent property at Babcary House. Good levels of space would be provided for the amenity / garden areas, as well as for storage of refuse and recycling bins.

The existing hedgerows around the site would be retained as much as possible whilst retaining the existing vehicle access. The existing hedges help to partly screen the proposed development from the road and on approach to the village from the south. Where any hedgerow is required to be trimmed or removed, this would be heavily supplemented with native species planting to mitigate any loss.

#### Scale

The proposed two dwellings would be set into the site, thereby seeking to reduce their visual appearance and scale on the landscape. Being 1.5 storeys high, the ridge heights would be no more than 7.2m in height from external ground level, as indicated on the submitted drawing no. F1574/100/E "Proposed Site Plan and Street Elevation".

The site is not within a designated Conservation Area and is not subject to any specific protective designations, such as SSSI, SAC, Wildlife Site, Green Belt, AONB, Flood Zone, Special Landscape Area, nor are there any trees on the site itself which are subject to TPO designations.

Included within the application submission are the following documents:

Design and Access Statement (March 2021) prepared by Della Valle Architects  
 A Heritage Statement (26 November 2020) prepared by C1 Context One Heritage and Archaeology  
 Bat Roost Assessment (January 2021) prepared by Country Contracts  
 Arboricultural Impact Assessment, Arboricultural Method Statement, Tree Protection Plan Revision A (August 2021) prepared by Hillside Trees Ltd, Arboricultural Consultancy  
 F1574/ Tree Planting Schedule/ Rev.A (04.10.2021)  
 Expert Witness Report (3 November 2020) prepared by Fleurets Ltd  
 Phosphate Calculations  
 Flood Risk Assessment (2 November 2021) prepared by RMA Environmental

The following drawings have been submitted:

Drawing no. F1574/LocPlan2: Location Plan  
Drawing no. F1574/001/A: Existing Site Survey  
Drawing no. F1574/100/E: Proposed Site Plan and Street Elevation

Three other applications have been submitted in respect of the Red Lion Inn and its curtilage. Whilst each are to be considered on their own merits, they are nevertheless 'linked' in various ways. These other three concurrent applications are as follows, and are subject to separate officer reports and recommendations.

21/01051/FUL. Changes of use of the existing outbuildings from 6 short term letting units and garden/function room/store currently used in connection with the adjoining public house into a single independent, self-contained dwelling unit and ancillary annex accommodation to that dwelling unit, and provision of new vehicular access and relocation of public house car park to the rear of the public house.

21/01052/LBC. Partial re-building and partial re-alignment of front boundary wall adjoined to the north end of the west elevation of the Red Lion Inn.

21/01054/DPO. Application to vary the Section 106 Agreement dated 7th October 2011 between South Somerset District Council and The Red Lion Inn (Babcary) Ltd in association with planning permission 10/05151/FUL to remove the requirements for (i) the outbuildings to be used in connection with the adjoining public house, and (ii) for purposes solely limited to short term letting rooms and as a garden/function room/store.

## HISTORY

02/02225/FUL & 02/02228/LBC. The demolition of toilet blocks and the erection of an extension to form dining room and new toilet facilities  
Planning permission and Listed Building consent granted 29.10.2002.

09/01417/LBC: Listed building consent granted (21/05/09) for the re-thatching of front and side roof with combed wheat and re-ridge.  
Listed Building consent granted 21.05.2009.

10/05151/FUL. Demolition and re-building of existing outbuilding to provide six en-suite letting rooms, construction of garden function room/store, and erection of staff/manager's dwelling.  
Planning permission granted 11.10.2011 subject to several conditions.  
Conditions 03, 04 and 05 state:

*03. The occupation of the dwelling hereby approved at the southern end of the site shall be restricted to those employed by the Red Lion public house, as part of the day to day running of the public house, and their dependents.*

Reason: To prevent unsustainable, permanent occupation that would be contrary to policy ST3 of the South Somerset Local Plan and the countryside policies as set out in PPS7.

*04. The occupation of the letting units hereby permitted shall be restricted to short term lets to bona fide guests of the public house and this accommodation shall not be occupied as a person's sole or main residence. The site operator or owner shall maintain an up to date register of the names of all occupiers of this accommodation, their main home addresses and the duration of their stay and shall make this information available at all reasonable times to the Local Planning Authority.*

Reason: To prevent unsustainable, permanent occupation that would be contrary to policy ST3 of the South Somerset Local Plan and the countryside policies as set out in PPS7.

*05. Upon first occupation of the managers dwelling hereby permitted the permanent residential use of the staff quarters on the first floor of the public shall cease and thereafter this accommodation shall be restricted to holiday purposes only. This accommodation shall not be*

*occupied as a person's sole or main residence. The site operator or owner shall maintain an up to date register of the names of all occupiers of this accommodation, their main home addresses and the duration of their stay and shall make this information available at all reasonable times to the Local Planning Authority.*

Reason: To prevent unsustainable, permanent occupation that would be contrary to policy ST3 of the South Somerset Local Plan and the countryside policies as set out in PPS7.

To be read in conjunction with this permission is a Section 106 Agreement dated 7th October 2011. The Agreement requires, inter alia:

- o the six letting rooms to be available for and not to be occupied at any time other than for short term lettings (defined as occupation by bona fide guests of the public house for individual periods not exceeding four weeks in total in any period of twelve weeks),
- o the manager's dwelling shall not be occupied at any time other than by a person or persons solely or mainly employed to provide services in connection with the operational running of the business at the Red Lion Inn and his or her resident dependents,
- o not to use any of the public house for residential use except this shall not prohibit the staff flat (i.e. the living accommodation located on the first floor of the public house) being used for short term letting,
- o all buildings forming part of the property (defined as the public house with its staff flat, the letting rooms, the manager's dwelling and the garden function room/store) shall be used in conjunction with the business run from the property and for no other purpose whatsoever so as to prevent the sub-division of the property as a single planning unit run from the site,
- o neither the staff flat, the letting rooms nor the manager's dwelling to be sold, let, occupied under licence or any other disposition made such that it would result in the staff flat, the letting rooms or the manager's dwelling being owned, occupied or used separately from the public house (unless otherwise agreed in writing with the Council), and
- o an accurate register of all guests of the public house occupying the letting rooms and the staff flat for short term lettings shall be maintained and be made available for inspection by the Council at all reasonable times.

10/05155/LBC. Demolition and re-building of existing outbuilding to provide six en-suite letting rooms, construction of garden function room/store, change of use of first floor staff flat to family letting suite and erection of staff/manager's dwelling.  
Listed Building consent granted 27.07.2011.

14/01868/FUL. Erection of a dwelling.  
Refused 27.06.2014.

Subsequent appeal dismissed 7th November 2014. In essence this proposal sought the erection of a dwelling to the south of the public house car park as per the planning permission 10/05051/FUL but without any tie restricting occupation to the public house business. In dismissing the appeal, the Inspector stated:

*...given my conclusions as to the poor sustainability of the proposed development, I conclude that the proposed development would not meet the criteria of Policy SS2 of the emerging Local Plan and would not be sustainable in the wider terms set out by the Framework.*

In concluding as I have above, a fundamental and critical distinction must be drawn between the previous permission, tied as it was to the continued viability of the public house, and the current appeal which has no such explicit link. I acknowledge the appellant's future intention to live in the proposed dwelling. Nevertheless, without the tie provided by the condition as imposed on the previous permission and the subsequent s.106 agreement, the link that justified the previous proposal in terms of its community benefit cannot be guaranteed. A range of circumstances - even if unforeseen at present - could lead to the proposed development being severed away from the public house. The outcome would be a dwelling that would be contrary to existing and emerging planning policy and to the principles of sustainable development as set out in the Framework.

15/01007/FUL. Erection of a dwelling and village shop.  
Planning permission granted 19.01.2016.

To be read in conjunction with this permission is a Section 106 Agreement dated 13th January 2016. The Agreement requires, inter alia:

- o not to occupy the dwelling until the shop has been completed and opened for business,
- o the shop to be kept open for business, seven days a week for a minimum of two hours per day for so long as it is viable to do so,
- o on the occasion of the business becoming unviable, details of accounts for the preceding twelve months to be provided to the Council, and
- o if agreed by the Council the owner will be released from the obligation under this agreement.

NOTE: On 19th February 2018 the Council confirmed in writing that, following receipt of the profit and loss accounts and additional information requested by virtue of the Section 106 Agreement, it was satisfied that the shop was unviable. Therefore, as per the relevant paragraph of that Agreement, the owner was formally released from the obligations under that agreement.

16/00780/S73. S73 application to vary condition 2 of approval 15/01007/FUL, to allow the substitution of plans. Amendments to the design of the dwelling. Revision of the access way to ensure the orientation of the dwelling maximizes amenity space, and privacy for the pub users and occupants of the dwelling.  
Planning permission granted 18.04.2016.

20/01967/OUT. Outline application with some matters reserved for the erection of 3 No. detached new dwellings within Red Lion Inn car park, conversion of 2 No. buildings into dwellings (5 No. total), provision of new vehicular access and relocating car park associated with Red Lion Inn.  
Withdrawn.

20/03350/PREAPP. Proposed residential development of 3 dwellings (1 conversion and 2 new building), creation of replacement car park and new vehicular access and general consolidating of Public House.

21/01051/FUL. Changes of use of the existing outbuildings from 6 short term letting units and garden/function room/store currently used in connection with the adjoining public house into a single independent, self-contained dwelling unit and ancillary annex accommodation to that dwelling unit, and provision of new vehicular access and relocation of public house car park to the rear of the public house.  
Pending consideration.

21/01052/LBC. Partial re-building and partial re-alignment of front boundary wall adjoined to the north end of the west elevation of the Red Lion Inn.  
Pending consideration.

21/01054/DPO. Application to vary the Section 106 Agreement dated 7th October 2011 between South Somerset District Council and The Red Lion Inn (Babcary) Ltd in association with planning permission 10/05151/FUL to remove the requirements for (i) the outbuildings to be used in connection with the adjoining public house, and (ii) for purposes solely limited to short term letting rooms and as a garden/function room/store.  
Pending consideration.

#### *OTHER RELEVANT HISTORY*

19/03381/OUT. Outline application with all matters reserved except access for the erection of 3 dwellings. Land OS 3461, Adjacent North Street, Babcary  
Outline planning permission 08.04.2020.

20/03299/REM. Reserved Matters application (pursuant to Outline application 19/03381/OUT) to include details of appearance, landscaping, layout and scale for the erection of 3 dwellings. Pending consideration.

## **POLICY**

Section 38(6) of the Planning and Compulsory Purchase Act (2004), and Paragraphs 2, 11, 12 and 47 of the NPPF state that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 imposes a general duty on local planning authorities when determining planning applications as respects listed buildings and states:

"In considering whether to grant planning permission, or permission in principle, for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

For the purposes of determining current applications the Local Planning Authority considers that the adopted development plan comprises the policies of the South Somerset Local Plan 2006-2028 (adopted March 2015).

### **Policies of the South Somerset Local Plan (2006-2028)**

SD1 - Sustainable Development

SS1 - Settlement Strategy

SS2 - Development in Rural Settlements

EP15 - Protection and Provision of Local Shops, Community Facilities and Services

TA1 - Low Carbon Travel

TA5 - Transport Impact of New Development

TA6 - Parking Standards

EQ2 - General Development

EQ3 - Historic Environment

EQ4 - Biodiversity

EQ7 - Pollution Control

### **National Planning Policy Framework - July 2021**

Chapter 2 - Achieving sustainable development

Chapter 4 - Decision-making

Chapter 5 - Delivering a sufficient supply of homes

Chapter 6 - Building a strong, competitive economy

Chapter 8 - Promoting healthy and safe communities

Chapter 9 - Promoting sustainable transport

Chapter 12 - Achieving well - designed places

Chapter 14 - Meeting the challenge of climate change, flooding and coastal change

Chapter 15 - Conserving and enhancing the natural environment

Chapter 16 - Conserving and enhancing the historic environment

### **National Planning Practice Guidance, including National Design Guide - September 2019**

#### **Other material considerations**

Somerset County Council Parking Strategy (SPS) (September 2013) and Standing Advice (June 2017)

## CONSULTATIONS

### Babcary Parish Council

A very detailed response dated 30th June 2021 was received from the Parish Council following its meeting on 14th June 2021 to discuss this particular application as well as the separate applications 21/01051/FUL, 21/01052/LBC and 21/01054/DPO. The one comprehensive response from the Parish Council applies to all four applications and has been included in full on the District Council's website for public consideration. The full response will not be reiterated in this report but specific extracts will be set out below to provide an indication and explanation of the Parish Council's objections to this proposal.

