RED LION INN, BABCARY, SOMERSET TA11 7ED
REQUEST FOR REVIEW OF ACV LISTING

Introduction

1. On 4 September 2025, the property known as the Red Lion Inn, Babcary, Somerset TA11 7ED (the "**Property**") was listed by Somerset Council on its Register of Assets of Community Value. The owner of the Property respectfully requests Somerset Council review this decision to list the Property as an Asset of Community Value ("**ACV**"), for the following reasons.

Summary

- The nomination was invalid and it is simply not possible for the Property to be listed pursuant to an unlawful nomination.
- In any case, the nomination does not meet the criteria in the first test because the Property is not used as a community hub on a non-ancillary basis. The main use diversified into tourism from 2003 onwards, and any use by locals is de minimis or ancillary in scale and function to that main use.
- In any case, the nomination does not meet the criteria for the second test as there is no realistic intention on the part of the nominees or any other group to utilise the "community right to bid", to make a realistic bid to buy the property or to formulate a realistic plan to raise money and acquire the skills and resources necessary to buy and run a community pub. Furthermore, there is simply no evidence of any intention or plan, fanciful or otherwise. The remote location, capital and maintenance costs of the Property mean that it is not realistically viable as a "community pub". In contrast, Mr and Mrs Garrard's ongoing plans for the pub are realistic and supported by professional consultants, finance, and the support of a positive pre-application advice from Somerset Council.
- In any case, part of the car park should be removed from the listing as it is surplus to requirements of the business, as confirmed in pre-application advice from Somerset Council Planners.
- In any case, the Property is exempt from listing as a boutique hotel with ancillary food and drink services, following the precedent set by Somerset Council rejecting the ACV listing nomination for the Notley Arms Inn.
- In any case, the "Barn" building containing the holiday let rooms is exempt from listing, regardless of the listing status of the rest of the Property.

2. The rationale is set out in more detail below with an examination of the background to the legislation, the history of the Property and consideration of each of the points listed above. In accordance with the ACV legislation, the issues will be considered in the following order

    a. whether there was a lawful nomination
    b. the first test: whether there is non-ancillary community use over
        (i) part or
        (ii) all of the Property
    c. the second test: whether there is a realistic likelihood of community use in the future
    d. what land in general is exempt from ACV listing

Legislation Background

3. The Localism Act 2011 ("**LA 2011**") introduced the ACV regime. At that time there was increasing concern that assets benefiting local communities were being lost because, by the time the local community had begun to respond to the threat of closure and prepare to bid, the asset had been sold. This coincided with a period during which local pubs were being sold off because they were no longer profitable due to changes in the market.

4. The LA 2011 set up a new procedure to be operated by local authorities under which an asset which satisfied certain statutory criteria could be nominated by a relevant entity and then listed by the local district of unitary council as an ACV. Listing is for a limited period of five years. The LA 2011 then imposes a moratorium triggered by an intention to dispose of any such listed asset.

5. The Plain English Guide to the Localism Act explained the reasons behind the ACV regime as follows.

> *"Every town, village or neighbourhood is home to buildings or amenities that play a vital role in local life. They might include community centres, libraries, swimming pools, village shops, markets or pubs [...] and if they are closed or sold into private use, it can be a real loss to the community. In some cases [...] community groups who have attempted to take assets over have faced significant challenges.* ***They often need more time to organise a bid and raise money than the private enterprises bidding against them****."* [Emphasis added].

6. Thus the *raison d'être* of the "*community right to bid*", as the ACV regime is known, is to hold up the disposal for a limited period giving local community groups the opportunity to make a realistic bid for an asset for which they must have a realistic amount of time, money, willing customers and specialist commercial knowhow to run successfully for an indefinite period in unpredictable market conditions.

7. To avoid confusion, the clear limits of the ACV regime must also be noted. The Government has said that the ACV scheme is not a planning policy to protect against change of use and that local authorities can already use planning regime powers to do that. The government has also said "*disproportionate restrictions on change of use [...] might result in more empty buildings, spoiling the local environment and holding back economic development.*" The "*community right to bid*" does not create compulsory purchase obligations for the owner, the local authority or the public purse in general. Neither is it designed to prevent development, unlike town and village green legislation. Caselaw, such as General Conference of the New Church v Bristol City Council (Localism Act 2011) [2015] UKFTT CR_2014_0013 (GRC), confirms that matters that fall to be addressed in the context of the law relating to development control fall outside the ambit of the ACV legislation.

8. However, there may be financial duties arising for a local authority as a consequence of its decision to list an ACV due to the possibility of having to pay compensation to the landowner for resultant losses. Compensation is payable to an owner of a listed ACV for loss or expense in relation to the ACV "*which would be likely not to have been incurred if the land had not been listed*" (reg.14(2) of The Assets of Community Value (England) Regulations 2012 ("the **2012 Regulations**")). Two heads of damage are expressly mentioned. One is loss due to a delay in sale "*which is wholly caused*" by the operation of the moratorium provisions (reg.14(3)(a)) such as wasted service charges or rates. The other is a claim for reasonable legal expenses

incurred in a successful appeal to the First-tier Tribunal in relation to listing or the entitlement to or amount of compensation (reg.14(3)(b)). Furthermore, in the First Tier Tribunal case of St John Ambulance v Teignbridge DC [2018] 11 WLUK 578, Judge Simon Bird QC concluded that a claim could be made for "*diminution in the value of land due to it being listed as an ACV*". This reasoning was approved by Judge Poynter of the Upper Tribunal in Fielder v Harrogate Borough Council [2020] UKUT 288 (AAC).

History of the Property

9. The property now known as the Red Lion Inn, Babcary, Somerset (the "**Property**") originated as a private dwelling in the seventeenth century. It was first used as a public house in Victorian times. It is grade II listed, built of local stone with a thatched roof. The current owner purchased the Property in 2002 and invested substantial sums in its restoration overseen by local authority heritage officers. Previous owners had run the Red Lion as a pub without diversifying into tourism and functions.

