

PLANNING COMMITTEE

CHAIRMAN: Cllr Dennis Smith

DATE: 21 November 2017

REPORT OF: Business Manager – Strategic Place

SUBJECT: The Council’s approach to Applying the Vacant Building Credit

RECOMMENDATION

The Committee is recommended to approve the Advice Note as technical guidance to inform its consideration of planning applications and to include it on the Council’s website to provide guidance to Applicants.

1. PURPOSE

- 1.1 To ensure a consistent approach is applied to all planning applications where Applicants consider their proposals to be eligible to receive a Vacant Building Credit.

2. BACKGROUND

- 2.1 On 28 November 2014 the Minister of State for Planning and Housing, Brandon Lewis MP, revised national planning policy concerning the use of section 106 planning obligations through a written ministerial statement (WMS). The National Planning Practice Guidance (NPPG) was simultaneously updated to set out implementation guidance, and was updated on 27 February and 26 March 2015 for further clarification. The WMS was the subject of a legal challenge, but following a Court of Appeal decision the WMS was reinstated as lawful policy. The relevant paragraphs (021 to 23) of the National Planning Practice Guidance (NPPG) were also reinstated.
- 2.2 One of the changes instigated by the WMS was the introduction of a ‘Vacant Building Credit’ (VBC) when calculating the affordable housing requirements for new residential development. The government’s intention in introducing the VBC was to provide an incentive for brownfield development on sites containing vacant buildings.
- 2.3 The VBC comes into play where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building. In summary, it operates by providing a financial credit equivalent to the existing gross floor space of relevant vacant buildings when the local planning authority calculates

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any affordable housing contribution for new residential development. For example, where a building with a gross floorspace of 2,000 square metres is demolished as part of a proposed development with a gross floorspace of 10,000 square metres, any affordable housing contribution should be reduced by a fifth of what would normally be required by the Local Plan policy.

- 2.4 The NPPG only provides limited guidance on exactly how the VBC should be applied and calculated. The NPPG does not define what is meant by vacant, but stipulates that the credit will not apply if a building has been "abandoned", although it does not offer guidance on how such a determination should be made.
- 2.5 The NPPG states that VBC will apply to any relevant vacant buildings being brought back into "*any lawful use*", so not just residential use. It will also apply to buildings "*demolished as part of the scheme*". This latter point implies that it ought not to apply where buildings have been demolished prior to an application.
- 2.6 The March 2015 amendment to the NPPG sought to provide added clarification on how the VBC applies to both affordable housing contributions and the provision of affordable units, and a simple example of how it is to be calculated was provided. It also included additional text for local planning authorities (LPAs) to consider how the VBC should apply to a particular development. This wording suggests that there is some flexibility in how LPAs can decide to apply the policy. The NPPG gives two examples of what it "may" be appropriate for LPAs to consider, namely:
 - whether the building has been "made vacant" for the sole purpose of redevelopment; and
 - whether the building is covered by an extant or recently expired permission for the same or substantially the same development. (The implication here is that LPAs can decide not to allow the credit to apply in these cases).

3. MAIN IMPLICATIONS

- 3.1 The Teignbridge Local Plan contains Policy WE2 which sets out the affordable housing targets for housing sites. In essence, on sites with a capacity for more than 4 dwellings affordable housing will be sought. A target % will be applied to the number of dwellings by which the site exceeds 4, those targets being 20% for Newton Abbot and Kingsteignton; 25% for Dawlish, Teignmouth and South West Exeter Urban Extension and 30% everywhere else.
- 3.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that "*if regard is to be had to the development plan for the purposes of any determination under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.*" Statements of national planning policy are material considerations which should be considered when making decisions on planning applications. The introduction of the VBC through the WMS and NPPG therefore has the

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potential to result in a conflict between national policy and Local Plan policy relating to the level of affordable housing provision on brownfield sites that contain vacant buildings.

