

## **VACANT BUILDING CREDIT**

This informative note provides guidance on the Council's approach to implementing the National Planning Practice Guidance on the Vacant Building Credit. It is to be considered as interim planning guidance, subject to further review and inclusion in a revised Affordable Housing Supplementary Planning Document (SPD) under the new Local Plan.

The Council considers it necessary to follow this national guidance as there is no current local plan policy with which it could be compared in terms of its relative weight as a planning consideration.

An earlier draft of this informative was published for consultation as an addendum to the current Affordable Housing and Extra Care SPD in April this year. Representations to the consultation included objections to the reference to the Community Infrastructure Levy (CIL) regulations to define 'vacant' for the purposes of applying the Vacant Building Credit. Officers reconsidered the approach and carried out further research. It was decided to retain the reference to the CIL regulations, as this is the approach taken by other local authorities and the Written Ministerial Statement, referred to below, specifically states the purpose of the Credit to be "*...to boost development on brownfield land and provide consistency with exemptions from the Community Infrastructure Levy.*"

### **1. Introduction**

On the 28<sup>th</sup> November 2014, the Written Ministerial Statement made by the Secretary of State for Housing and Planning introduced the intention to restrict "*...the application of Affordable Housing contributions to vacant buildings brought back into use (other than for any increase in floorspace). This latter proposal was to boost development on brownfield land and provide consistency with exemptions from the Community Infrastructure Levy.*"

The Government subsequently published paras 021 – 023 of the National Planning Practice Guidance (NPPG) on Planning Obligations which includes guidance on Vacant Building Credit.

#### ***NPPG Paragraph 021***

##### ***What is the vacant building credit?***

*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.*

### **2. The Council's Current Policy Position**

Policy CS18 of the Adopted Core Strategy (December 2013) currently requires all developments to provide 35% Affordable Housing on-site, subject to certain thresholds unless the economic viability of the development is jeopardised.

Section 3.2 of the Affordable Housing and Extra Care Housing SPD (adopted May 2014) includes the following advice:

*The gross number of new dwellings created as part of a development scheme will be used to determine the number to which the threshold will be applied. Existing dwellings, which might be*

*present on a site and which would subsequently be demolished or the subject of significant structural alterations will not be discounted, except in specific circumstances, such as estate regeneration. Where existing houses/flats are retained, and refurbished and upgraded, as part of any development scheme, they will not count as additional new units for the calculation of the Affordable Housing requirement.*

*However, where existing dwellings are subdivided, the additional new units would be included in the total housing numbers for the purpose of determining the Affordable Housing requirements. The requirement for an Affordable Housing contribution will therefore apply to the conversion of any existing building where the additional housing units would result in the threshold being reached.'*

### **3. Impact of the Vacant Building Credit**

The SPD advice above will be superseded in those situations where an application site is considered to be a brownfield development and contains an existing building, **which is vacant at the time the application is made and which it is proposed to demolish for redevelopment or to bring back into use**. The council will apply the Vacant Building Credit to the building, where it is wholly vacant and to be redeveloped completely, which may result in a proportionate reduction of the Affordable Housing contribution.

### **4. Agricultural buildings and other exclusions**

Buildings that occupy agricultural land do not qualify for Vacant Building Credit.

The stated purpose of the Vacant Building Credit is to 'incentivise brownfield development', as set out in the NPPG (paragraph 23b-021 and 023). The Glossary at Annex 2 of the revised National Planning Policy Framework (NPPF) 2018 contains a reference to brownfield land which states; 'See previously developed land', also defined in the Glossary. This definition expressly excludes 'land that is or was last occupied by agricultural or forestry buildings;'

Also excluded by the definition of previously developed land are: 'land that has been developed for mineral extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as 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.'

## 5. Implementation of the Vacant Building Credit

If an applicant wishes to claim a reduction in the Affordable Housing contribution through the Vacant Building Credit, this should be made clear in the application and be accompanied by the Gross Internal Area (GIA) of both the existing relevant vacant building and the total GIA of the proposed development. See Appendix 2 below for the definition of GIA.