10. In 2003 the business was transformed. The current owners extended the small lounge bar where previous owners had served basic pub grub had been served and transformed it into a sophisticated restaurant with more elaborate meals cooked from scratch on site by a chef. The main business at the Property became catering to a UK-wide market with the new "destination restaurant" alongside a new service offering exclusive, upmarket "once in a lifetime" private functions, mostly weddings. Food was served in the restaurant and lounge bar areas, with a small "public bar" remaining as an ancillary, additional income stream.

11. In 2011 planning permission was granted pursuant to tourism policies for the conversion of a dilapidated building (the "Barn") into six *en suite* boutique letting rooms.

12. As the development of tourist accommodation required the owners to be nearby, planning permission was granted at the same time for a separate dwelling to the south of the site. (Since 2003 growing family needs had necessitated the owners moving out of cramped managers' flat on the first floor of the Property into various rental properties, prior to the building of the new house.)

13. Since 2011 the main thrust of business is as a highly specialised "function" venue, "destination" restaurant, and boutique hotel, in a picturesque Grade II listed setting. Out of commercial necessity bookings are made online and attract visitors from around the UK and abroad, rather than relying on local footfall or passing trade, which would simply not be a viable business model.

14. Only ten per cent of revenue is from those in the local community. While the Property may be located in a village, it is not a "local pub" but an exclusive wedding party function venue catering to a national and international market. The last "local" wedding booking was prior to 2011. While the Property may be local to those in the local community, any use by the local community of the bar is ancillary to the main destination restaurant and function business. It caters to once in a lifetime events, such as weddings rather than more mundane functions. Its menu is for fine dining on special occasions, rather than everyday mass-produced microwaved "pub grub". It is a different market from the convenience food market which competes with the £5 McDonalds or supermarket meal deals and the less picturesque "local" pubs which are competing with the cheap supermarket alcohol offered to the casual drinker. It is more of a tourist experience than that offered by many budget hotel chains.

15. The Red Lion is a Destination Boutique Inn. If it were a local pub, it simply would not exist in today's market.

16. The unique selling point of the business is that people travel from far afield to spend their money there. While there is a bar, this is ancillary to the tourist use which dominates the business.

Reasons for Requesting Review

17. On 4 September 2025 the Property was listed by Somerset Council on its register of Assets of Community Value ("**ACV Register**"). Mr and Mrs Garrard, the owners of the Property, respectfully request Somerset Council review this decision to list the Property as an Asset of Community Value ("**ACV**"), for the following reasons.

    - The nomination was invalid and it is simply not possible for the Property to be listed pursuant to an unlawful nomination.

    - In any case, the nomination does not meet the criteria in the first test because the Property is not used as a community hub on a non-ancillary basis. The main use diversified into tourism from 2003 onwards, and any use by locals is de minimis or ancillary in scale and function to that main use.

    - In any case, the nomination does not meet the criteria for the second test as there is no realistic intention on the part of the nominees or any other group to utilise the "community right to bid", to make a realistic bid to buy the property or to formulate a realistic plan to raise money and acquire the skills and resources necessary to buy and run a community pub. Furthermore, there is simply no evidence of any intention or plan, fanciful or otherwise. The remote location, capital and maintenance costs of the Property mean that it is not realistically viable as a "community pub". In contrast, Mr and Mrs Garrard's ongoing plans for the pub are realistic and supported by professional consultants, finance, and the support of a positive pre-application advice from Somerset Council.

    - In any case, part of the car park should be removed from the listing as it is surplus to requirements of the business, as confirmed in pre-application advice from Somerset Council Planners.

    - In any case, the Property is exempt from listing as a boutique hotel with ancillary food and drink services, following the precedent set by Somerset Council rejecting the ACV listing nomination for the Notley Arms Inn.

    - In any case, the "Barn" building containing the holiday let rooms is exempt from listing, regardless of the listing status of the rest of the Property.

18. In accordance with the ACV legislation, the following issues will be considered.

    a. whether there was a lawful nomination
    b. the first test: whether there is non-ancillary community use over
        (i) part or
        (ii) all of the Property

c. the second test: whether there is a realistic likelihood of community use in the future
d. what land in general is exempt from ACV listing

Nomination not valid

19. The first reason for requesting a review of the Listing is that the purported Nomination was not made lawfully by the Parish Council, and does not meet the criteria set out in the legislation and regulations (LA 2011 (s.89(2)(b)).

20. In general, land in a local authority's area which is of community value may be included by a local authority in its list of ACVs in response to a "community nomination". A nominating body must provide a description of the nominated land including its proposed boundaries; information regarding the owners and occupiers; and the reasons why the authority should conclude that the land is of community value. Evidence of the nominator's eligibility must also be provided.

21. For the purpose of making a "community nomination", the bodies who can make such a nomination are a parish council and a voluntary or community body with a local connection (s.89(2)(b)). The latter covers a neighbourhood forum, parish council, unincorporated associations with at least 21 members and which do not distribute any surplus to its members, a charity, a company limited by guarantee, a co-operative or community benefit society, and a community interest company (Regulation 5). To qualify, the activities of such bodies must be wholly or partly concerned with the area of the authority or a neighbouring authority. Further, if an unincorporated association then not only must it have at least 21 local members, but any surplus must be wholly or partly applied for the benefit of the authority's area or a neighbouring authority's area. This requirement as regards any surplus must also be satisfied by a company limited by guarantee or a co-operative or community benefit society. To be a local member that member must be registered on the local government electoral roll with an address in the local authority's area or in a neighbouring authority's area (reg. 4(2)).

22. In this case, while the nomination purported to come from Babcary Parish Council, there is no official record of a lawful decision-making process or resolution in relation to the nomination pursuant to the requirements of the Local Government Act 1972 ("**LGA 1972**").

23. All matters to be discussed and voted upon at a parish council meeting must be set out in an agenda published and circulated at least three clear days (not including the issue and meeting) before a meeting of a parish council (LGA Sch 12 paras 10(2)(a) and 26(2)(a)). As stated in Lonfield Parish Council v Wright (1918) 88 LJ Ch 119:

> *"It may be that a very important question is going to be considered at the meeting; it may be on the other hand that the only business is purely formal, paying some tradesman or something of that description. In the one case the members would attend in force and in the other case it was a mere matter of form, the members would not attend beyond the necessary quorum. Accordingly, the notice convening the meeting should contain sufficient description of the important business which the meeting is to transact, and the meeting cannot in ordinary circumstances go outside the business mentioned in that notice"*

24. The Babcary Parish Council website has not published, and Babcary Parish Council does not appear to have produced, any agendas since November 2022. The Parish Council website and the village newsletter "*Babcary News and Views*" publish only the minutes of Parish Council meetings, but agendas are not mentioned. This potentially renders any Parish Council decisions made since the November 2022 meeting unlawful.