The specific objections are as follows:

- No new housing needed
- Contrary to SS4 of the emerging South Somerset Local Plan Review 2016-2036
- Flood risk
- Mains drainage problems and capacity
- Loss of employment
- Sustainability - introduces a new dwelling, whilst removing two part time jobs in a village community with very little employment and no viable public transport. By removing the B&B, the most profitable part of the pub operation, it would appear that either many more jobs will have to go OR the pub will have to become significantly less profitable.
- Listed building - gross over development and seriously detrimental to the rustic character and setting of the listed building and would put at risk its future as a working pub. Moving the car park to the north of the pub moves the noise and light of the car park into the middle of the village and is detrimental to the adjoining houses including Percy House, also Grade II listed.
- Section 106 agreement- the ownership and occupation of the B&B, den marquee and car park is tied to the pub by a Section 106 agreement signed by the owners as per planning application 10/05151/FUL. Removing them would require a demonstration of their unviability over a period of time, not in relation to short term events, and removal of the conditions would also be against Planning Policy. The purpose of the S.106 agreement was to prevent the various parts of the site being sold off for development profit at a later date to the detriment of the community. This is exactly what is proposed so the S.106 must be retained
- Asset of Community Value - the entire Red Lion premises are registered as an Asset of Community Value and therefore cannot be broken up and sold off piecemeal.
- Unsatisfactory B&B dwelling - the proposal to create a residential dwelling out of the B&B building and the Den/marquee area creates a house that would be unsuitable for residential occupation. The B&B house would be surrounded by beer garden on one side and pub car parking on the other with the chimney of the pizza oven very close to the bedroom windows.
- Phosphate levels increase
- Proposed car parking is inadequate, contrived and unsafe
- Loss of amenities - the plans reduce the beer garden by approximately 25%, remove the children's play area, remove the disabled parking facilities and remove the B&B rooms
- Detrimental to the viability of the pub

The conclusion put forward by the Parish Council:

*The Red Lion is the only pub in the village and is a vital community asset, central to village life. The village has only three public spaces; the church, the playing field and the pub. This plan would reduce the pub to a shadow of its former self as it could no longer function as a destination/gastro pub. The village itself is far too small to support the pub alone without outside visitors and, if this plan were allowed, the pub would inevitably spiral downhill and ultimately close. Once lost and built over the car park, B&B and marquee/den can never be replaced and the scaled down pub premises would make a highly desirable residential site were the pub to close.*

Both CAMRA and CPRE share the view that this plan will be detrimental to the future of the Red Lion as a thriving pub.

The Six Pilgrims parishes (Alford, Babcary, Hornblotton, Lovington, N&S Barrow) used to have two pubs until very recently but now 'The Pilgrims Rest' is closed and lost to development; so we are fighting to save the last one. Charlton Mackrell have battled against the development of the car park of 'The Greyhound' and now its closure. The applicants' previous pub, 'The Mandeville Arms' at Hardington is also now closed. The Red Lion is registered as an ACV and the pub is at serious risk of decline and closure.

A further detailed response dated 25th November 2021 was received from the Parish Council following notification about receipt of a viability assessment carried out by a consultant on behalf of the District Council (Mr John Keane of Thomas E. Teague, Licensed Property Valuers, Rating Surveyors, Auctioneers, Brokers and Stocktakers) and a Flood Risk Assessment submitted on behalf of the applicants.

- Viability Assessment for SSDC by John Keane - The independent Viability Assessment commissioned by SSDC from John Keane of Thomas Teague completely vindicates what the Parish Council has been saying all along; that this plan would fundamentally undermine the long term viability of the Red Lion. The report is thorough and perceptive and rightly highlights the dangers of reducing (for ever) from four income streams down to two, the loss of the most profitable part of the business and the risks to the business of inadequate and contrived parking arrangements. The plans remove the long term future proofing which a rural pub in a small village needs in these uncertain times. The conclusion of the report (Section 28) is absolutely clear and unambiguous and it concludes in 28.8, "The implementation of the proposed scheme would be detrimental to the long term viability and future of the Red Lion." Given the duty on planning authorities to safeguard the future of rural pubs these applications should be rejected outright immediately.
- Flood Risk Assessment - The FRA submitted by RMA Environmental on behalf of the applicants is weak and crucially does NOT provide sequential testing as required and nor does it explain how the known flooding problem in Steart Lane will be mitigated. The Parish Council sets out in much detail responses to various paragraphs within the FRA and concludes that the FRA as submitted is wholly inadequate and should be rejected.

### **County Highway Authority**

No objections subject to the imposition of conditions relating to the provision and retention of the parking and turning spaces and they being kept free from obstruction; no obstruction to visibility; provision for the accommodation of on-site surface water disposal so that none drains onto the highway; hardsurfacing of the proposed access; and implementation of an approved Construction Environmental Management Plan.

As there are multiple applications on this site it will be imperative that the existing car parking for the commercial use is not lost prior to the creation of the new car parking area. The most appropriate way to secure this, given that the car parking and the residential elements are being sought under two different planning applications, would be by legal agreement.

### **County Public Rights of Way Team**

The current proposal will obstruct the footpath L 2/21. The proposal either needs to be revised to prevent any obstruction or a diversion order applied for.

The County Council does not object to the proposal subject to the applicants being informed that the grant of planning permission does not entitle them to obstruct a public right of way.

A condition will be required in this respect with regard to timing.

In addition, it appears that the public footpath L 2/21 is already obstructed on land owned by the applicants and it would be entirely logical that any diversion order should seek to address those obstructions at the same time.

The footpath L 2/21 crosses a small timber sleeper bridge. If the diverted route for path L 2/21 uses the same bridge, the bridge should be improved by widening it. If a new crossing is required at an alternative location, the new bridge should have a clear width of one metre and

suitable handrails, no steps on or off the bridge (as at present) and a self-closing gate if necessary. The bridge should sit no lower than the current structure and the applicant should seek consent to carry out the works from the appropriate flood risk authority if necessary. In addition the design of the bridge should be agreed with the Authority prior to a diversion and installation.

#### **SSDC Conservation Specialist**

Objection raised.

#### **SSDC External Heritage Consultant**

An external Heritage Consultant was appointed to act on behalf of the Council due to the Council's own Conservation Specialist being absent on long-term sick leave. Following a site visit carried out by the Heritage Consultant on 25th October, a detailed response dated 14th December 2021 was submitted to the Council. The recommendation was that "great weight" should be given to the safeguarding of the designated and undesignated heritage assets and their settings in any planning balance, as required under the NPPF. It was considered that the proposed scheme would contribute to a high level of less-than-substantial harm and the Heritage Consultant was unable to offer support from a heritage impact perspective.

#### **South West Heritage Trust**

There are limited or no archaeological implications to this proposal and therefore no objections are raised on archaeological grounds.

#### **County Ecologist**

In respect of the outbuildings to the north of the application site, 'The Den' has been characterised as a confirmed bar roost, likely for Serotine bats, and 'The Barn' has been characterised as providing high potential for roosting bats. The confirmed roost is situated within the loft void. Whilst raising no objections to the proposal, in order to avoid disturbing roosting bats during construction works, conditions are recommended relating to timing of works; exclusion buffer zone to be created around 'The Barn' and 'The Den' during construction activities; submission and agreement of an external lighting scheme; protection of retained hedgerows; and the submission and approval of a Biodiversity Enhancement Plan.

In terms of phosphates, the applicants are seeking to combine the nutrient impacts of both application proposals together with the argument that the decrease resulting from one dwelling instead of six holiday lets (application ref 21/01051/FUL) will compensate for the increase resulting from the two new dwellings (application ref 21/01053/OUT). In that respect it is suggested that the development achieves better than nutrient neutrality, so the matter of phosphates has been resolved. Provided a S106 could be used to legally 'tie' the two application proposals together along the lines of ensuring the 'phosphate decrease' application would commence or be completed prior to commencement or occupation of the 'phosphates increase' application, then no objections are raised.

#### **Natural England**

If SSDC is confident that a S106 could be used to legally 'tie' the two application proposals together and ensure the 'phosphate decrease' application would be completed prior to commencement or occupation of the 'phosphates increase' application, in principle Natural England would be open to considering any appropriate assessment based off this approach. The applications would still need a Habitats Regulations Assessment, proceeding to an Appropriate Assessment to demonstrate that the requirements of regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) have been considered by the LPA. Natural England must be consulted on any appropriate assessment the LPA may decide to make.

#### **SSDC Tree Officer**

Following receipt of an amended landscaping scheme and tree planting schedule, no objections are raised subject to the imposition of conditions relating to tree and hedgerow



protection and implementation of the submitted revised landscaping scheme.

### **SSDC Environmental Health**

No comments received.

### **Environment Agency**

The EA confirms that its flood maps show this site to be in flood zone 1 at low flood risk. The sequential test and FRA requirements do not apply unless the site is over 1 hectare. If over 1 hectare, the FRA should relate to surface water only and the LLFA should advise on this. The site appears not to be over 1 hectare and the EA would have no comments to make on this proposal. Flood Zone 1 is the best place to develop in relation to flood risk.

### **Wessex Water**

No objections.

### **SSDC Viability Assessor - Mr John Keane of Thomas E. Teague, Licensed Property Valuers, Rating Surveyors, Auctioneers, Brokers and Stocktakers**

Following the proposed development, The Red Lion would still be a viable business but with a significantly reduced turnover and at a lower level of profitability. However, the implementation of the proposed scheme would be detrimental to the long-term viability and future of The Red Lion.

### **Pub Protection Officer, Somerset CAMRA**

An objection is raised because the proposal represents an overdevelopment of the site that would likely be severely detrimental to future viability of the Red Lion.

## **REPRESENTATIONS**

This application ref. 21/01053/OUT (and the three other concurrent applications refs 21/01051/FUL, 21/01052/LBC and 21/01054/DPO) have attracted many letters/emails of representation from residents both within the village and from elsewhere, raising objections and offering support for the development proposals as a whole. All representations received can be viewed on the Council's website but can be summarised as follows, in no particular order:

### Support

- Covid restrictions have not helped the viability of pubs on a national basis. The proposals are more than reasonable solutions to help preserve the Red Lion Inn as an on-going commercial asset for the long term future and to avoid its premature closure.
- The viability report submitted with the application shows the pub would be sustainable without the letting rooms and 'The Den'.
- The proposals seek to conserve the listed character of the Red Lion Inn.
- All villages are having to accommodate extra housing - this development is small and in line with current housing policy and is not unjustified.
- The current car park is very unsightly - its relocation and development would be a visual improvement.
- The proposals would result in no worse impacts on visual appearance and highway safety than the approved new housing on the opposite side of the lane.

### Objections

- The Red Lion Inn is an important village asset and its viability and retention must be protected and preserved at all costs. The proposals would result in a material adverse impact on the viability of the public house business.
- The existing signed S106 Agreement must be honoured and retained to ensure continued viability of the public house.
- Reduction in size of the beer garden would be unacceptable and be less attractive to customers.

- The proposals will result in detriment to the character and appearance of the Listed Building and would detract from its significance.
- Overdevelopment of the site as a whole.
- There would be a material loss of employment.
- Unacceptable resultant impact on highway safety - poor visibility, insufficient on-site turning.
- Insufficient on-site parking being proposed. No safe on-street parking nearby.
- Unacceptable resultant impact on flooding and flood risk in the immediate and wider area.
- Inadequate sewerage system in village. Increased foul sewage problems as a result.
- Adverse resultant impact on residential amenities of neighbouring properties - construction traffic, additional noise, spill-over of cars, headlights and door slamming by users of proposed car park.
- Unsatisfactory living conditions for occupiers of the proposed converted dwelling due to proximity to public house.
- Adverse resultant impact on the local ecosystems and possible harm to habitats of protected species.
- Unacceptable diversion of public footpath.
- No need for further housing in the village.
- Non-compliance with economic, social and environmental objectives of sustainable development.
- Phosphate restrictions.