- 3.3 The Council must continue to use the Local Plan policy as the starting point for considering the required level of affordable housing provision. However, the implications of the more recent national policy will need to be considered in every case, considerations of relative weight of each policy assessed on each occasion, and an appropriate balance struck on each application. The NPPG does anticipate potential exceptions where it might not be appropriate to apply the VBC and so assumes some flexibility in its application already. The exceptions are not exhaustive and, in light of the Court of Appeal decision, it would be possible for the decision-maker acting reasonably to exercise his planning judgement (in accordance with section 38(6) and weighing other relevant factors) and decide not to apply the VBC for other reasons in a particular case. It is virtually certain, though, that Planning Inspectors will give substantial weight to the national policy in most cases.
- 3.4 Even where it is clear that a VBC should be applied, the guidance provided by the NPPG is open to significant interpretation. In the absence of an adopted Advice Note there is a likelihood that decision-making may be inconsistent, resulting in uncertainty and complaints of unfairness. If a decision results in an appeal it will be important that the Council can demonstrate a consistent approach based on adopted guidance. An Advice Note displayed on the Council's website will also give Applicants advance notice of the way the Council will apply the VBC, giving them greater certainty on how to prepare their application.
- 3.5 The draft Advice Note attached as Appendix A sets out the relevant paragraphs from the NPPG and explains the matters that will need to be examined when eligibility for VBC is being considered. It also identifies how the Council will define "vacant" and how it will calculate floorspace. The Advice Note also makes it clear that the VBC will not be applied to rural exception sites. It also sets a worked example of how the VBC calculation will be applied.
- 3.6 The Advice Note places the onus on an Applicant who is seeking a VBC to set out their evidence in a VBC Statement as part of their planning application. The Note provides guidance on the information that should be included in the Applicant's VBC Statement.

4. GROUPS CONSULTED

- 4.1 Legal Services, Housing, Spatial Planning & Delivery

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5. TIME-SCALE

5.1 Immediate

Wards affected	All
Contact for any more information	Nick Davies, Business Manager - 5745
Appendices attached:	A: Applying the Vacant Building Credit – Advice Note (Draft)

Applying the Vacant Building Credit – Advice Note November 2017

Amendments made to the National Planning Practice Guidance (NPPG) in May 2016 changed the way that affordable housing contributions can be sought from development, see the NPPG at: <https://www.gov.uk/guidance/planning-obligations>

Paragraphs 21 to 23 of the NPPG make provision for the Vacant Building Credit, which aims to encourage the effective use of previously developed land that contains vacant buildings.

Paragraph 21

“National policy provides an incentive for brownfield development on sites containing vacant buildings. Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought. Affordable housing contributions may be required for any increase in floorspace”.

Paragraph 22

“Where there is an overall increase in floorspace in the proposed development, the local planning authority should calculate the amount of affordable housing contributions required from the development as set out in their Local Plan. A ‘credit’ should then be applied which is the equivalent of the gross floorspace of any relevant vacant buildings being brought back into use or demolished as part of the scheme and deducted from the overall affordable housing contribution calculation. This will apply in calculating either the number of affordable housing units to be provided within the development or where an equivalent financial contribution is being provided...”

Paragraph 23

“The vacant building credit applies where the building has not been abandoned.

The policy is intended to incentivise brownfield development, including the reuse or redevelopment of empty and redundant buildings. In considering how the vacant building credit should apply to a particular development, local planning authorities should have regard to the intention of national policy.

In doing so, it may be appropriate for authorities to consider:

- Whether the building has been made vacant for the sole purposes of re-development.*
- Whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development.”*

The purpose of this Advice Note is to clarify how Teignbridge District Council will apply the Vacant Building Credit in line with the NPPG.

- The vacant building credit will only be applied where the building has not been abandoned and has not been demolished prior to the date when an application has been validated;
- The national guidance does not specify how to calculate floorspace. For consistency Gross Internal Area (GIA) will be used for both vacant and proposed floorspace.

- The NPPG does not provide a definition of “vacant building” so the LPA has applied the CIL definition, which is a building that has not been in continuous use for any 6 month period during the last 3 years. This means the whole building must have been vacant, not just a single planning unit or part of the building. The building must be vacant at the time the application is validated for the VBC to be applied.
- National Planning Policy Guidance explicitly excludes rural exception sites from any restrictions on seeking planning obligations. The NPPF definition of exception sites are those of small scale where the principle of market housing wouldn't ordinarily be accepted. It therefore follows that the VBC should not be applied in circumstances where this might result in no affordable housing being provided on an exception site. VBC will not therefore applied to rural exceptions sites.

Is the proposed development eligible for Vacant Building Credit?

Applicants who consider that their proposals are eligible for VBC should set out their evidence in a VBC Statement as part of their planning application. The Statement should provide the following information.