25. Moreover, there is no mention of any resolution or vote by the Parish Council recorded in the published Babcary Parish Council Minutes.

26. Item 3 of "*Any Other Business*" of the Minutes of 9 June 2025 makes no mention of a nomination or any indication that the Parish Council made a decision to nominate the Property. Rather than referring to a nomination it wrongly states that the Property's ACV listing has already been renewed, nearly three months before the official renewal date of 4 September 2025. The Minutes are as follows.

> *"The Parish Council confirmed renewal of Asset of Community Value (ACV) registration on The Red Lion"*

27. The following month, Item 4 of "*Matters Arising*" of the minutes of 14 July 2025 again makes no mention of a nomination or any indication that the Parish voted on a decision to nominate the Property. The minutes repeat, wrongly, that the renewal (which in fact took place almost two months later) has already taken place. The Minutes are as follows.

> *"The Parish Council confirmed renewal of Asset of Community Value (ACV) registration on The Red Lion"*

28. With regard to the Item 4 of "*Any Other Business*" of the 9 June 2025 Minutes, it is simply not lawful for motions to be carried in "Any Other Business" as these items have not been advertised in the published Agenda (LGA Sch 12 paras 10(2)(a) and 26(2)(a)). As Paul Clayden wrote in "*Charles Arnold-Baker on Local Council Administration*"

> "*A Council cannot lawfully decide any matter which is not specified in the* [agenda].
>
> *Some agendas conclude with the item 'Any Other Business'. Since this conceals rather than specifies the business, if any, to which it relates no decisions may lawfully be made on business brought up for discussion under it… There is, however, no objection to matters being discussed under the heading of 'Any Other Business' which involve no more than an exchange of information*."

29. Given that no Agenda was published for the 14 July 2025 meeting, any decisions taken at the meeting will also be unlawful (LGA Sch 12 paras 10(2)(a) and 26(2)(a), Longfield Parish Council v Wright (1918) 88 LJ 119).

30. In any case the nomination form purporting to make the nomination was dated 25 June 2025. In the hypothetical situation where a lawful decision to nominate was made on 14 July 2025, this would have been too late to provide lawful authority to make a nomination, more than two weeks later.

31. It appears that the form was signed by the Chairman of the Parish Council. No member of the Parish Council is authorised to make decisions or act on behalf of the Council outside of properly convened, quorate meetings.

32. The Chairman of the Parish Council has provided his own address for correspondence. But no member of the Parish Council, including the Chairman, has power to represent the Council outside of properly convened, quorate meetings. All correspondence with the Parish Council must be via the Clerk, not with individual councillors.

33. It is notable that the published Parish Council Minutes do not include any record of councillors' discussions of how the Parish Council, or other community organisation, will fund the purchase of the Property or how they will find the resources and knowhow to run it competently. It is also notable that the supporting information is simply recycled from the Parish Council's 2020 nomination. This is five years out of date. It does not take into account more recent events, and was notably written during the Covid lockdown.

34. Looking further back in the Babcary Parish Council Minutes to the original ACV listing, Minutes of the meeting of 13 July 2020 record only discussions relating to objecting to planning permission, rather than any considerations of the purpose of the ACV legislation (to provide time for a community bid) or of how councillors, or others, will buy and run this particular highly specialised function venue. There is no evidence of a "realistic" plan, or anything approaching a plan at all, other than a plan to halt development.

35. Incidentally, the purported "resolution" to nominate the Property as an ACV in 2020 was, again, recorded as an unadvertised item of "Any Other Business" (Item 3) at the 13 July 2020 meeting, rendering the decision unlawful (LGA Sch 12 paras 10(2)(a) and 26(2)(a)). This decision was reported thus in the Minutes:-

> *"Mr Simon Hoar informed the parish council of Mr & Mrs Garretts* [sic] *intention to put 3 dwellings onto The Red Lion car park, convert the B&B to a private dwelling, build another house where the den/marquee stands and relocate the pub car park to the left of the pub on the site of the kitchen garden and end of the beer garden where the children's slide is located. More details to follow; planning application not received.*
>
> *Given <u>the uncertainty</u> over the long term future of the pub the Parish Council resolved to apply to have the pub registered as an Asset of Community Value (ACV). It was noted that there would probably need to be a public parish council meeting in August solely to consider the Red Lion planning application and, given the public interest, it should not be held via Zoom but be held outside the Hut on the playing field. Date to be set once the planning application has been received.*

36. The decision to nominate an ACV was clearly brought up at the last moment, in "Any Other Business", by a single councillor, the Chairman, Mr Hoar, in response to an application for planning permission. Any vote on a resolution to nominate would have been unlawful as held without notice and without the opportunity for other Councillors to do any research or receive advice on the aims of the legislation or the criteria for nomination, including the Parish Council or another community body having a "realistic" hope of purchasing and running the pub itself. It appears Councillors may regard ACV listing as a way to prevent change, rather than as an opportunity for them to take full responsibility for the resources and risk of running the pub themselves.

37. The legislation does not allow a single individual to nominate, so the Chairman, not authorised by the Parish Council and acting as an individual, cannot lawfully nominate the Property as an ACV. The Parish Council comprises only seven councillors and there were only

nine people, including observing members of the public, present at the June 2025 meeting. This is fewer than the requirement of at least twenty-one local people required by the legislation.

38. As in the case of Marshall & Ors v Arun District Council & Anor [2017] UKFTT CR-2016-0025 (GRC) (30 April 2017), the Property must be removed from the ACV List as the nomination was not valid. It is simply not possible for Somerset Council to maintain the Property on the ACV list where this has not been pursuant to a valid nomination.

Failure to meet other ACV listing criteria

39. In addition to the purported nomination failing to meet the statutory criteria, there are additional reasons why the part or all of the Property should be removed from the ACV listing. These relate to the criteria set out in the first and second tests under Sections 88 and 89 of the LA 2011, and the exemptions set out at Schedule 1 Assets of Community Value (England) Regulations 2012/2421 (the "**2012 Regulations**").