## **CONSIDERATIONS**

### **Principle of Development**

The Council is required to make a decision in line with the Development Plan, unless material considerations indicate otherwise (Section 38(6), Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990). The National Planning Policy Framework (NPPF) is a key material planning consideration.

In policy context, national guidance contained within the NPPF sets out a presumption in favour of sustainable development. Paragraph 79 of the NPPF states that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.

Policy SD1 of the Local Plan also recognises that, when considering development proposals, the Council will take a proactive approach to reflect the presumption in favour of sustainable development contained in the NPPF and seek to secure development that improves the economic, social and environmental conditions within the District. Planning applications that accord with the policies in the Local Plan will be approved without delay, unless material considerations indicate otherwise.

Policy SS1 highlights the areas where new development is expected to be focused, grouping certain towns and villages into a hierarchy, of settlements including the Strategically Significant Town (Yeovil), Primary Market Towns, Local Market Towns and Rural Centres. All other settlements are 'Rural Settlements', which Policy SS1 states "will be considered as part of the countryside to which national countryside protection policies apply (subject to the exceptions identified in Policy SS2)".

Policy SS2 states:

"Development in Rural Settlements (not Market Towns or Rural Centres) will be strictly controlled and limited to that which:

- Provides employment opportunities appropriate to the scale of the settlement; and/or
- Creates or enhances community facilities and services to serve the settlement; and/or
- Meets identified housing need, particularly for affordable housing.

Development will be permitted where it is commensurate with the scale and character of the settlement, provides for one or more of the types of development above, and increases the sustainability of a settlement in general.

Proposals should be consistent with relevant community led plans, and should generally have the support of the local community following robust engagement and consultation.

Proposals for housing development should only be permitted in Rural Settlements that have access to two or more key services listed at paragraph 5.41"

Those key services referred to in paragraph 5.41 of the Local Plan are local convenience shop, post office, pub, children's play area/sports pitch, village hall/community centre, health centre, faith facility and primary school.

Babcary is defined in the Local Plan as a Rural Settlement, where development will be strictly controlled. It has access to a church, a public house and a children's play area. As noted above, Policy SS2 restricts development in rural settlements other than in a limited number of circumstances and only where it is commensurate with the scale and character of the settlement. Policy EQ2 seeks to ensure new development, amongst other things, promotes local distinctiveness, conserves, or enhances, local landscape character and respects local context.

However, elements of Policy SS2 must be considered out of date, as SSDC cannot currently demonstrate a five year supply of housing land. It is noted that Babcary is a broadly sustainable location, with basic facilities contained within the settlement. It has reasonable transport links. The principle of some limited residential development within the village must therefore be considered acceptable. As stated above, the Council accepts that it cannot currently demonstrate a five-year supply of deliverable housing sites and that, pursuant to paragraph 11 of the Framework, the weighted presumption in favour of sustainable development is engaged. The proposed development would make a contribution towards meeting the housing shortfall within South Somerset. This would be a social and economic benefit. There would also be a limited and temporary economic benefit during the construction phase. However, due to the small scale of the development, such benefits would be moderate in scale.

The Parish Council has cited Policy SS4 of the emerging Local Plan and has stated that this proposal is contrary to said emerging policy. However, as the emerging Local Plan Review is still at an early stage in its preparation and representations have yet to be considered, only extremely limited weight can be attached to it, as reflected in the guidance in paragraph 48 of the NPPF.

In addition, due regard must be had to the extant outline permission for the erection of three dwellings on land to the west of the application site on the opposite side of the lane. Mindful of the 'tilted balance', and that Babcary has a public house, a place of worship and a recreation ground, the settlement can be considered broadly sustainable and should be considered able to accommodate a commensurate level of housing growth subject to any constraints. Three dwellings was considered an acceptable level of housing growth for the village. Local Plan policy and NPPF guidance remains broadly similar, and in terms of consistency, the provision of two additional dwellings on the current application site is deemed acceptable in principle, but subject to other detailed material planning considerations detailed below.

### **Viability of Public House**

In considering proposals that would result in a significant loss of a site and/or premises currently used as a public house, Local Plan Policy EP15 is relevant.

Policy EP15 states " *Proposals that would result in a significant or total loss of site and/or premises currently or last used for a local shop, post office, public house, community or cultural facility or other service that contributes towards the sustainability of a local settlement will not*

*be permitted except where the applicant demonstrates that:*

- *alternative provision of equivalent or better quality, that is accessible to that local community is available within the settlement or will be provided and made available prior to commencement of redevelopment; or*
- *there is no reasonable prospect of retention of the existing use as it is unviable as demonstrated by a viability assessment, and all reasonable efforts to secure suitable alternative business or community re-use or social enterprise have been made for a maximum of 18 months or a period agreed by the Local Planning Authority prior to application submission."*

The NPPF makes reference to the need for building a strong, competitive economy. To support a prosperous rural economy, paragraph 84 advises that planning decisions should enable various scenarios to occur, including the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship. This is re-emphasised in Chapter 8 of the NPPF "Promoting healthy and safe communities"; paragraph 93 d) stating that planning decisions should ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community.

Having regard to the important material consideration relating to future viability of the public house, the application submission is accompanied by an 'Expert Witness Report' dated 3rd November 2020 prepared by Mr Stuart Parsons of Fleurets Ltd. Within that Report, reference is made to economic viability, the impact of coronavirus, the background and style of trade, the property (its location, description and accommodation, condition, rateable value, premises licence), trade potential, marketability of the Red Lion, and considerations of third party comments. Mr Parsons offers the following conclusions:

*The Red Lion i.e. without the letting bedrooms and marquee/Den is a well configured business with scope to provide c.90 covers, excellent ancillary facilities, accommodation for live-in owners or staff, external trading area and parking facilities for approximately 20 vehicles.*

The Red Lion should be capable of providing an owner/occupier with an economically viable and sustainable business.

The reduced scale of the business will make it more marketable and as a consequence improve the long term sustainability.

By reducing the debt against the existing business the economic viability of the business for the applicants is improved.

It is not denied that the loss of the letting bedrooms and marquee/den will make the business less profitable at an operational level. However, when regard is had to the servicing of debt the reduced scale of the business and reduced debt improves the sustainability of the business.

In response to this Expert Witness Report prepared by Fleurets, another 'Expert Witness Report' dated 26th June 2021 has been prepared by Mr Michael Hughes of MJD Hughes Ltd on behalf of "concerned residents of Babcarly". That report sets out similar issues and considerations as in the Fleurets Report, but provides a different conclusion. In his executive summary, Mr Hughes concludes:

*The selling of the plot or developing the area with planning permission is a short-term gain for the current individual operator, offering no benefit to the business and creating only dangers to the long-term viability of the business. The expert witness report by Mr Parsons has failed to confirm the future viability of the Red Lion Inn and so cannot be considered as providing answers as to the suitability of the planning applications to not endanger the viability of the public house and ensure the long-term survival of the Red Lion Inn.*

Comments have been sought from the Somerset Branch of CAMRA, and after due consideration, the Pub Protection Officer has registered an objection to the proposal, based on the following extracts of his submitted representation:

*We consider that these proposals, should they be approved, would inevitably cause the pub to become unviable in the near future. A planning application for change of use of the public house premises to residential status would no doubt follow in short order. CAMRA believe the long-term future for pubs such as this is assured. The facilities at the Red Lion put them in an enviable position to survive and trade profitably in the short and medium-term. To consider removing very significant income streams at this stage is clearly detrimental to viability. CAMRA is finding growing evidence throughout the UK that the Covid situation is being cited as good reason for planning change to many licensed premises. We have requested that all LPAs be wary of these applications and believe this to be one such example. Planning considerations need to be decided for the long-term good of our communities, not for the benefit of short-term individual gain. This case is particularly important as it is the only public house extant within a significant district, namely the Six Pilgrims parishes. CAMRA were disappointed to hear of closure of the nearby Pilgrims Rest recently, although this would have had a beneficial effect for the Red Lion in that an element of the former's clientele will have migrated.*

*S106 arrangements relating to ownership and occupation of the B&B facilities tied to the pub (ref 10/05151/FUL) are a most important consideration and should not be deviated from. Similarly maintaining the existing planning conditions and clauses relating to the B&B, den and marquee are considered crucial protection to ongoing viability of this CAMRA-recognised and respected public house. As a destination hospitality business, accommodation facilities are a key element of their offer. The number of past B&B clients responding to this consultation is evidence of the popularity of the rooms.*

*I would also draw your attention to the National Planning Policy Framework 2019, specifically paragraph 92, requiring the Local Planning Authority to plan positively for provision and use of public houses (among other entities). LPAs must 'guard against unnecessary loss of valued facilities, particularly where this would reduce the community's ability to meet its day to day needs', and ensure that 'established facilities are retained for the benefit of the community'. These principles should be considered all-encompassing when considering such applications, particularly in instances such as this where the premises in question are rightly recognised as an Asset of Community Value. The ACV correctly relates to the business as a whole, including essential accommodation and function facilities.*

*We do not consider proposed changes and upgrades to the A303 layout to be potentially detrimental to future viability of the Red Lion. This is very much a destination pub that folk will find their way to, as long as it remains the attractive, complete and intact business the owners/operators have successfully created.*

Instructed to act on behalf of SSDC, a detailed viability assessment dated 20th October 2021 has been provided by Mr John Keane of Thomas E Teague, having due regard in his assessment to the Expert Witness Report dated 3rd November 2020 prepared by Mr Stuart Parsons of Fleurets Ltd on behalf of the applicants, and also the detailed observations relating to future viability issues which have been raised by the Parish Council, third parties, CAMRA Somerset branch, CPRE and MJD Hughes Ltd, the latter having been given instructions by local residents to prepare a report on the viability of the Red Lion Inn in response to the Expert Witness Report provided by Mr Stuart Parsons.

Mr Keane has offered the following conclusions:

*Following the proposed development, The Red Lion would still be a viable business but with a significantly reduced turnover and at a lower level of profitability.*

The new site layout would be inferior to the current one with inadequate and poorly arranged parking provision - part of which would be shared with the occupants of the proposed new housing - and reduced external trade space, which could have a detrimental effect on the business.

The letting rooms are currently the highest profit generating part of the business and their loss would be keenly felt.

Whilst less core, the function side of the business is a useful profit centre that also provides an additional customer base for the letting rooms.

The reduced facilities, site and buildings at The Red Lion would compromise the pub's ability to adapt to changing market preferences, take advantage of new opportunities and make it less future-proof.

The personal circumstances of the current operator should not be conflated with how the market would view the pub and its proposition post-development. Neither the current owners' off-site living accommodation nor parking space would now be available to a new owner and they would need to be provided for out of the post-development pub.

The current planning condition restricting the occupation of the first floor of the main pub building to holiday purposes only could compromise the marketability of the pub and upgrade/renovation costs, subject to the grant of satisfactory planning permission, would need to be factored in.

The implementation of the proposed scheme would be detrimental to the long-term viability and future of The Red Lion.

The LPA gives due consideration to the assessment and conclusions offered by its own appointed viability assessor, Mr Keane, whose report has taken into account of and has regard to the various conflicting reports and representations submitted in support of or objecting to the application proposal in respect of whether the proposals would or would not ensure the long term viability of the public house. Mr Keane's report has been considered to be an important material consideration when determining this application proposal, having due regard to his conclusion that "The implementation of the proposed scheme would be detrimental to the long-term viability and future of The Red Lion."

Having due regard to that conclusion, it is considered that the proposed development would result in a significant or total loss of the premises currently used as a public house that contributes towards the sustainability of the village of Babcarry. As such the proposal would be contrary to Policy EP15 of the South Somerset Local Plan and relevant guidance in the NPPF.

In addition, the proposed development would not provide employment opportunities appropriate to the scale of the settlement, would not create or enhance community facilities and services to serve the settlement, or meet an identified housing need (particularly affordable housing), nor would it increase the sustainability of the settlement. As such the proposed development would be contrary to Local Plan Policies SD1 and SS2 and relevant NPPF guidance.