### ***NPPG Paragraph 023***

*Does the vacant building credit apply to any vacant building being brought back into use?*

*The vacant building 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 purpose of redevelopment.*
- *Whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development.*

## 6. Abandonment

Paragraph 022 above excludes abandoned buildings from the Vacant Building Credit. Paragraph 057 of the NPPG on Community Infrastructure Levy advises that, in deciding whether a use has been abandoned, account should be taken of all the relevant circumstances, such as:

- the condition of the property
- the period of non-use.
- whether there is an intervening use; and
- any evidence regarding the owner's intentions

Each case is a matter for the collecting authority to judge.

When claiming Vacant Building Credit, the applicant will need to submit information on the matters above in order that the Council can determine whether the relevant build has been abandoned or not.

## 7. Vacant building

The Council will apply the definitions of 'building' and 'in-use building' as set out at Part 5, 40 (11) of the Community Infrastructure Levy Regulation as amended by the Community Infrastructure Levy (Amendment) Regulations 2014. This regulation states that a 'building' does not include buildings:

- into which people do not normally go,
- into which people go only intermittently for the purpose of maintaining or inspecting machinery, or
- for which planning permission was granted for a limited period.

The regulation also states that an in-use building is one which has been in lawful use for a continuous period of at least six months within the three years ending on the day planning permission first permits the chargeable development. Therefore, as Vacant Building Credit only applies to buildings that are not in-use i.e. vacant, the implication of this regulatory framework is that a vacant building is one which has **not** been in lawful use for a continuous period of at least six months within the three years ending on the day planning permission first permits the chargeable development.

To ensure that the Vacant Building Credit does not incentivise unsustainable development, such as the forced eviction of businesses or the neglect of viable commercial businesses for the sole purpose of redevelopment and in order to claim a Vacant Building Credit, the applicant may be required to demonstrate that the building has been actively marketed at a realistic price for a reasonable period of at least 12 months and that there is no demand for the building in its current state for the use for which it has permission. This applies to buildings which have become vacant within the three year period before the application is made.

The Vacant Building Credit will not be applied to buildings which are covered by an extant or recently expired planning permission for the same or substantially the same development.

#### **8. Vacant Building Credit and the Community Infrastructure Levy (CIL)**

CIL is charged to provide money for infrastructure. The charges are paid per square metre of net new floorspace, whereby any existing building/floorspace in lawful use is subtracted from the total charge. This recognises the existing impact of the lawful use and therefore the need only to mitigate the impact of the additional, new use. Where that existing lawful use has ceased, i.e. where it has not been in use for a continuous period of at least six months in the preceding three years, then the charge becomes liable on the gross floorspace, with no deduction of existing floorspace.

The Vacant Building Credit applies '*...where a vacant building is brought back into lawful use, or is demolished to be replaced by a new building,...*' (NPPG Paragraph 021 above).

It is therefore incompatible to claim that the building is 'in-use' to claim CIL relief on existing floorspace *and* claim the Vacant Building Credit.

#### **The applicant will not be able to claim relief from CIL on the relevant building in addition to the Vacant Building Credit.**

The Council will determine whether a building is eligible for either CIL relief or the Vacant Building Credit as follows:

- **CIL relief** will be granted if the relevant building has been in lawful use for a continuous period of at least six months in the period of three years preceding the granting of planning permission, and
- **Vacant Building Credit** will be applied to the development if the relevant building has **NOT** been in lawful use for a continuous period of at least six months in the period of three years preceding the submission of the planning application and is vacant at the time of making that application.

The Council will be rigorous in its application of the above criteria in order to assess fairly the competing interests of Affordable Housing need and the encouragement of brownfield development.

## **9. Calculation of the Vacant Building Credit**

The amount of Vacant Building Credit to be set against the Affordable Housing contribution will be assessed according to the calculation below at Appendix 1 on Full and Reserved Matters applications. It may be agreed in principle on Outline applications but cannot be assessed until the detail of the floorspaces to be developed have been approved.