40. The first test in Section 88 of the LA 2011 relates to the current actual use of the asset. If the test is not satisfied, then the second stage is to apply the second test which relates to the use of the asset in the "*recent past*". At the heart of these tests, and the operation of the statutory regime, is use which furthers the social wellbeing or social interest of the local community ("community benefit").

41. The first test is based on actual use. Two conditions need to be satisfied for the first test to be passed (Section 88(a) LA 2011) as follows.

    (a) the current actual use of the land or building furthers community benefit in a way which is not an ancillary use (to another main use); and

    (b) for the future it is realistic to think that there can continue to be user of the land or building which will further community benefit in a way which is not an ancillary use (to another main use).

42. The future use proposed can be different to the current use provided that it is realistic to think that it can be carried on.

43. To qualify, the use which is for the benefit of the local community must not be an ancillary use.

44. To be a non-ancillary use the use must

    (i) be a significant use in the context of the asset; and
    (ii) not subsidiary to any other use of the asset.

45. The second test is as follows. If there is no current actual community use, then there are two further conditions which need to be satisfied if an asset is to be listed (Section 88(2) LA 2011). These are as follows.

    (a) there was a time in the recent past when an actual use furthered community benefit which was not an ancillary use; and

(b) it is realistic to think that there is a time in the next five years when there could be user of the land or building which is not ancillary which will further community benefit.

46. As with the first stage of the process this future use for community benefit is not limited by the past use.

47. Three categories of land and building will be excluded from the operation of the listing regime. The principal exclusion relates to residences. The other two are caravan sites and land held by a statutory undertaking for its operations (Schedule 1 of the 2012 Regulations).

48. The residence exclusion is a wide one applying not just to homes but also to hotels, houses in multiple occupation and holiday dwellings. Included within the area excluded will be the land treated as connected with the residence. The test is a simple one as to whether the land is in single ownership with the residence provided that any part can be reached from every other part. If a road, canal, river or railway splits the land then this will not prevent the requirements being satisfied if "but for" that intervention such access would be possible.

49. The Property does not meet the first or second criteria for ACV listing. The Property is a boutique hotel with destination restaurant and ancillary bar. It is therefore exempt in its entirety. In any case, even without taking in to account the Property as a whole, the "Barn" building containing the holiday letting rooms must be removed from the ACV listing.

50. The rationale for this is set out in detail below.

First Test – current use – tourism with no non-ancillary community use

51. The first test for ACV listing is set out at Section 88(a) LA 2011 as follows.

(a) the current actual use of the land or building furthers community benefit and is not an ancillary use; and

(b) for the future it is realistic to think that there can continue to be user of the land or building which will further community benefit and is not an ancillary use.

52. To qualify, the use which is for the benefit of the local community must <u>not</u> be an <u>ancillary</u> use. To be a "*non-ancillary*" use the use must

(i) be a significant use in the context of the asset; and
(ii) not subsidiary to any other use of the asset.

Any Community Use of Property is "Ancillary", Rather than "Non-Ancillary"

53. Any "community use" that might occur at the Red Lion is not "non-ancillary" because the <u>significant</u> use of the Property is at least 90% tourism trade the with any "community use" merely subsidiary or ancillary to the main business, and not in any way a "significant" use (as required by the statutory criteria).

54. This is illustrated by the "Eat Out to Help Out" government Covid lockdown recovery initiative. This scheme offered consumers 50% off food and non-alcoholic beverages during August 2020 at participating restaurants, including the Property. Of three thousand covers during that period, only twelve covers were people local to the Property, meaning that just 0.4% of

trade was local, and 99.6% was tourism. Any "community" use is therefore clearly ancillary to tourism. In this example it was less than one percent of trade. The landlords estimate that trade from locals is less than ten per cent in general, at any given time (bearing in mind that "Eat Out to Help Out" generated an uplift of over one thousand additional meals compared to any other August). The lion's share of trade is from the tourism industry.

The meaning of "Ancillary" and "Non-Ancillary" in this context

55. Although "ancillary" is not expressly defined in the LA 2011, it is not a free for all, or else it would be impossible to apply the legislation in a consistent manner. The judgment in the ACV First Tier case of General Conference of the New Church v Bristol City Council (Localism Act 2011) [2015] UKFTT CR_2014_0013 (GRC) helpfully confirms that applying the definition of "ancillary" developed in planning law cases can be useful can be useful to ACV cases. The relevant paragraphs of that judgment read as follows.

> "*18. The expression "ancillary use", which occurs in several places in section 88, is undefined. I agree with Mr Wadsley that, in the circumstances, it may be helpful (to put it no higher) to look at how the concept of primary and ancillary uses is dealt with in planning law. In volume 2 of the Planning Encyclopaedia (Planning R.184: April 2014) one finds at P55.39 that:-*
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> > *" In many cases it is possible to identify a single primary use for a site overall, such as "private dwelling", "retail shop", "hotel", or "farm". That description may in any given case describe the sum of a number of "incidental" or "ancillary" uses of quite different character.*
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> *19. At P55.42, we find:-*
>
> > *" Much analysis in this area relies upon subjective judgements as to the type and scale of activity which may ordinarily be regarded as ancillary to a particular primary use. It is a test of functional relationship rather than extent."*
>
> *20. Mr Wadsley submitted that churches are places of assembly and, as such, can also be useful as a meeting place for others who may not share the religious purpose for which the church was created. In this way, meetings for the other groups that used part of the church (the evidence is that they were not allowed to use certain areas) were in the category of meetings or assemblies. There was, accordingly, a functional link between those meetings and the principal or main use.*
>
> *21. In the alternative, Mr Wadsley drew attention to paragraph 7.6 of the Explanatory Memorandum to the 2012 Regulations, which speaks of the "main purpose of the building or land". Mr Wadsley submitted that, on this approach, the answer one arrived at was the same: namely, that the main purpose of the church was as a church and the other uses were subsidiary to that.*
>
> *22. As the Tribunal stated in Dorset CC v Purbeck DC (CR/2013/004), in determining for the purpose of section 88 whether a use is ancillary, "there is no certain guidance or touchstone". In some cases, the position "on the ground" may be such that a single primary use is such that other uses fall properly to be regarded as ancillary to that primary*

use, whether or not one uses the test of functional relationship. In other cases, there may be a number of discrete uses, where none is properly to be regarded as ancillary, even though one particular use may be more significant than the others (whether in terms of intensity or otherwise). Neither planning law nor explanatory memoranda provide definitive answers; the context is all.