### **Impact on Designated Heritage Asset**

The policy framework is as follows:

Section 66(1) of the of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that when considering whether to grant planning permission for development which affects a listed building or its setting, the LPA shall have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.

The National Planning Policy Framework Chapter 16 'Conserving and enhancing the historic environment' requires us to assess the impact that development will have on a heritage asset.

Paragraph 197 states:

In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and

distinctiveness.

Paragraph 199 states:

When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

In particular paragraph 202 states:

Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

Local Plan Policy EQ3 reflects the NPPF guidance. Heritage assets must be conserved and where appropriate enhanced for their historic significance and important contribution to local distinctiveness, character and sense of place. In addition Policy EQ2 requires all new development proposals to be designed to achieve a high quality which promotes the District's local distinctiveness and preserves or enhances the character and appearance of the District.

The Council's Conservation Specialist was initially consulted about this application. He provided the following comments:

"First for clarity this and the other associated applications have attracted interest because the Grade II Listed Pub is important in terms of its social and cultural heritage in Babcary. That is outside my remit. My comments must only relate to built heritage. It is however clear that retention of the public house is likely to be the best way to preserve the character of the listed building. I am not aware of any proposals which would seek to change this use.

I commented on a previous scheme for this site so it is worth rehearsing my previous objection to application 20/01967/OUT which was an outline application with some matters reserved for the erection of 3 No. detached new dwellings within Red Lion Inn car park, conversion of 2 No. buildings into dwellings (5 No. total), provision of new vehicular access and relocating car park associated with Red Lion Inn.

*It is very intensive and allows minimal garden space for the buildings. I would normally say that I am concerned that the high density is forcing the cars into prominence. However this is a car park. I could raise concerns about the setting and density but not strong objections. This is not in a conservation area. I think it is important that the buildings reflect the local stone vernacular. Being in outline concern me as this is essential to ensure that the buildings will not harm the setting of the Listed Building.*

At this stage I feel that this application does not meet NPPF paragraph 196. There is harm but the level is hard to equate because it is in outline. Similarly we can't see if there are any offsetting benefits. Accordingly I must object to the proposals.

I am pleased to see that the new application has taken on board some of my concerns.

This proposal has been significantly altered and reduced in size, demonstrating that 2 detached dwellings only, and not 3 can be suitably accommodated at the southern end of the existing pub car park which was my previous concern. The orientation of the buildings has been rotated to afford larger south facing rear gardens (12m to 15m), and the building positions are further distanced from the Red Lion pub. The previous distance from the pub building to the nearest new build dwelling was 42m. With the reduction in dwelling numbers and ability to reposition the new build dwellings, the distance from building to building is now 54m. This offers a significant reduction in any potential harm to the setting of the Grade II Listed Red Lion Inn. This also allows for an enhanced and wider parking courtyard between the new build dwellings and those to be converted - 'The Barn / The Den' which are subject to a separate

application."

The Conservation Specialist set out various relevant heritage related paragraphs from the NPPF and made reference to Local Plan Policies EQ3 and EQ2 before offering the following opinion:

"I have given thought as to whether the revisions are sufficient to address all potential harm to the setting of the Grade II Listed Red Lion Inn. At this stage I still consider that this has the potential to cause harm. I think it is important that the buildings reflect the local stone vernacular. Being in outline still concerns me as this is essential to ensure that the buildings will not harm the setting of the Listed Building. I would place this at the low end of the spectrum of less than substantial harm. If we could agree a detailed design then this objection could well be removed altogether. Alternatively you may consider that there is sufficient public benefit in creating a long term viable use for the listed building to offset this minor harm. Accordingly I object to this proposal."

Subsequently, an external Heritage Consultant was appointed to act on behalf of the Council due to the Council's Conservation Specialist being absent on long-term sick leave. Following a site visit carried out by the Heritage Consultant on 25th October, a detailed response dated 14th December 2021 was submitted to the Council, offering various detailed comments extracts of which are set out below.

#### *Scheme*

This Outline application has been submitted separately from a LBC and linked Full Planning application relating to the existing buildings and structures, and as such will be assessed independently, although it is acknowledged that there would be a cumulative and amplified impact if all proposals were to be approved.

#### *Layout*

Reference and hence justification for the proposals being considered under this application, is made in the submission to the fact that there is little visual connection between the inn and the car park, the car park being the proposed site for the development. However, the car park at present forms an integral part of the listed building's setting, historically, spatial as well as economically in supporting the designated heritage asset's present use. Formerly an orchard, as is commonly found around the edges of historic settlements providing a transition from the built to the natural environment of the wider rural setting. The car park's spatial character assists in facilitating the Inn's original village gateway appearance, due to the degree of separation it provides between the listed building group and the recent, modern development of Babcary House (Manager's/Owners House), so mitigating this latter C20 development and maintaining the Inn's special "rural" character.

Setting of a heritage asset, as defined by Historic England, should be noted as being not just the curtilage but all the land from which the heritage asset can be experienced, whether public or private land and as such allowing for associated views. Such settings are defined in the NPPF's Glossary as being a source of a heritage asset's significance. This further reinforces the importance and positive contribution the present open aspect the car park site affords to the Red Lion building group.

Map regression and historical analysis have been found to show that the area of car park has "been part of the land holding from the mid C19", confirming a "historical relationship" between inn and the site. Therefore, the proposed site is considered to fall within the historic curtilage of the designated heritage asset. Sub-division of such curtilages is not generally supported from a heritage point of view, as it is considered to detrimentally erode the setting of a listed building and so contributes harm to the Evidential, Historical and Group Value of the associated heritage asset.

It is only in exceptional circumstances where thorough justification as required by the NPPF



exists, (i.e. where a situation meets the strict Historic England criteria laid out in their enabling development guidance), that there may be scope for such a permanent subdivision and separation.

However, in this specific case the application has not been submitted as an enabling development application, nor does it meet the criteria due to:

- The listed building is not considered a Building At Risk, as not on the LPA's BAR Register, and presently occupied, and house and land well maintained.
- The heritage asset supports a well-established and active business, as evidenced both physically and financially. (ref: Viability Assessments).
- There is no need for manager housing, as this already has been facilitated by a previous planning permission.

Instead, it is submitted as a standard planning application for the proposed fragmentation of the original site.

The NPPF (paragraphs 199 and 197) requires that any development should give great weight to the conservation of the heritage asset and for the desirability of new development making a positive contribution to local character and distinctiveness.

Despite the original historic barn having been lost and the present ancillary building a replacement, the approval was based on its care of replacement being of a similar form and footprint as well as upon or approximately upon the same site, directly alongside the road, so as to maintain the historic relationship between the listed inn and its legal status as a remaining ancillary "service" building to the Inn, so safeguarding the significance of the Red Lion. As a result, the present barn and the associated store/function room remain a positive contribution to the setting and design-wise integrate well into the street scene. When viewed from the car park and lane, they appear as harmonious traditional grouping so enhancing the setting.

The proposed introduction of two new dwellings between Babcary House and the listed Inn's building group is considered to contribute a visual and physical intrusion into the historic setting, impacting on its connection with the wider rural setting.

The position of the proposed dwellings approximately midway in the plot appear to give greater weight to the need for separation between them and the modern development of Babcary House, than they do to distance between them and traditional The Red Lion group, resulting in an even greater encroachment on the listed building's setting and the opportunity for greater public views from this key road junction, where they will be seen juxtaposed with the street elevation of the Inn and "barn".

Furthermore, the excess of hardscaped paving shown and regimented parking bays is more akin to an urban (or semi-urban) development, not a small rural village or setting of a heritage asset.

It is recognised that Babcary House has already diluted the direct connection of the historic public house group to the wider countryside on the southern boundary of the curtilage. However, although unfortunate in its position, the former dwelling does serve the ongoing use of the Inn and therefore presently has a beneficial relationship with the heritage asset. In contrast, the proposed dwellings would offer no benefit to the listed building and would in fact, also impact on the relationship between Babcary House and the Red Lion. This element of the scheme is considered to result in the incremental erosion of the historic curtilage, the wider setting of the listed building/ ancillary group, as well as its special rural character, contributing a high level of less than substantial harm.

#### *Scale*

Although described as one and half storeys, the proposed dwellings appear to be a substantial footprint. Shown on the proposed Site Plan, they appear detached, their L-shaped plans mirror images of each other rather than a more varied layout form that references best practice for

development within a historic setting which would as required by the NPPF to both preserve or better reveal the distinctiveness of the existing heritage assets.

Although appearance is a reserved matter within this outline submission, there is a suggestion their form and appearance would also match and be potentially of a uniform height throughout, their prime elevations facing into the car park toward the Inn group, rather than toward the street. As such, their detached and uniform footprints take no reference from characteristic orientation or form of the village's dwellings nor particularly relate to a site such as this, where a design more akin to a lower status and low key, ancillary building range set around a yard would perhaps be a more respectful, in maintaining the primacy of the designated historic building.

In addition, on the approach from the south (Stear Lane direction), the gable ends of the historic Inn's building group will no longer be viewed as a distinctive feature of the lane but more as one of a number of developments, now positioned along this stretch of road, due to the relative proximity of the resulting new properties and the reduced space around the historic building group. In addition, there will also be an element of screening by the proposed one and half storey development, located as shown, close to the roadside boundary. This will impact detrimentally on how the heritage asset and its associated buildings in how it will be perceived and hence experienced, contributing less- than-substantial harm to its significance.

#### *Access*

The existing access to the car park is proposed to serve the proposed two dwellings and, as such, will require a visibility splay to be created to the south to meet Highways' requirements. This will result in a section of native hedging being removed and new planting installed offset from the lane-side. A set-back section of low-level railway sleeper wall is also shown on the northern side adjoining the Barn gable end directly in line with the access and sightlines from Mani Street. These changes will contribute an impact on the unspoilt character of the lane, which is significant particularly in this section for its narrow and tightly lined borders with enclosing hedges, before meeting Main Street.

#### *SUMMARY*

It appears that none of the supporting information has provided thorough justification, as required by the NPPF, for the introduction of the proposed development within the historic curtilage of the listed building, either economically or physically. In fact, the Viability Assessment as commissioned from an independent assessor by SDDC raises concerns over the long term future of the Inn due to the proposed development compromising the existing car parking provision.

Neither can it be considered, due to the development's location, scale, number or units that the development preserves or better reveals the distinctiveness of the designated heritage asset. Instead, there appears to be a failure to understand the contribution of the historic curtilage and wider setting bring to the appreciation of the existing heritage asset and as such the proposed development fails to have successfully responded to the need to safeguard the significance of this heritage asset and its tightly knit group.

The present car park, although not aesthetic in its own right, has contributed a specific improvement to the listed building's setting, by relocating the cars and associated traffic movements away from the heritage asset's immediate environs, following the conversion of the former car park to patio function/amenity area and allowing the extension and improvement of the beer garden, following the blocking up of the historic access between the Inn and the Barn and the construction of the function room/store. The proposed development will instead reverse this by once more forcing the relocation of parking to other more immediate positions within the setting of the listed Inn so failing to preserve its significance and together with the intrusion of the development contribute cumulative erosion of the historic site.

Overall, the proposal is considered to constitute an intrusive development that appears from

the proposed layout to take little reference from the historic, rural setting and fails to respect the historical and evidential value of the site in its relationship to the Grade II heritage asset.

It, furthermore, necessitates added impact of additional associated development in other parts of the curtilage, which also involve encroachment on the immediate setting of heritage assets, which together fail to preserve or enhance and contribute a high level of less-than substantial harm to the setting's spatial character, detrimentally eroding its gateway position and its primacy as a villagescape, historic building group. In this particular case, the notable level of harm to the significance and setting of the heritage asset has not been justified, as required under the NPPF.

As such, "great weight" should be given to the safeguarding of the heritage assets and their settings in any planning balance, as required under the NPPF (para 199-203), as the proposed scheme is considered to contribute a high level of less-than-substantial harm and officer support cannot therefore be forthcoming.