In those cases where the Vacant Building Credit reduces the Affordable Housing contribution to below 1 dwelling, the resulting contribution will be paid as a financial contribution towards Affordable Housing provision elsewhere in the District.

Where vacant buildings are demolished for redevelopment, only those vacant buildings which enable and relate directly to the redevelopment will be included in the assessment of any Vacant Building Credit.

### **Appendices**

Appendix 1: Calculation of the Vacant Building Credit

Appendix 2: Gross Internal Area

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**Appendix 1: Calculation of the Vacant Building Credit**

The second paragraph of Paragraph 022, below, provides an example of how the Vacant Building Credit should be calculated, based on the proportional relationship between the existing and the proposed floorspace.

***NPPG Paragraph 022***

*What is the process for determining the vacant building credit?*

*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 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.*

*The existing floorspace of a vacant building should be credited against the floorspace of the new development. For example, where a building with a gross floorspace of 8,000 square metre building is demolished as part of a proposed development with a gross floorspace of 10,000 square metres, any Affordable Housing contribution should be a fifth of what would normally be sought.*

In the example above, the difference between the ‘old’ (8,000 m<sup>2</sup>) and the ‘new’ (10,000 m<sup>2</sup>) is 2,000 m<sup>2</sup>, which is a proportional increase in floorspace of 1/5 or 20%. The amount of Affordable Housing that could be sought would be 1/5 or 20% of the Affordable Housing contribution required under Local Plan policy. This is equivalent to a reduction, or ‘credit’, of 80%.

**Example**

A development site contains a vacant building with a floorspace of 5,000 m<sup>2</sup>, which is to be demolished. It is proposed to build 100 dwellings, which altogether have a total floorspace of 7,700 m<sup>2</sup>.

Step 1: Calculate the Affordable Housing contribution based on the total number of eligible dwellings\* and the Affordable Housing percentage (35%) required by the council’s planning policy, i.e.

$$100 \times 35\% = 35 \text{ affordable dwellings (AH)}$$

Step 2: Calculate the amount of existing floorspace, if any, as a proportion of the floorspace provided by the development:

$$E/P \times 100 \text{ (where E = existing floorspace and P = proposed floorspace), i.e.}$$

$$5,000 \div 7,700 \times 100 = 64.94\%$$

Step 3: Deduct (credit) this percentage from the policy compliant Affordable Housing contribution,

$$AH - (E/P \times 100)$$

$$35 - 64.94\% = \mathbf{12.27}$$

(rounded down to 12 affordable dwellings to be delivered on-site)

**\*N.B.** Any Local Plan or national threshold for Affordable Housing will be applied at this stage, not to the increase in floorspace. In the example above, the threshold would be applied to the 100 dwellings with a total of 7,700 m<sup>2</sup>, not to the increase in floorspace of 2,700 m<sup>2</sup>.

## **Appendix 2: Gross Internal Area**

**Where an application site contains a vacant building, which the applicant wishes to be taken into account, the application should include the gross internal floorspace figures for both the existing and the proposed buildings.**

### **Definition of floorspace**

For the purposes of assessing floorspace, the council will use the definition of gross internal area (GIA) used by the RICS in Part 3 of its Code of measuring practice:

[http://www.rics.org/Global/RICS\\_property\\_measurement\\_1st\\_edition\\_PGguidance\\_2015.pdf](http://www.rics.org/Global/RICS_property_measurement_1st_edition_PGguidance_2015.pdf)

Gross Internal Area:

Broadly speaking, the Gross Internal Area is the area of a building measured to the internal face of the perimeter walls at each floor level, excluding:

- perimeter wall thickness and external projections
- external open-sided balconies, covered ways and fire escapes
- canopies
- voids over or under structural, raked or stepped floors
- greenhouses, garden stores, fuel stores, and the like in residential property.