23. In the present case, the original and sole purpose was as a church. That remained the position, even when other non-religious groups were permitted to make use of the church. On the facts, I find that the primary use was as a church. Again, on the facts, I find that the evidence discloses that the other uses did not have a more than ancillary character. They were disparate, largely ad hoc and even before closure had dwindled to the point where only one group was using the church on a regular basis. In short, immediately before its closure, the reality was that (despite the decline in congregations) the church was still a church; not a community or social centre. The other uses were ancillary."

56. The above case refers to the First Tier Tribunal ACV case of Dorset County Council v Purbeck District Council (Community Rights: Allowed) [2014] UKFTT CR_2013_0004 (GRC) which helpfully confirms that quantum or amount of use can be determinative in assessing whether a use is ancillary. As follows (paragraph 14).

"*…In my judgement, all will depend upon the facts. I specifically reject the submission that the "quantum" or amount of use cannot be determinative and that it is the status of the user as against the rights of the owner which counts."*

57. This approach was confirmed by the judge in Idsall School v Shropshire Council [2015] UKFTT CR-2014-0016 (GRC) as follows.

"16. I respectfully agree. The issue of what is "ancillary" for the purposes of the 2011 Act is essentially fact-specific. I see nothing in the Act which compels the conclusion that there must always be only one primary use of the land or buildings in question, to which any other use must necessarily be ancillary. If use A is, in reality, no more than supportive or otherwise serving the purpose of use B, then use A will be ancillary to use B: as Mr Bircher observed, the word "ancillary" comes from the Latin ancilla = maidservant. I also agree with Mr Hopkins that there may be cases where, even though there is no functional relationship between uses A and B, use A may properly be said to be ancillary to use B if a comparison of the two reveals use A to be so minor or minimal as to make it unreal to equate the two uses for the purpose of section 88. Accordingly, like Judge Warren in the Dorset case, I reject the submission that the quantum or amount of a use cannot be determinative, at least in certain situations."

58. In planning law, the meaning of "ancillary", and what constitutes a "planning unit", is an objective test, as set out in the case of Burdle and Another v Secretary of State for The Environment and Another [1972] 1 W.L.R. 1207.

59. Applying the definition of "ancillary" found in planning law, an approach confirmed as correct in the General Conference of the New Church v Bristol City Council (Localism Act 2011) [2015] UKFTT CR_2014_0013 (GRC) case above, a useful precedent is found in the planning law case of Emma Hotels Ltd. v Secretary of State for the Environment and Another (1981) 41 P. & C.R. 255. This confirms that the use by locals of a hotel bar is merely "ancillary" to the property's main use as a hotel, as follows.

> *"The fact that it is a free house may well attract customers in larger numbers than would be the case if it were a tied house, but it does not follow from that that it ceases to be a hotel or that the attracting of non-residents involves a separate composite use within the same planning unit as something in the nature of a public house.*
>
> *Unless one has a very large number of bedrooms, or a very large number of people sleeping in those bedrooms, and in addition residents who are prone to make use of the drinking facilities to a very large extent, I really do not see why the Secretary of State should be in the least bit surprised that only 20 to 30 per cent. of the users of the public bar were residents*
>
> *The other factors encouraging the general public to come in and drink seem to me all to be necessary incidents of having a non-residents' bar. There is no point in having a non-residents' bar if you do not invite people to use it.*
>
> *The fact that it can readily be isolated physically from the rest of the building does not seem to me to be a relevant factor unless steps are taken to isolate it. That would be a different matter altogether, *260 but, unless and until that is done, I cannot see on what basis the Secretary of State reached the conclusion that this was not an incident of use [as a hotel]."*

60. It is notable in the Emma Hotel case that the use of the hotel bar by "locals" was confirmed as ancillary even where locals represented 70% to 80% of the takings from the hotel bar, with takings from residents only being 20% to 30%. In that case, it was the use of the **property as a whole** that was taken into account when analysing the main and ancillary uses, rather than considering the bar in isolation.

Tourism is the main use of the Property – any use by locals is ancillary in law and in fact

61. Applying these principles to the current case: on the facts, the main use of the Property is for tourism catering to those who travel from afar for a special treat, holiday or "once in a lifetime" event such as a wedding. The takings for this aspect of the business far outweigh any local trade, according to the most generous estimate, would only represent 10 to 20 per cent of trade, with tourism trade being the lion's share at 80% or 90% or more.

62. The tourism use of the Property is further underlined by the fact that extensive works were granted planning permission in 2011 for

> *"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"*

The 2011 permission (10/05151/FUL) was granted pursuant to the Council's tourism policies, and it was acknowledged by the Council and others that tourism was the main driver of trade and viability of the Property (as opposed to a "local community" comprising "*residents, locals and regular visitors*" required by the LA 2011, per paragraph 20 of 4C Hotels (2) Ltd v City Of London & Anor [2018] UKFTT CR-2017-0011 (GRC)).

63. Pursuant to the 2011 planning permission, an adjacent outbuilding (known as "the Barn") was converted into six *en suite* letting rooms. These have been advertised to a nationwide and international customer base on hotel booking sites such as "*Bookings.Com*" as boutique hotel accommodation with an associated restaurant and bar. The letting rooms are high end and booked well in advance by tourists travelling from afar, and clearly not the kind of less sophisticated rooms available on an ad hoc basis to anyone who happened to be drinking in a pub. That is, the boutique hotel rooms are not ancillary to a pub use. This underlined by the fact that the Property is a Finalist in the 2025/26 "*Bristol, Bath and Somerset Tourism Awards*".

The s106 "planning unit" obligation can only to the use of the house, not the separate elements of the business

64. A section 106 agreement was entered into pursuant the tourism planning application. The Agenda and Minutes of the planning committee indicate that this was necessary due to the building of a new house in the countryside to be used as manager's accommodation. Therefore, the Property was bound in one ownership by the Section 106 to prevent the house being sold off separately.