Mindful of such detailed comments, it is considered that the proposed development would not safeguard or enhance the significance, character, setting and local distinctiveness of the designated heritage asset. As such the proposed development would be contrary to Policies EQ3 and EQ2 of the South Somerset Local Plan and relevant guidance within the NPPF.

### **Access and Highway Safety**

Local Plan Policy TA5 requires all new development to securing inclusive, safe and convenient access on foot, cycle, and by public and private transport that addresses the needs of all, and to ensure that the expected nature and volume of traffic and parked vehicles generated by the development would not have a detrimental impact on the character or amenity of the area and would not compromise the safety and/or function of the local or strategic road networks in terms of both volume and type of traffic generated.

Policy TA6 states that parking provision in new development should be design-led and based upon site characteristic, location and accessibility. The parking arrangements within SCC's Parking Strategy will be applied within the District.

Paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Paragraph 108 of the NPPF advises that maximum parking standards for residential and non-residential development should only be set where there is clear and compelling justification that they are necessary for managing the local road network.

The County Highway Authority notes that this application for the erection of two detached dwellings within the existing Red Lion Inn car park and the fully detailed application 21/01051/FUL for the changes of use of the existing outbuildings from 6 short term letting units and garden/function room/store into a single independent, self-contained dwelling unit and ancillary annex accommodation to that dwelling unit, and provision of new vehicular access and relocation of public house car park to the rear of the public house are intrinsically linked and thus that Authority's one response has been provided with the aim of serving both applications proposals.

The proposed dwellings would be constructed on the current car park, with two buildings adjacent to the car parking area converted into a dwelling and ancillary annex, and a new car park created to the rear of the public house and a new access to the proposed car park to the north of the public house. The access to the dwellings would be from an unclassified highway and the new car park from a classified un-numbered highway, both subject to the national speed limit. There is no recorded injury collision data for either public highway.

A previous application had been submitted (application ref. 20/01967/OUT), which included more dwellings (erection of 3 new dwellings within Red Lion Inn car park and conversion of 2 buildings into dwellings (5 in total)). The Highway Authority commented on that application which, following discussions with the Local Planning Authority and the applicant's agent, was withdrawn. For that previous application the Highway Authority did not object to the available visibility splays from either the existing access which would serve the residential dwellings, and a small number of commercial parking spaces, or from the proposed new vehicular access.

Due to the nature of the highway and the subsequent speeds of passing vehicles this remains the case. The Highway Authority does have some concerns regarding the 4 commercial spaces to be accessed immediately from the public highway between the pub and the building known as The Barn as these spaces would require manoeuvring on the highway junction between the classified and unclassified highways. The previous application included some areas of parking for both elements that were considered contrived, the submitted drawing F1574/100/E has addressed these concerns.

Focusing on the residential element there are 3 dwellings proposed, one conversion and two 1.5 storey new builds. The converted building would also include an annex. The plan shows that Plot 1 (the conversion) would have three bedrooms, with three parking spaces, and Plots 2 and 3 would each have four bedrooms, with four parking spaces each. These parking spaces, along with four of the commercial spaces, are proposed to be accessed from the existing access and arranged in a courtyard type design. This proposal is unlikely to attract an objection from the Highway Authority. In order to comply with the Somerset Parking Strategy, access would need to be provided to Electric Charging Points and to secure, accessible and appropriate cycle storage at a level of one per bedroom for all new residential accommodation.

Turning to the commercial element and the relocation of the car park, the proposed new access would seem to have visibility splays suitable for the geometry and likely speeds of vehicles passing by the access. The submitted drawing, F1574/100/E, shows a total of 20 spaces being provided to serve the pub. Information provided by the applicant's agent on 17 December 2020 states that the publicly accessible areas of the pub are approximately 80.75sqm, taking into account the remaining outside space for the commercial use it is considered that this number of parking spaces would be sufficient. However as noted above, the Highway Authority does have some concerns regarding some of them (4). The submitted drawing has also overcome the previously noted difficulties with access to/from the proposed cycle parking. A small number of the spaces within the proposed car park would still seem a little contrived or tight; however, the Highway Authority considers that it would be unreasonable to object to the application over the level of concern raised by these element.

As there are multiple applications on this site it will be imperative that the existing car parking for the commercial use is not lost prior to the creation of the new car parking area. The most appropriate way to secure this, given that the car parking and the residential elements are being sought under two different planning applications, would be by legal agreement.

Taking the above comments into account, the Highways Authority does not object to the proposal in this application. Conditions are recommended relating to provision and retention of parking spaces, visibility, surface water disposal, hard surfacing of access, and approval of a Construction Environmental Management Plan.

Overall, the application site is considered to be in a sustainable location, having regard to the scale of development proposed and the role and function of the settlement which benefits from a variety of local facilities and amenities. Whilst mindful of the various highways related objections raised by the Parish Council and third parties, nevertheless the proposed development itself does not give rise to an objection on traffic generation or highway safety grounds from the Highway Authority.

However, this is very much dependent on planning permission being granted in respect of the

separate application 21/01051/FUL to allow the alternative new car parking and turning areas to be provided to serve the public house in order to offset the loss of parking that would result should this outline proposal be approved. In the absence of any planning permission being granted for such alternative parking provision to serve the public house (and the completion and signing of a S106 Agreement to ensure that such alternative parking provision is provided within an agreed timeframe), any grant of outline permission for the erection of these two dwellings would result in an unacceptable loss of on-site parking facilities to serve the Red Lion Inn, thus leading to increased parking on the County highway with resultant dangers and inconvenience to road users, public safety and convenience. As such, the proposal would be contrary to the aims and requirements of Policies TA5 and TA6 of the South Somerset Local Plan and relevant Central Government guidance.

### **Residential Amenity**

Local Plan Policy EQ2 requires development proposals to protect the residential amenity of neighbouring properties. In addition Local Plan Policy EQ7 states that development that would result in air, light, noise, water quality or other environmental pollution or harm to amenity, health or safety will only be permitted if the potential adverse effects would be mitigated to an acceptable level by other environmental controls, or by measures included in the proposals.

New development will usually have some effect on the amenity of neighbours. These effects include impacts from loss of light, overshadowing, loss of privacy and overbearing impacts. In relation to privacy, the design and layout of new development should ensure that reasonable privacy and light is provided for surrounding residents and occupiers, particularly in relation to residential use and enjoyment of dwellings and private gardens. Spacing between the windows of dwellings should achieve suitable distances for privacy and light, whilst also preventing cramped and congested layouts.

There are no existing dwellings in close proximity to the site, other than the applicants' own dwelling to the south of the site. In addition, due regard must be given to the fact that there is an extant permission for 3 dwellings to the west of the site. In overall terms, however, it is considered that the proposed dwellings, in terms of their size, design and positioning, would result in no significant impact on, nor demonstrable harm caused to, the residential amenities of occupiers of any nearby properties by way of overshadowing, overbearing/dominant impact, overlooking and loss of privacy which would justify a refusal of planning permission.

As such, the proposal would meet the relevant aims and objectives of Policy EQ2 of the South Somerset Local Plan and relevant guidance in the NPPF.

### **Flooding and Drainage**

The application site is at a low risk of flooding, lying as it does within Flood Zone 1. Nevertheless, local concern has been expressed about flooding of site and surrounds and that the application had not been accompanied by a Flood Risk Assessment, which is a requirement under the NPPF. Paragraph 167 of the NPPF advises that, when determining any planning applications, the LPA should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment.

A Flood Risk Assessment has been submitted on behalf of the applicants and the Environment Agency duly consulted. The FRA has concluded that future occupants of the development would be safe during the design flood event for the operational lifetime of the development and the FRA has also demonstrated that the proposed development would be safe and that it would not increase flood risk elsewhere.

The Environment Agency has confirmed that its flood maps show the application site to be in flood zone 1 at low flood risk. The EA wishes to raise no comments about this proposal, suffice to say that flood zone 1 is the best place to develop in relation to flood risk.

In terms of proposed foul drainage disposal to the mains system, Wessex Water has noted the

comments made by nearby residents stating that the mains sewerage system in village is inadequate and that there will be increased foul sewage problems as a result of this development proposal. In this instance, Wessex Water comments that the additional predicted foul flows from the proposals will be minimal. Prolonged periods of wet weather causes the water table to be high and for groundwater to enter the existing foul sewerage system through groundwater infiltration. Wessex Water are still due to undertake an infiltration survey of the sewer network in Babcarry to try to identify sources of infiltration. Following the results of this the affected sewers will be programmed for relining to reduce the risk of flooding under these circumstances. Notwithstanding these comments, Wessex Water raises no objections.

Taking into account the above, it is considered that the application accords with the requirements of Local Plan Policies EQ1 and EQ7 and relevant guidance within the NPPF.

## **Ecology**

Local Planning Authorities have a statutory duty to ensure that the impact of development on wildlife is fully considered during the determination of a planning application under the Wildlife and Countryside Act 1981 (as amended), Natural Environment and Rural Communities Act 2006, The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations 2017). Policy EQ4 of the Local Plan also require proposals to pay consideration to the impact of development on wildlife and to provide mitigation measures where appropriate.

To ensure appropriate mitigation for Protected Wildlife Species (particularly bats), a survey to search for bats, indication of bat use and potential for bats to roost has been commissioned by the applicants. The survey also checked for other protected wildlife. This survey was undertaken by Country Contracts.

In terms of landscape in general, the Red Lion and outbuildings are situated towards the centre of the village. The property has established residential village properties around it, but open countryside is nearby in all directions. The surrounding land is intensively farmed in fields which are a mix of pasture and rotational crops, separated largely by regularly flail cut connective hedgerows. There are significant areas of woodland within 0.5 of a kilometre to the southwest of the site. Some of the surrounding field hedgerows also support mature trees. This surrounding landscape offers bat foraging habitat of a range of qualities, from lower quality residential areas to a mix of arable and pastoral farmland with some mature trees in hedgerows, small woodland areas and patches of semi-natural vegetation.

There are existing outbuildings referred to as 'The Barn' (a recently modernised property which provides letting rooms associated with pub), 'The Den' (also recently modernised to provide bar facilities for outdoor functions at the pub), a timber garden shed, a small stone store and a storage shipping container. Survey results were as follows:

### *Bats*

The Barn: No bats or signs of bat usage were found in the loft or on the exterior of the building. However, potential bat roosting opportunities exist externally behind the timber cladding, and gaps behind the fascia and tops of walls.

The Den: No bats or signs of bat usage were found in the loft or on the exterior of the building. However, potential bat roosting opportunities exist externally behind the timber cladding, and gaps behind the fascia and tops of walls.

The Timber Shed, Small Stone Store and Shipping Container: No bats or signs of bat usage were found.

The outbuildings were assessed for bat roost potential. The results are that both The Barn and The Den have a high suitability rating for bat roosts, whereas the Shed, Store and Shipping Container have negligible bat roost suitability.

### *Trees*

No surveyed trees were found to have features which would provide potential bat roosting sites.

### *Reptiles and amphibians*

There are no aquatic habitats within the site or immediate boundaries. The development area was considered unsuitable to provide refuge or suitable terrestrial habitat for reptiles and amphibians.

### *Badgers*

No badger setts were found in the survey area. Animal paths through adjacent hedgerows were considered to be used by badgers.

### *Dormice*

The boundary hedgerows/vegetation were considered to be species limited, of poor structure and sub optimal to support Dormice. The hedgerows/vegetation have very limited potential connectivity with suitable habitats off site.

### *Nesting Birds*

No nesting birds, or indications that birds have nested, were found in or on any of the surveyed buildings. The trees and vegetation within the development do provide limited nesting opportunities for a variety of bird species.

The County Ecologist has raised no objections to the proposed development. Based on these findings, he has confirmed that 'The Den' has been characterised as a confirmed bat roost, likely for Serotine bats, and 'The Barn' has been characterised as providing high potential for roosting bats. To avoid disturbing roosting bats during construction works a condition is recommended relating to the timings of works with such works being carried out under the direction of a licenced bat ecologist. Other ecological mitigation and enhancement conditions are recommended, including provision of protective fencing, timing of works for vegetation removal in relation to nesting birds, implementation of an agreed lighting scheme, new planting, implementation of a Biodiversity Enhancement Plan, and reference to legal protection afforded to badgers.