- **Is the site brownfield?** The definition in the NPPF Glossary for previously developed land is “*Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time.*”
- **Is the building vacant?** Applicants will need to show that the building is currently vacant and has not been in continuous use for any 6 month period within the preceding 3 years from the day the planning application is validated. Evidence such as Council Tax or Rates records will be required to determine whether or not a building is vacant.
- **Is the whole building vacant?** If part of the building is occupied or has been occupied within the last 3 years then it will not qualify.
- **Has the building been made vacant for the sole purpose of redevelopment?** VBC will not be applied to building/s that have so Applicants will be expected to demonstrate that the vacancy has arisen for other reasons.
- **Has the building been abandoned?** The onus will be on the Applicant to demonstrate that a building is not an “abandoned building”. The Applicant should have regard to the working definition of abandonment in the decision of the Court of Appeal in *Hughes v Secretary of State for the Environment [2000]* which identifies 4 relevant factors:
 - The physical condition of the building;
 - The length of time for which the building has not been used for its permitted purposes;

- Whether it has been used for any other purposes; and
- The owner's intentions.
- **Is the proposal covered by an extant or recently expired planning permission for the same or substantially the same development?** VBC will not be applied in these circumstances. This includes all resolutions to approve which predate 1st May 2016.

Calculating the Credit

Once the Council concludes that VBC should be applied, the following process will apply:

- Confirm to the applicant that the VBC will be applied
- Calculate the GIA floorspace of the existing building/s as a proportion of the proposed GIA floor space of the proposed redevelopment to give the Credit Proportion

(Note: for wholly residential schemes this will be the total GIA of all proposed dwellings, for mixed use schemes the GIA of the proposed future residential elements only will be used);

- All calculations will be rounded to the nearest square metre
- Apply this Credit Proportion as a reduction to the Affordable obligation
- Where a VBC calculation results in a part dwelling requirement this will be rounded up to the next whole affordable dwelling, e.g. 1.25 affordable dwellings after VBC has been applied will be rounded to 2 whole affordable dwellings.
- Where VBC is applied, the full affordable housing obligations will be sought as a percentage of the remaining floor space viability (i.e. disregarding the net of 4 dwelling table of affordable housing provision calculations in the Teignbridge Local Plan). This is because any joint application of the VBC alongside the net of 4 would be a disproportionate double development viability subsidy.

Worked example of the application of the credit:

Example: A proposal to provide a 25 unit (1875sqm @ 75sqm each) 2 bed housing scheme on a Brownfield site on which currently sits a vacant building of 300sqm.

Where the scheme should normally provide 7.5 – rounding to 8 AH (@30%)

The process is simply to apply the Credit Proportion, or as an example:-

- Credit Proportion is $(300\text{sqm} / 1875) = 0.16$ proportion or 16%. Therefore 16% shall be deducted from the on-site affordable housing requirement as follows:
- 16% of 8 AH = 1.28. 8 minus 1.28 = 6.72 rounds back up to 7
- therefore the total number of affordable units required is 7.
- For off-site contributions which have been exceptionally and robustly justified, the Council's off site affordable housing tariff as set out in the 6th Sept 2016 Executive Report shall be applied to the net number of affordable dwellings which would be required after the credit has been applied. Note that the off-site contribution payments will be regularly reviewed to take account of BCIS cost increases.
- The affordable housing obligations will be calculated as a representative mix of the overall residential development – hence if the scheme is split half and half @ 3 and 4 bed houses – the average contribution between 3 and 4 bed houses will be applied (i.e. 3 bed £92,865 / 4 bed £106,109 – average contribution per AH dwelling would

be £99,487). In the case above where 2 bed houses are proposed, the 2 bed house contribution is used:

- Credit Proportion is $(300\text{sqm} / 1875) = 0.16$ proportion or 16%. Therefore 16% shall be deducted from the off-site affordable housing requirement as follows:
- 8 AH = @ 2 bed houses tariff = $8 \times £75,509 = £604,072$
- 16% discount is applied to the AH financial obligation $£604,072$ less $£95,651$
- Off-site contribution payable taking account of VBC = $£508,421$

Interaction with CIL

Applicants will need to be careful about the interaction of CIL credit for 'in use buildings'. Existing 'in-use buildings' act as a credit on the 'chargeable development' CIL charge. Each square metre of existing building on the site, reduces the CIL by one square metre. The CIL Regs define the credit as applying to 'in-use buildings' and buildings meet this definition if they are:

- i) present on the day that planning permission first permits the development; and
- ii) contain a part that has been in lawful use for a continuous period of at least six months within the period of three years ending before the planning permission first permits the chargeable development.

The day planning permission first permits the chargeable development is the day the last reserved matter is approved (unless the applicant and LPA agree to defer until pre commencement conditions discharged).

Applicants should not seek to claim 'in use' buildings for CIL credit, while at the same time arguing vacancy for VBC. Applicants will need to consider both credits carefully and plan their development accordingly.

Viability

If development viability remains an issue following application of the VBC then a viability appraisal would need to be submitted if a further reduction in the provision of affordable housing is sought. It should reflect the impact of VBC and would need to demonstrate why the net affordable housing requirement cannot be met.