65. There is also a requirement that the land be in a single planning unit. Committee papers evidence that planning officers were concerned that, without a section 106 obligation, the distance between the buildings meant that there was a risk of there not being a sufficient "function" link with the business for the proposed new house to be "ancillary" to (and therefore within the same planning unit as) the business. This section 106 obligation could only apply to ensuring that the house was not used for independent residential purposes (for example by someone not connected with the business) and is justified by planning policies.

66. There is no evidence that there was any intention at committee or in the drafting of the Section 106 agreement to keep all of the elements of the business in one planning unit. There would be no policy justification for doing so. It would likely be unenforceable as it would be impracticable to attempt to micromanage all the elements of the landlords' business which would, in any case, be dictated to a material extent by outside factors such as market forces. It would be a mistake to imagine that the Section 106 does or could prevent the growth of the tourism side of the business, as this would be contrary to planning policy and in direct contradiction of the reasons for the grant of the planning permission.

67. In the hypothetical situation this were not clear, it would be possible to apply to remove any ambiguous wording and amend the Section 106 obligation, for the avoidance of all doubt. While the initial decision would be for the Council in its function as local planning authority, any refusal would be subject to a right of appeal to the Planning Inspectorate. It is difficult to see any policy or practical justification for the Council to defend such a hypothetical appeal.

68. This is because of the history and reasons for the Section 106 agreement as evidenced by the planning history. Historically the business elements of the Property have varied. For instance, the property was run mainly as pub until 2003 when the restaurant and private functions business became the main element of business. Food was served in the restaurant and lounge bar, with only a small, designated "public bar" remaining. The business was clearly evolving from a pub as market forces demanded diversification to maintain business viability. No planning permission was needed for this in 2003 as "pub" and "restaurant" uses were within the same planning use class in the iteration of the Use Classes Order in force at the time. At that time (2003) the Owners moved out of cramped managers' flat on first floor

of the Property, staying in various rented accommodation with their young family over the next fifteen years.

69. From 2011 planning permission was granted pursuant to tourism policies for the conversion of a nearby dilapidated building in to six en suite units of high end holiday let accommodation. As the development of tourist accommodation required the owners to be nearby, planning permission was granted at the same time for a separate dwelling to the south of the site.

70. The officer's report for this permission notes that officers were concerned that

> *"the remoteness of the dwelling from the hub of the business could undermine the functional requirement"* [of the test for whether the dwelling is ancillary to the business].

71. Nonetheless the planning committee granted permission despite the officer's recommendation for refusal, and a Section 106 obligation included obligations, not only that the land be held in one ownership (which is a standard Section 106 obligation), but also a requirement that all the land be operated as a single planning unit. This is widely drafted and therefore but would be problematic as a planning obligation if this were to be interpreted as a requirement to prevent any element of the business growing or diminishing. What constitutes a planning unit is an objective test. Single ownership can be an indicator of a single planning unit. However, if, for instance, the functional test is not met, then the land will not be a single planning unit. Where a business has several elements, including accommodation, a restaurant and a bar, the question of whether it is a single unit will depend on the vagaries and variation of market demand and the ability of the business to service the same. This is beyond the scope of what planning obligations may achieve, and therefore not enforceable.

Community hub use is elsewhere the village

72. While the Property has not been used as a "community hub" in the way envisaged by the ACV legislation since it was renovated for tourism use in 2003, the parish council-owned Babcary Playing Field and its small community centre, "The Hut", provide community activities for the 248 villagers. These activities are advertised on the Parish Council website and in the local newsletter produced by the Parish Council. It is notable that all of the advertised community activities take place in places other than the Property. That is, on the Playing Field, in the Hut (at the Playing Field) and in the Church.

73. The Parish Council's website advertises these community facilities as follows.

> *"Babcary Playing Field includes a cricket pitch, tennis court, childrens' play area, benches fand picnic table. The pavilion, commonly known as "The Hut" is used for committee meetings, the community shop and smaller village functions.*
>
> *The Playing Field Committee (a registered charity) also organises the annual village Sports Day in July, Bonfire Night in November and 7.5 mile Road Race in February.*
>
> *During the summer months there is weekly family rounders, held on a weekday evening. See newsletter for details. The cricket club has sadly been in abeyance for many years due to lack of players.*

The Hut is available to residents to hire for events, as are crockery, cutlery, chairs and tables, marquee etc. Contact Gilli Salmons on 07934 250083 to book."

https://babcaryparishcouncil.org.uk/playing-field/

74. No similar community activities take place at the Property.

75. The Parish Council coordinates a small "shop" in its playing field pavilion, "The Hut". This is only open for 1.5 hours per week.. This is possibly due to lack of customer demand and/or lack of volunteers, resulting from the very small village population. This would reconcile with the experience of Mr and Mrs Garrard who, for a short period, ran a small village shop at the Property, ancillary to the main use, pursuant to planning condition requirements. The shop opened daily but was forced to close in due course due to lack of customer demand.

76. The information on the Parish Council website tells a different story from the case it made in its nomination. The Parish Council simply recycled an exact copy of its application statement from 2020. This does not mention the range of activities and the village shop run at Babcary Playing Field and "The Hut", which is clearly the true "hub" of community activities. With no similar activities being held in the Property.

77. As the Parish Council's nomination statement was written during the Covid lockdown in 2020, it refers to "uncertainty" which surely must have passed five years later. It was inaccurate in 2020, and the passage of time make it further inaccurate. It cannot be taken seriously as an up to date assessment of the need for a temporary

2nd Test : if no current actual community use – Realistic Future Use as Community Asset

78. The criteria in the LA 2011 include two separate tests. If the first test (above) (regarding the actual current use of the Property) is not satisfied, the second test (regarding potential future uses of the Property) must be applied to the facts of the case.

79. The second test is as follows. If there is no current actual community use, then there are two further conditions which need to be satisfied if an asset is to be listed (Section 88(2) LA 2011). These are as follows.

    (a) there was a time in the recent past when an actual use furthered community benefit which was not an ancillary use; and

    (b) it is realistic to think that there is a time in the next five years when there could be user of the land or building which is not ancillary which will further community benefit.