With the incorporation of such conditions, it is considered that the proposed development would not conflict with the aims and aspirations of Policy EQ4 of the South Somerset Local Plan and relevant guidance within the NPPF.

### **Somerset Levels and Moors: Phosphates**

The Somerset Levels and Moors are designated as a Special Protection Area (SPA) under the Habitats Regulations 2017 and listed as a Ramsar Site under the Ramsar Convention. The Ramsar Site consists of a number of Sites of Special Scientific Interest (SSSIs) within what is the largest area of lowland wet grassland and wetland habitat remaining in Britain, within the flood plains of the Rivers Axe, Brue, Parrett, Tone and their tributaries. The site attracts internationally important numbers of wildlife, including wildfowl, aquatic invertebrates, and is an important site for breeding waders.

Natural England has written to various Councils in Somerset (including SSDC) advising about the high levels of phosphates in the Somerset Levels and Moors that are causing the interest features of the Ramsar Site to be unfavourable, or at risk, from the effects of these high levels. This is as a result of a Court Judgement known as the Dutch N case, which has seen a greater scrutiny of plans or projects by Natural England, regarding increased nutrient loads that may have a significant effect on sites designated under the Habitats Regulations 2017 (including Ramsar Sites).

A significant area of South Somerset falls within the catchment. The application site is located within this catchment area. However, further to discussions with Natural England and the County

Ecologist, the advice received is that the proposed development for the erection of two new dwellings, together with the proposed application proposal for the changes of use of the 'The Barn' and 'The Den' from 6 short term letting units and garden/function room/store into a single dwelling unit and ancillary annex accommodation (application ref 21/01051/FUL) would be unlikely to add significantly to nutrient loading on the Somerset Levels and Moors Ramsar site.

The County Ecologist is mindful that the applicants are seeking to combine the nutrient impacts of both application proposals together with the argument that the decrease resulting from one dwelling instead of six holiday lets (application ref 21/01051/FUL) would compensate for the increase resulting from the two new dwellings (current application ref 21/01053/OUT). In that respect it is suggested that the development achieves better than nutrient neutrality, so the matter of phosphates has been resolved. Provided a S106 could be used to legally 'tie' the two application proposals together along the lines of ensuring the 'phosphate decrease' application would commence or be completed prior to commencement or occupation of the 'phosphates increase' application, then no objections are raised.

Natural England has advised that, if SSDC is confident that a S106 could be used to legally 'tie' the two application proposals together and ensure the 'phosphate decrease' application would be completed prior to commencement or occupation of the 'phosphates increase' application, in principle Natural England would be open to considering any appropriate assessment based off this approach. The applications would still need a Habitats Regulations Assessment, proceeding to an Appropriate Assessment to demonstrate that the requirements of regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) have been considered by the LPA. Natural England must be consulted on any appropriate assessment the LPA may decide to make.

Notwithstanding those comments about 'tying' both applications together by means of a S106 Agreement, each of the applications must be considered on its own merits. There is no guarantee that the other application for the creation of a single dwelling unit in lieu of the existing 6 holiday letting rooms would be acceptable in planning terms, having regard to all material considerations. Taking this current proposal as a 'stand-alone' scheme, it is considered that the proposed erection of two new dwellings would increase the nutrient impact of the site. As such, it is considered appropriate to raise an objection based on the issue of phosphates and impact on the Somerset Levels and Moors, albeit there is the acknowledgement that that a satisfactory solution could be achieved by means of 'tying' both application proposals together with a S106 Agreement should both proposed development schemes be granted the appropriate planning permissions.

Thus, taking the individual merits of this current outline application proposal into account, the applicants have not demonstrated that the proposed development for the erection of two new dwellings would achieve nutrient neutrality and has not included measures to aimed at mitigation. Thus, the proposal would be contrary to the provisions of the Conservation of Habitats and Species Regulations 2017, The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, Policy EQ4 of the South Somerset Local Plan 2006-2028 and relevant guidance within the NPPF.

### **Heritage and Planning Balance**

The public benefits of the proposal include the delivery of market housing, which would contribute to the provision of homes in the District, in an accepted situation where there is a less than five-year housing land supply. The Government's objective is to significantly boost the supply of housing and the proposal would provide two dwellings in a location with good access to some services and facilities. Irrespective of the extent of the shortfall however, given the small scale of the proposal, the delivery of two dwellings would attract only moderate weight.

In addition, the proposal would enhance the local economy, including creating jobs associated with the conversion stage and new residents are likely to support existing services. These



beneficial factors would be common to any such development and, with no evidence to suggest local services are in particular need of the proposal, they carry moderate weight.

However, considerable importance and weight attaches to the desirability of preserving the settings of listed buildings, of which one (The Red Lion Inn) would be harmed by the proposals. The public benefits associated with the proposal do not present cumulatively considerable weight to be added in the heritage balance set out in paragraph 202 of the Framework. Additionally, statutory duties to preserve the listed building and its setting have not been met. The less than substantial harm caused to the Listed Building and its setting would not be outweighed by the public benefits of the proposal. The great weight that this harm attracts outweighs the moderate benefits associated with the provision of two new dwellings.

The proposal, taken on its own individual merits, is not in accordance with Local Plan Policies EP15, EQ2, EQ3, EQ4, TA5 and TA6. There would be harm to the character and appearance of the site and the settlement of Babcary, together with the unacceptable loss of parking facilities to serve the public house with resultant increase in on-street parking, and the development would have a likely adverse effect on the integrity of the Ramsar site due to the additional discharge of nutrients, and absence of mitigation. Irrespective of an absence of harm in respect of residential amenity, flood risk and biodiversity, the proposed development runs counter to the development plan, against which planning decisions should be made unless material considerations indicate otherwise.

The Council acknowledges that it is unable to demonstrate a 5-year supply of housing land, triggering the operation of footnote 8 of the NPPF and paragraph 11(d). However, in respect of the designated heritage asset, it is considered that there is a clear reason for refusing the development, thus the tilted balance does not apply. Even if it did, it is considered that, assessed against the policies in the NPPF as a whole, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

As such it is recommended that outline planning permission for the development proposal should not be granted.

### **Human Rights and Equality Issues.**

#### Human Rights Act

The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance

#### Equalities Act

In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **RECOMMENDATION**

Planning permission is refused for the following reasons:

## **SUBJECT TO THE FOLLOWING:**

01. The implementation of the proposed development would be detrimental to the long-term viability and future of The Red Lion Inn, resulting in a significant or total loss of the premises currently used as a public house that contributes towards the sustainability of the village of Babcary. In addition, the proposed development would not provide employment opportunities appropriate to the scale of the settlement, would not create or enhance community facilities and services to serve the settlement, or meet an identified housing need (particularly affordable housing), nor would it increase the sustainability of the settlement. As such the proposed development would be contrary to Policies SD1, SS2 and EP15 of the South Somerset Local Plan and relevant guidance in the National Planning Policy Framework (2021).
02. The proposed development would neither preserve nor enhance the character and appearance of the Listed Building and its setting and would cause less than substantial harm to the significance of the designated heritage asset. As such, the proposal conflicts with Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 and, in the absence of any public benefits that would outweigh such harm, is contrary to Policies EQ2 and EQ3 of the South Somerset Local Plan 2006-2028 and Chapter 16 of the National Planning Policy Framework (2021), in particular paragraphs 197, 199 and 202.
03. The proposed development would involve the loss of a significant number of parking and turning spaces currently used in association with the Red Lion Inn public house. In the absence of any approved alternative on-site parking and turning spaces for customers and staff, the loss of the existing car park area to accommodate the proposed development would result in an increase in on-street parking, thereby increasing the dangers to highway safety and public safety to an unacceptable degree. As such, the proposal is contrary to Policies TA5 and TA6 of the South Somerset Local Plan 2006-2028 and relevant guidance within the National Planning Policy Framework (2021).
04. The application site falls within the catchment area flowing into the Somerset Levels and Moors Ramsar, designated as a Special Protection Area (SPA) and a Site of Special Scientific Interest (SSSI) for its rare aquatic invertebrates. Any new housing, including single dwellings, will result in an increase in phosphates contained within foul water discharge, resulting in changes to environmental conditions for these species. As the designated site is in 'unfavourable' condition, any increase, including from single dwellings, is seen as significant, either alone or in combination with other developments. There is currently no means of strategic mitigation relating to phosphates, and no site-specific measures have been proposed. In the absence of any other mechanism by which mitigation could be secured, granting outline planning permission would be contrary to the Conservation of Habitats and Species Regulations 2017 and The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. It is considered that the development would have a likely adverse effect on the integrity of the Ramsar site due to the additional discharge of nutrients, and absence of mitigation. As such the proposal is considered contrary to paragraph 180 (a) of the National Planning Policy Framework, which states that planning decisions permission should be refused if significant harm to biodiversity cannot be avoided, mitigated, or as a last resort, compensated for, and Policy EQ4 (Biodiversity) of the South Somerset Local Plan.

## **Informatives:**

01. This decision has been taken having regard to the following submitted drawings and documents:

Drawing no. F1574/LocPlan2: Location Plan

Drawing no. F1574/001/A: Existing Site Survey

Drawing no. F1574/100/E: Proposed Site Plan and Street Elevation

Design and Access Statement (March 2021) prepared by Della Valle Architects  
A Heritage Statement (26 November 2020) prepared by C1 Context One Heritage and  
Archaeology  
Bat Roost Assessment (January 2021) prepared by Country Contracts  
Arboricultural Impact Assessment, Arboricultural Method Statement, Tree Protection Plan  
Revision A (August 2021) prepared by Hillside Trees Ltd, Arboricultural Consultancy  
F1574/ Tree Planting Schedule/ Rev.A (04.10.2021)  
Expert Witness Report (3 November 2020) prepared by Fleurets Ltd  
Phosphate Calculations  
Flood Risk Assessment (2 November 2021) prepared by RMA Environmental

02. In accordance with the NPPF the Council, as Local Planning Authority, takes a positive and proactive approach to development proposals focused on solutions. The Council works with applicants/agents in a positive and proactive manner by offering a pre-application advice service, and as appropriate updating applications/agents of any issues that may arise in the processing of their application and where possible suggesting solutions. In this case, there were no minor or obvious solutions to overcome the significant concerns caused by the proposals.

