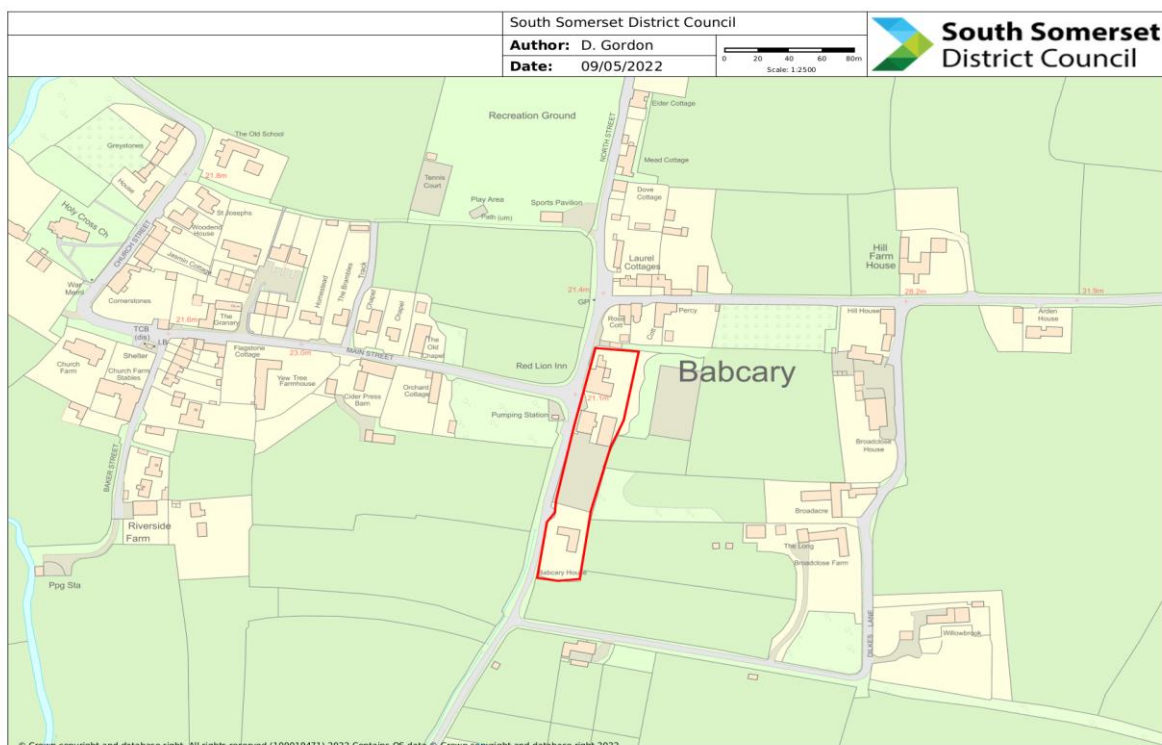


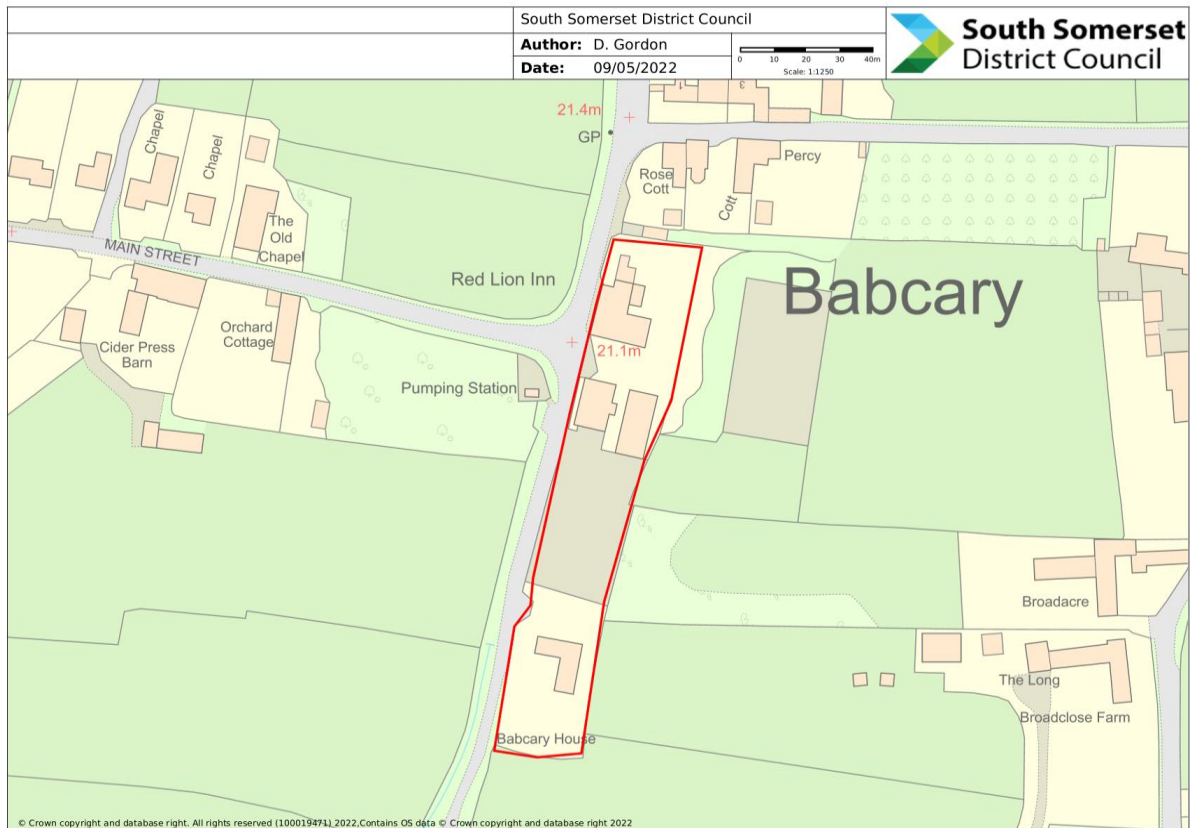
Officer Report On Planning Application: 21/01054/DPO

Proposal :	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.
Site Address:	The Red Lion Inn , Main Street, Babcary, Somerton, TA11 7ED
Parish:	Babcary
CARY Ward (SSDC Member)	Cllr K Messenger Cllr H Hobhouse
Recommending Case Officer:	David Kenyon (Principal Specialist) Tel: 01935 462091 Email: david.kenyon@southsomerset.gov.uk
Target date :	13th July 2021
Applicant :	Mr & Mrs C Garrard
Agent: (no agent if blank)	Mr Jonathan Lovelace Della Valle Architects Lake View Charlton Estate Shepton Mallet BA4 5QE
Application Type :	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 (Bab Cary) 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.