80. With regard to Section 88(2)(a), the Property there has been no time in the "recent past" when an actual use furthered community benefit which was not an ancillary use, for the reasons set out in relation to the first test. The main thrust of the business has been tourism since the development of the "destination restaurant" and special event function business initiatives pursuant to the 2003 renovation of the Property.

81. The second test requires the criteria in both (a) and (b) to be met. As 88(2)(a) is not met, there is no need to move on and consider 88(2)(b).

82. However, in the hypothetical case where 88(2)(a) were satisfied, with regard to Section 88(2)(b) it is not realistic to think that there is a time within the next five years when there could be user of the land or building which is not ancillary which will further community benefit. Again, the reasons for this are set out in the section dealing with the first test. These reasons include the following.

83. The Property is a thriving tourist business, rather than a "community hub". Any "community hub" activities take place elsewhere, at the local church, and at Babcary Playing Fields and the Hut community centre.

84. The population of Babcary is only 248 people (2011 census). It is unrealistic to say that such a small population would generate enough customer footfall to support any kind of "community pub", let alone one with the purchase and maintenance costs of an ancient listed building. Documents published on the Council's own Planning Register demonstrate that it is commonly accepted by all parties, including Somerset Council and the Parish Council, that diversification into tourism has been necessary in order to maintain a viable business model. While there is a volunteer-run "village shop" at the "Hub" community centre, this is only open for one and a half hours per week. This is way below the level of customers and volunteers necessary to run a viable "community pub".

85. The "community pubs" showcased on the CAMRA website, for instance, tend to be in more densely populated areas, utilising unlisted buildings with fewer capital, maintenance and running costs. CAMRA community pubs have far greater footfall and passing trade, as well as a much larger market for customers and volunteers and raising money from individual local investors. They have far lower capital and running costs. For instance, they are not in listed buildings with thatched roofs. While they may have a "function room", this is not a specialised offering, and not for upmarket weddings, but for less formal family parties. CAMRA community pubs are used primarily as a community space, much like "The Hut", run by Babcary Parish Council, is used for parish council meetings, clubs and societies, volunteer run "village shop", function room for lower cost informal parties, such as children's birthday parties (rather than "once in a lifetime" events such as a high end wedding at a boutique hotel, as offered by the Property).

86. There is no evidence that the Parish Council or any other community group has the will or wherewithal to purchase the freehold and run a "community pub" at the Property. Published Parish Council minutes demonstrate that actually this has never been discussed at Parish Council meetings. The motivation appears to be to fear of change, rather than a desire to start a new community initiative. The nomination appears to be motivated by a desire to prevent development of the business, rather than being motivated by a desire to bid for the Property, do the work necessary to arrange funding to submit a realistic bid to purchase the Property, and make a realistic commitment to the organisation and management of a "community pub". The ACV legislation is expressly in force to enable realistic community bids, and nothing else. If a realistic bid is not likely to be forthcoming, the Property should not be on the list.

87. It is notable that, as shown on Somerset Council's ACV list, as currently published, none of the relevant nominating organisations made a bid for the 14 properties which were notified to the Council as being put on the market. This may indicate a wider problem of parish councils making nominations willy nilly without realistic intentions to make a bid and put their money where their mouths are.

88. There may be a general problem within Somerset of Parish Councils not understanding the purpose of the legislation. For instance, the Somerset Council list of unsuccessful nominations demonstrates that a parish council's attempt to nominate the White Hart Inn at Corfe was unsuccessful due to lack of a realistic prospect of it satisfying the requirements of Section 88(2)(b). Reading that parish council's meeting minutes there appeared to be a misconception that listing a property means that Somerset Council has the power to require a landowner of a closed pub to open it to the public, even if running at a loss, as a "public facility". Moreover, when the owner's solicitor finally asked the parish council to make an offer to buy the property and run the pub themselves, the parish council clearly had no intention of doing so.

89. Unless a parish council has a genuine desire to make a bid themselves, and a reasonable prospect of making a realistic bid, it is difficult to see how they can satisfy the requirements of Section 88(2)(b) of LA 2011. While case law indicates that it is not necessary for a nominating entity to have a "detailed business plan" at the time of nomination, they should at least have an understanding that this would be required at some point and a genuine desire to make a realistic bid and run a community pub as soon as the opportunity arises.

90. It is notable that in the five years since the original listing in 2020 Babcary Parish Council has not given any thought to raising money to exercise its "community right to bid", or putting together a realistic business plan. One member has, on his own, simply recycled his 2020 nomination statement word for word. The minimal effort exerted is an indication that there is no realistic drive to put in the work or understanding of the skills and energy required to exercise a community right to bid and commit to running a community pub for an unlimited period into the future.

91. It is clear from caselaw that the legislation requires the nominator's aspirations to be "realistic" and "not fanciful". The Parish Council's plans are not even fanciful, but non-existent based on the available evidence.

92. On the other hand, Mr and Mrs Garrard have recently had positive pre-application discussions (Reference 25/01282/PREMIN) with Somerset Council planning department with regard to their realistic plans for the Property, which involve continuing to develop the tourism business which has been established for the past twenty-two years and which do not involve it becoming a "community hub" or "community pub" along CAMRA lines. They have invested time and money in appointing professionals to assist them with these realistic plans and will implement realistic funding arrangements based on realistic financial data and forecasts, and their vast experience of running the business and understanding of the tourism market. (This is in stark contrast to the lack of activity, commitment and realistic intentions or plans of the Parish Council).

93. Moreover, even in the hypothetical situation where Babcary Parish Council had a genuine desire to bid and were able to raise money to make a bid, it is likely that there would be a cost to the public purse. For instance, as a result of any publicly-funded grants towards the purchase price or in the form of compensation payable by Somerset Council for any financial loss to the current owners resulting from the listing. One must ask whether it would be reasonable to expect the public purse to pay capital and running costs for a renovated listed building for negligible community use when there is already a less expensive Parish Council-owned building (the Hut) providing the same function, at a time of ongoing public spending austerity. In contrast, local authorities are having to sell off their real estate and make

redundancies to remain solvent. Either the legislation is not meant to be interpreted in this way, or - if the legislation is meant only to hamper development and cause financial loss to existing land owners - there is an unacceptable risk that it is not compatible with the Human Rights Act 1998, as it negatively impacts the private property of land owners, interfering with rights under Article 1 of Protocol 1 of the European Convention on Human Rights. The Council is, of course, obliged to consider human rights consequences when making decisions.