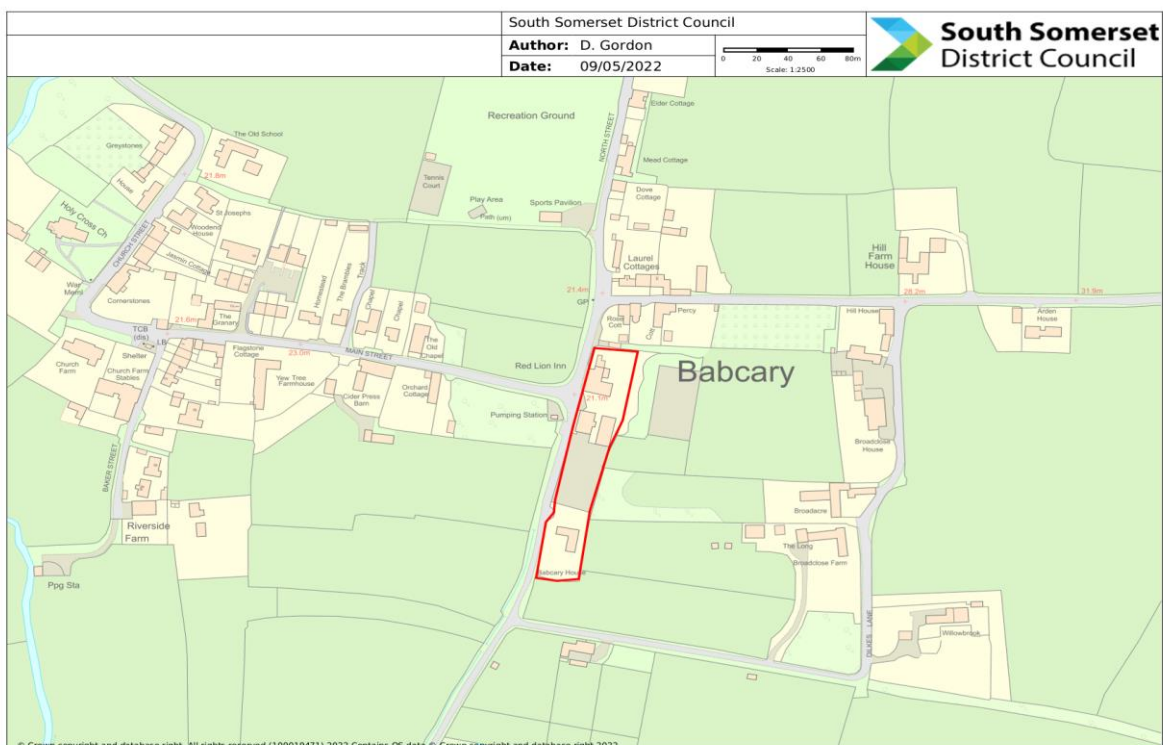
# Agenda Item 9

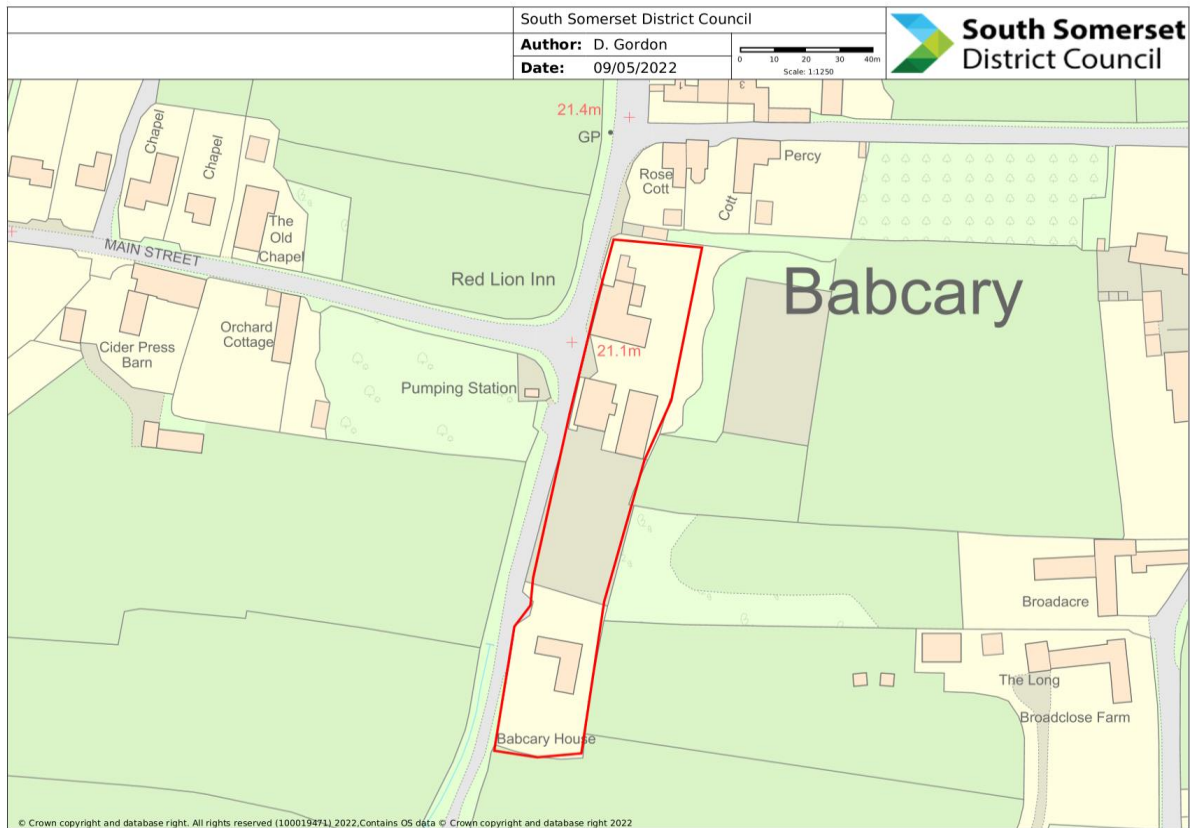
## Officer Report On Planning Application: 21/01054/DPO

<b>Proposal :</b>	Application to vary the Section 106 Agreement dated 7th October 2011 between South Somerset District Council and The Red Lion Inn (Babcary) Ltd in association with planning permission 10/05151/FUL to remove the requirements for (i) the outbuildings to be used in connection with the adjoining public house, and (ii) for purposes solely limited to short term letting rooms and as a garden/function room/store.
<b>Site Address:</b>	The Red Lion Inn , Main Street, Babcary, Somerton, TA11 7ED
<b>Parish:</b>	Babcary
<b>CARY Ward (SSDC Member)</b>	Cllr K Messenger Cllr H Hobhouse
<b>Recommending Case Officer:</b>	David Kenyon (Principal Specialist) Tel: 01935 462091 Email: david.kenyon@southsomerset.gov.uk
<b>Target date :</b>	13th July 2021
<b>Applicant :</b>	Mr & Mrs C Garrard
<b>Agent: (no agent if blank)</b>	Mr Jonathan Lovelace Della Valle Architects Lake View Charlton Estate Shepton Mallet BA4 5QE
<b>Application Type :</b>	Non PS1 and PS2 return applications

### REASON FOR REFERRAL

This application is referred to the Ward Members as the officer recommendation is contrary to the views received from third parties in support of the proposal and does not fully reflect all the reasons set out by the Parish Council and those third parties who are raising objections to the application.





## PROPOSAL

This application is seeking to vary a Section 106 agreement dated 7th October 2011 between South Somerset District Council and The Red Lion Inn (Babcary) Limited, which is an agreement relating to the following planning permission:

10/05151/FUL. Demolition and re-building of existing outbuilding to provide six en-suite letting rooms, construction of garden function room/store, and erection of staff/manager's dwelling. Planning permission granted 11.10.2011 subject to several conditions. Conditions 03, 04 and 05 state:

*03. The occupation of the dwelling hereby approved at the southern end of the site shall be restricted to those employed by the Red Lion public house, as part of the day to day running of the public house, and their dependents.*

Reason: To prevent unsustainable, permanent occupation that would be contrary to policy ST3 of the South Somerset Local Plan and the countryside policies as set out in PPS7.

*04. The occupation of the letting units hereby permitted shall be restricted to short term lets to bona fide guests of the public house and this accommodation shall not be occupied as a person's sole or main residence. The site operator or owner shall maintain an up to date register of the names of all occupiers of this accommodation, their main home addresses and the duration of their stay and shall make this information available at all reasonable times to the Local Planning Authority.*

Reason: To prevent unsustainable, permanent occupation that would be contrary to policy ST3 of the South Somerset Local Plan and the countryside policies as set out in PPS7.

*05. Upon first occupation of the managers dwelling hereby permitted the permanent residential use of the staff quarters on the first floor of the public shall cease and thereafter this accommodation shall be restricted to holiday purposes only. This accommodation shall not be occupied as a person's sole or main residence. The site operator or owner shall maintain an*

*up to date register of the names of all occupiers of this accommodation, their main home addresses and the duration of their stay and shall make this information available at all reasonable times to the Local Planning Authority.*

Reason: To prevent unsustainable, permanent occupation that would be contrary to policy ST3 of the South Somerset Local Plan and the countryside policies as set out in PPS7.

The Section 106 Agreement secures, inter alia:

- the six letting rooms to be available for and not to be occupied at any time other than for short term lettings (defined as occupation by bona fide guests of the public house for individual periods not exceeding four weeks in total in any period of twelve weeks),
- not to use any of the public house for residential use except this shall not prohibit the staff flat (i.e. the living accommodation located on the first floor of the public house) being used for short term letting,
- all buildings forming part of the property (defined as the public house with its staff flat, the letting rooms, the manager's dwelling and the garden function room/store) shall be used in conjunction with the business run from the property and for no other purpose whatsoever so as to prevent the sub-division of the property as a single planning unit run from the site,
- neither the staff flat, the letting rooms nor the manager's dwelling to be sold, let, occupied under licence or any other disposition made such that it would result in the staff flat, the letting rooms or the manager's dwelling being owned, occupied or used separately from the public house (unless otherwise agreed in writing with the Council), and
- an accurate register of all guests of the public house occupying the letting rooms and the staff flat for short term lettings shall be maintained and be made available for inspection by the Council at all reasonable times.

The proposal seeks to vary/modify the agreement by removing the requirements for:

- (i) the outbuildings to be used in connection with the adjoining public house, and
- (ii) for purposes solely limited to short term letting rooms and as a garden/function room/store.

Such variations/modifications are sought in order to allow a proposed change of use of the existing outbuildings from 6no. short term letting units and garden/function room/ store currently used in connection with the adjoining public house, into a single self-contained dwelling unit and ancillary garden room associated with that dwelling only (subject to a concurrent planning application ref. 21/01051/FUL).

## **HISTORY**

02/02225/FUL & 02/02228/LBC. The demolition of toilet blocks and the erection of an extension to form dining room and new toilet facilities

Planning permission and Listed Building consent granted 29.10.2002.

09/01417/LBC: Listed building consent granted (21/05/09) for the re-thatching of front and side roof with combed wheat and re-ridge.

Listed Building consent granted 21.05.2009.

10/05151/FUL. Demolition and re-building of existing outbuilding to provide six en-suite letting rooms, construction of garden function room/store, and erection of staff/manager's dwelling.

Conditional planning permission granted 11.10.2011.

To be read in conjunction with this permission is a Section 106 Agreement dated 7th October 2011.

10/05155/LBC. Demolition and re-building of existing outbuilding to provide six en-suite letting rooms, construction of garden function room/store, change of use of first floor staff flat to family letting suite and erection of staff/manager's dwelling.

Listed Building consent granted 27.07.2011.

14/01868/FUL. Erection of a dwelling.  
Refused 27.06.2014.  
Subsequent appeal dismissed 7th November 2014.

15/01007/FUL. Erection of a dwelling and village shop.  
Planning permission granted 19.01.2016.  
To be read in conjunction with this permission is a Section 106 Agreement dated 13th January 2016. The Agreement requires, inter alia:

- not to occupy the dwelling until the shop has been completed and opened for business,
- the shop to be kept open for business, seven days a week for a minimum of two hours per day for so long as it is viable to do so,
- on the occasion of the business becoming unviable, details of accounts for the preceding twelve months to be provided to the Council, and
- if agreed by the Council the owner will be released from the obligation under this agreement.

NOTE: On 19th February 2018 the Council confirmed in writing that, following receipt of the profit and loss accounts and additional information requested by virtue of the Section 106 Agreement, it was satisfied that the shop was unviable. Therefore, as per the relevant paragraph of that Agreement, the owner was formally released from the obligations under that agreement.

16/00780/S73. S73 application to vary condition 2 of approval 15/01007/FUL, to allow the substitution of plans. Amendments to the design of the dwelling. Revision of the access way to ensure the orientation of the dwelling maximizes amenity space, and privacy for the pub users and occupants of the dwelling.  
Planning permission granted 18.04.2016.

20/01967/OUT. Outline application with some matters reserved for the erection of 3 No. detached new dwellings within Red Lion Inn car park, conversion of 2 No. buildings into dwellings (5 No. total), provision of new vehicular access and relocating car park associated with Red Lion Inn.  
Withdrawn.

20/03350/PREAPP. Proposed residential development of 3 dwellings (1 conversion and 2 new building), creation of replacement car park and new vehicular access and general consolidating of Public House.

21/01051/FUL. Changes of use of the existing outbuildings from 6 short term letting units and garden/function room/store currently used in connection with the adjoining public house into a single independent, self-contained dwelling unit and ancillary annex accommodation to that dwelling unit, and provision of new vehicular access and relocation of public house car park to the rear of the public house.  
Pending consideration.

21/01052/LBC. Partial re-building and partial re-alignment of front boundary wall adjoined to the north end of the west elevation of the Red Lion Inn.  
Pending consideration.

21/01053/OUT. Outline application for the erection of 2no. detached new dwellings within the Red Lion Inn car park and adaptation of existing vehicular access, with some matters reserved except for access, layout and scale.  
Pending consideration.