94. It is very clearly demonstrated that the purported nomination does not meet the criteria set out in the second test (Section 88(2) LA 2011).

Removal of Part of Car Park from Listing

95. In any case, part of the land should be removed from the listing as Somerset Council has already confirmed in pre-application discussions with Mr and Mrs Garrard (Reference 25/01282/PREMIN) that part of the land currently used as a car park is surplus to requirements, and that the number of parking spaces may be reduced to 23. The pre-application document states as follows.

> "*In relation to viability, it is considered that the only likely impact the proposal in this pre-application enquiry could have is reducing the number of parking spaces available for customers visiting the pub. The existing pub car park is very large for a rural pub car park. The proposal is to reduce the number of parking spaces to 23. It is considered that it is unlikely that the viability of the pub will be put at risk, as 23 would remain a relatively high number of parking spaces, and much higher than the 12 or so spaces proposed in the dismissed appeal. The car park is not particularly well-used. On the pre-app site visit, in the late afternoon on a weekday in the summer, the car park only had two cars in.*"

96. Furthermore, Mr and Mrs Garrard have indicated that, in fact, the total number of car parking spaces will be thirty (rather than twenty-three), which indicates that the land may be removed from the ACV listing without affecting the business.

97. Moreover, Mr and Mrs Garrard's bank, Handelsbanken, relying on an independent valuation by Fleurets, have confirmed that the surplus car parking spaces may be removed without adverse affect on the valuation of the Property or its businesses.

98. The land to be removed is shown on the attached plan.

Applying Exemptions

99. In any case, notwithstanding the issues with the nomination and the application of the first and second tests, it is simply not possible for certain land to be listed as an ACV due to exemptions in the legislation and regulations (Schedule 1 of the "2012 Regulations").

100. Three categories of land and building will be excluded from the operation of the listing regime. The principal exclusion relates to residences. The other two are caravan sites and land held by a statutory undertaking for its operations (Schedule 1 of the 2012 Regulations).

101. These exemptions may be applied to Property as follows.

Hotel Exemption

102. The whole of the Property may be excluded as it is primarily a boutique hotel with ancillary destination restaurant and bar services.

103. There is a precedent for this exemption being applied by Somerset Council for a similar property, the Notley Arms Inn, Front Street, Monksilver Taunton TA4 4JB.

104. Somerset Council's published list of unsuccessful ACV nominations, in its current iteration, shows that the Notley Arms was nomination on 9 July 2024 by Monksilver Parish Council. The nomination was unsuccessful for the following reason.

> *"Whole or part of the property is a hotel, or is otherwise principally used for letting or licensing accommodation to paying occupants (Schedule 1 Regulation 3). This qualifies as a residence and is land therefore which is not considered of community value and therefore cannot be nominated."*

105. Like the Red Lion Inn, the Notley Arms Inn is a boutique hotel with seven en suite holiday let rooms with ancillary food and bar services. Like the Red Lion Inn, the Notley Arms Inn is advertised to tourists on sites such as TripAdvisor and it is clear that tourism is the main thrust of the business. Similarly, rooms are available at a similar price range to tourists booking well advance and travelling from afar.

106. The Notley Arms Inn website describes the business as follows.

> *"Re-built around 1870 The Notley Arms Inn, Exmoor National Park, Somerset has recently been refurbished back a traditional country inn with open fires and a beautiful beer garden bounded by a bubbling stream and a separate coach house with six en-suite bedrooms which have been awarded 'Four Star Gold' by the AA"*

107. It is clearly a "country inn" which is a tourist destination, rather than a "community hub".

108. Somerset Council rejected the parish council's nomination as the property was a hotel and exempt from listing.

109. Further detail is given in the minutes of the relevant parish council meeting which indicate that local trade only accounted for 18% of total trade at the Notley Arms Inn, with 82% of trade being tourism-related. These are comparable with the takings split at the Red Lion Inn where local trade is only 10 to 20%, with tourism-relating trade accounting for 80 to 90%.

Exemption for "The Barn"

110. In any case, regardless of the assessment of the Property and business as a whole, at the very least the "Barn" building containing the six en suite holiday let rooms should be removed from the ACV listing as hotels and letting rooms are specifically exempt from ACV listing. It is simply not possible for them to be listed.

111. Both by figures and function, the tourism element of the business is clearly not an ancillary element of a "community hub" for the reasons given in the preceding sections.

112. Please find attached a plan showing the extent of the "Barn" building containing the holiday let rooms.

CONCLUSION

As set out in more detail above, the Property should be removed from Somerset Council's ACV list for the following reasons.

(a) The nomination was invalid and it is simply not possible for the Property to be listed pursuant to an unlawful nomination.

(b) In any case, the nomination does not meet the criteria in the first test because the Property is not used as a community hub on a non-ancillary basis. The main use diversified in to tourism from 2003 onwards, and any use by locals is de minimis or ancillary in scale and function to that main use.

(c) In any case, the nomination does not meet the criteria for the second test as there is no realistic intention on the part of the nominees or any other group to utilise the "community right to bid", to make a realistic bid to buy the property or to formulate a realistic plan to raise money and acquire the skills and resources necessary to buy and run a community pub. Furthermore, there is simply no evidence of any intention or plan, fanciful or otherwise. The remote location, capital and maintenance costs of the Property mean that it is not realistically viable as a "community pub". In contrast, Mr and Mrs Garrard's ongoing plans for the pub are realistic and supported by professional consultants, finance, and the support of a positive pre-application advice from Somerset Council.

(d) In any case, part of the car park should be removed from the listing as it is surplus to requirements of the business, as confirmed in pre-application advice from Somerset Council Planners.

(e) In any case, the Property is exempt from listing as a boutique hotel with ancillary food and drink services, following the precedent set by Somerset Council rejecting the ACV listing nomination for the Notley Arms Inn.

(f) In any case, the "Barn" building containing the holiday let rooms is exempt from listing, regardless of the listing status of the rest of the Property.

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