## **POLICY**

Section 38(6) of the Planning and Compulsory Purchase Act (2004), and Paragraphs 2, 11, 12 and 47 of the NPPF state that applications are to be determined in accordance with the

development plan unless material considerations indicate otherwise.

Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 imposes a general duty on local planning authorities when determining planning applications as respects listed buildings and states:

"In considering whether to grant planning permission, or permission in principle, for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

For the purposes of determining current applications the Local Planning Authority considers that the adopted development plan comprises the policies of the South Somerset Local Plan 2006-2028 (adopted March 2015).

#### **Policies of the South Somerset Local Plan (2006-2028)**

SD1 - Sustainable Development

SS1 - Settlement Strategy

SS2 - Development in Rural Settlements

EP15 - Protection and Provision of Local Shops, Community Facilities and Services

TA1 - Low Carbon Travel

TA5 - Transport Impact of New Development

TA6 - Parking Standards

EQ2 - General Development

EQ3 - Historic Environment

EQ4 - Biodiversity

EQ7 - Pollution Control

#### **National Planning Policy Framework - July 2021**

Chapter 2 - Achieving sustainable development

Chapter 4 - Decision-making

Chapter 5 - Delivering a sufficient supply of homes

Chapter 6 - Building a strong, competitive economy

Chapter 8 - Promoting healthy and safe communities

Chapter 9 - Promoting sustainable transport

Chapter 12 - Achieving well - designed places

Chapter 14 - Meeting the challenge of climate change, flooding and coastal change

Chapter 15 - Conserving and enhancing the natural environment

Chapter 16 - Conserving and enhancing the historic environment

#### **National Planning Practice Guidance, including National Design Guide - September 2019**

#### **Other Relevant Documents**

Somerset County Council Parking Strategy (SPS) (September 2013) and Standing Advice (June 2017)

#### **CONSULTATIONS**

##### **Babcary Parish Council**

A very detailed response dated 30th June 2021 was received from the Parish Council following its meeting on 14th June 2021 to discuss this particular application as well as the separate applications 21/01052/LBC, 21/01053/OUT and 21/01054/DPO. The one comprehensive response from the Parish Council applies to all four applications and has been included in full on the District Council's website for public consideration. The full response will not be reiterated in this report but specific extracts will be set out below to provide an indication and explanation



of the Parish Council's objections to this proposal.

The specific objections are as follows:

- No new housing needed
- Contrary to SS4 of the emerging South Somerset Local Plan Review 2016-2036
- Flood risk
- Mains drainage problems and capacity
- Loss of employment
- Sustainability - introduces a new dwelling, whilst removing two part time jobs in a village community with very little employment and no viable public transport. By removing the B&B, the most profitable part of the pub operation, it would appear that either many more jobs will have to go OR the pub will have to become significantly less profitable.
- Listed building - gross over development and seriously detrimental to the rustic character and setting of the listed building and would put at risk its future as a working pub. Moving the car park to the north of the pub moves the noise and light of the car park into the middle of the village and is detrimental to the adjoining houses including Percy House, also Grade II listed.
- Section 106 agreement- the ownership and occupation of the B&B, den marquee and car park is tied to the pub by a Section 106 agreement signed by the owners as per planning application 10/05151/FUL. Removing them would require a demonstration of their unviability over a period of time, not in relation to short term events, and removal of the conditions would also be against Planning Policy. The purpose of the S.106 agreement was to prevent the various parts of the site being sold off for development profit at a later date to the detriment of the community. This is exactly what is proposed so the S.106 must be retained
- Asset of Community Value - the entire Red Lion premises are registered as an Asset of Community Value and therefore cannot be broken up and sold off piecemeal.
- Unsatisfactory B&B dwelling - the proposal to create a residential dwelling out of the B&B building and the Den/marquee area creates a house that would be unsuitable for residential occupation. The B&B house would be surrounded by beer garden on one side and pub car parking on the other with the chimney of the pizza oven very close to the bedroom windows.
- Phosphate levels increase
- Proposed car parking is inadequate, contrived and unsafe
- Loss of amenities - the plans reduce the beer garden by approximately 25%, remove the children's play area, remove the disabled parking facilities and remove the B&B rooms
- Detrimental to the viability of the pub

The conclusion put forward by the Parish Council:

*The Red Lion is the only pub in the village and is a vital community asset, central to village life. The village has only three public spaces; the church, the playing field and the pub. This plan would reduce the pub to a shadow of its former self as it could no longer function as a destination/gastro pub. The village itself is far too small to support the pub alone without outside visitors and, if this plan were allowed, the pub would inevitably spiral downhill and ultimately close. Once lost and built over the car park, B&B and marquee/den can never be replaced and the scaled down pub premises would make a highly desirable residential site were the pub to close.*

Both CAMRA and CPRE share the view that this plan will be detrimental to the future of the Red Lion as a thriving pub.

The Six Pilgrims parishes (Alford, Babcary, Hornblotton, Lovington, N&S Barrow) used to have two pubs until very recently but now 'The Pilgrims Rest' is closed and lost to development; so we are fighting to save the last one. Charlton Mackrell have battled against the development of the car park of 'The Greyhound' and now its closure. The applicants' previous pub, 'The Mandeville Arms' at Hardington is also now closed. The Red Lion is registered as an ACV and the pub is at serious risk of decline and closure.

A further detailed response dated 25th November 2021 was received from the Parish Council following notification about receipt of a viability assessment carried out by a consultant on behalf of the District Council (Mr John Keane of Thomas E. Teague, Licensed Property Valuers, Rating Surveyors, Auctioneers, Brokers and Stocktakers) and a Flood Risk Assessment submitted on behalf of the applicants.

- Viability Assessment for SSDC by John Keane - The independent Viability Assessment commissioned by SSDC from John Keane of Thomas Teague completely vindicates what the Parish Council has been saying all along; that this plan would fundamentally undermine the long term viability of the Red Lion. The report is thorough and perceptive and rightly highlights the dangers of reducing (for ever) from four income streams down to two, the loss of the most profitable part of the business and the risks to the business of inadequate and contrived parking arrangements. The plans remove the long term future proofing which a rural pub in a small village needs in these uncertain times. The conclusion of the report (Section 28) is absolutely clear and unambiguous and it concludes in 28.8, "The implementation of the proposed scheme would be detrimental to the long term viability and future of the Red Lion." Given the duty on planning authorities to safeguard the future of rural pubs these applications should be rejected outright immediately.
- Flood Risk Assessment - The FRA submitted by RMA Environmental on behalf of the applicants is weak and crucially does NOT provide sequential testing as required and nor does it explain how the known flooding problem in Steart Lane will be mitigated. The Parish Council sets out in much detail responses to various paragraphs within the FRA and concludes that the FRA as submitted is wholly inadequate and should be rejected.

## **REPRESENTATIONS**

This application ref. 21/01054/DPO (and the three other concurrent applications refs 21/01051/FUL, 21/01052/LBC and 21/01053/OUT) have attracted many letters/emails of representation from residents both within the village and from elsewhere, raising objections and offering support for the development proposals as a whole. All representations received can be viewed on the Council's website but can be summarised as follows, in no particular order:

### Support

- Covid restrictions have not helped the viability of pubs on a national basis. The proposals are more than reasonable solutions to help preserve the Red Lion Inn as an on-going commercial asset for the long term future and to avoid its premature closure.
- The viability report submitted with the application shows the pub would be sustainable without the letting rooms and 'The Den'.
- The proposals seek to conserve the listed character of the Red Lion Inn.
- All villages are having to accommodate extra housing - this development is small and in line with current housing policy and is not unjustified.
- The current car park is very unsightly - its relocation and development would be a visual improvement.
- The proposals would result in no worse impacts on visual appearance and highway safety than the approved new housing on the opposite side of the lane.

### Objections

- The Red Lion Inn is an important village asset and its viability and retention must be protected and preserved at all costs. The proposals would result in a material adverse impact on the viability of the public house business.
- The existing signed S106 Agreement must be honoured and retained to ensure continued viability of the public house.
- Reduction in size of the beer garden would be unacceptable and be less attractive to customers.

- The proposals will result in detriment to the character and appearance of the Listed Building and would detract from its significance.
- Overdevelopment of the site as a whole.
- There would be a material loss of employment.
- Unacceptable resultant impact on highway safety - poor visibility, insufficient on-site turning.
- Insufficient on-site parking being proposed. No safe on-street parking nearby.
- Unacceptable resultant impact on flooding and flood risk in the immediate and wider area.
- Inadequate sewerage system in village. Increased foul sewage problems as a result.
- Adverse resultant impact on residential amenities of neighbouring properties - construction traffic, additional noise, spill-over of cars, headlights and door slamming by users of proposed car park.
- Unsatisfactory living conditions for occupiers of the proposed converted dwelling due to proximity to public house.
- Adverse resultant impact on the local ecosystems and possible harm to habitats of protected species.
- Unacceptable diversion of public footpath.
- No need for further housing in the village.
- Non-compliance with economic, social and environmental objectives of sustainable development.
- Phosphate restrictions.

## CONSIDERATIONS

The application seeks to make the following changes to the S.106 Agreement:

To remove the requirements for:

- (i) the outbuildings to be used in connection with the adjoining public house, and
- (ii) for purposes solely limited to short term letting rooms and as a garden/function room/store.

The reasoning behind the submission of this application is to allow the outbuildings in question to be used as a single, independent, self-contained dwelling unit and ancillary annex accommodation to that dwelling unit should the development proposal, the subject of planning application ref 21/01051/FUL, be granted planning permission.

The Council has various objections to the application proposal 21/01051/FUL, which in turn reflects objections being raised to the proposed variation/modification of the current Section 106 Agreement. The reasons for objection are as follows:

### 1. Future viability of the Red Lion Inn

The LPA has appointed a Viability Assessor to provide professional advice on this particular matter. A viability assessment report has been provided which has taken into account of and has regard to the various conflicting reports and representations submitted in support of or objecting to the application proposal in respect of whether the proposals would or would not ensure the long term viability of the public house. The Viability Assessor's report has been considered to be an important material consideration when determining this application proposal, having due regard to his conclusion that "The implementation of the proposed scheme would be detrimental to the long-term viability and future of The Red Lion."

Having due regard to that conclusion, it is considered that the proposed variations/modifications to the current Section 106 Agreement would result in a significant or total loss of the premises currently used as a public house that contributes towards the sustainability of the village of Bab Cary. As such the proposal would be contrary to Policy EP15 of the South Somerset Local Plan and relevant guidance in the NPPF.

In addition, the proposed development would not provide employment opportunities appropriate to the scale of the settlement, would not create or enhance community facilities

and services to serve the settlement, or meet an identified housing need (particularly affordable housing), nor would it increase the sustainability of the settlement. As such the proposed development would be contrary to Local Plan Policies SD1 and SS2 and relevant NPPF guidance.

## **RECOMMENDATION**

To REFUSE to allow the variation/modification of the Section 106 agreement dated 7th October 2011 between South Somerset District Council and The Red Lion Inn (Babcary) Limited.

## **SUBJECT TO THE FOLLOWING:**

01. The Section 106 Agreement still serves a useful purpose to help secure the viability of the Red Lion Inn. The proposed variation/modification of the Section 106 Agreement would be detrimental to the long-term viability and future of The Red Lion Inn, resulting in a significant or total loss of the premises currently used as a public house that contributes towards the sustainability of the village of Babcary. In addition, the proposed development would not provide employment opportunities appropriate to the scale of the settlement, would not create or enhance community facilities and services to serve the settlement, or meet an identified housing need (particularly affordable housing), nor would it increase the sustainability of the settlement. As such the proposed development would be contrary to Policies SD1, SS2 and EP15 of the South Somerset Local Plan and relevant guidance in the National Planning Policy Framework (2021).

## **Informatives:**

01. In accordance with the NPPF the Council, as Local Planning Authority, takes a positive and proactive approach to development proposals focused on solutions. The Council works with applicants/agents in a positive and proactive manner by offering a pre-application advice service, and as appropriate updating applications/agents of any issues that may arise in the processing of their application and where possible suggesting solutions. In this case, there were no minor or obvious solutions to overcome the significant concerns caused by the proposals.