

## PLANNING COMMITTEE

Tuesday, 18 September 2018 - Waveney District Council

Thursday, 20 September 2018 - Suffolk Coastal District Council

## THE APPLICATION OF VACANT BUILDING CREDIT (VBC) AT THE TWO COUNCILS

### EXECUTIVE SUMMARY

1. In 2016 the government reaffirmed the application of Vacant Building Credit (VBC) following a Court of Appeal ruling.
2. The guidance on how VBC is to be applied, as set out in the National Planning Policy Guidance, is potentially open to interpretation so the two councils' Planning Committees are recommended to endorse the contents of this report and the attached Advice Note to confirm how the two councils will consider when VBC will apply.

Is the report Open or Exempt?	Open
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<b>Wards Affected:</b>	All Wards in Suffolk Coastal and Waveney District Councils
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<b>Cabinet Member:</b>	Councillor Tony Fryatt, Suffolk Coastal Cabinet Member for Planning Councillor David Ritchie, Waveney Cabinet Member Planning and Coastal Management
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<b>Supporting Officer:</b>	Philip Ridley Head of Planning and Coastal Management Telephone 01394 444432 Email – <a href="mailto:Philip.ridley@eastsoffolk.gov.uk">Philip.ridley@eastsoffolk.gov.uk</a>
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## 1 INTRODUCTION

- 1.1 This report considers the Vacant Building Credit (VBC) in relation to affordable housing, which was reintroduced by the government as set out in the National Planning Practice Guidance (NPPG) in 2016 and is now referred to in Paragraph 63 of the new NPPF, July 2018. It sets out the proposed approach for the two east Suffolk councils in considering when VBC applies.
- 1.2 Different Authorities have different approaches as to whether and how VBC is to be applied, and how it is implemented as the guidance in the NPPG is open to some interpretation. Suffolk Coastal Planning Committee considered a report at the Planning Committee of the 29<sup>th</sup> June 2016 where it was noted that VBC had been reinstated as part of their consideration of some changes to affordable housing on schemes of less than 10 units but no approach to its application was considered. This report seeks to establish a consistent approach for the two councils in assessing whether VBC is applicable or not. The report considers how VBC should be applied in the two councils, in particular, given that both councils each have an adopted Local Plan, and each sets out its respective affordable housing requirement and provides policy as to how its delivery should be applied.

## 2 MAIN ISSUES

- 2.1 The aim of the VBC is to promote development of brownfield sites and to unlock genuine brownfield development by providing an affordable housing credit. It allows the floorspace of existing buildings that are to be redeveloped, to be offset against the calculations for affordable housing requirements (whether financial contribution or on site provision).
- 2.2 National guidance set out in the National Planning Practice Guidance (NPPG) provides limited advice on how the VBC should be applied. The NPPG states, *'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. 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 is appropriate to consider;*
- *Whether the building has been made vacant for the sole purposes of redevelopment.*
  - *Whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development.'*
- 2.3 National guidance also states that 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.

- 2.4 Local Authorities have applied different approaches to the VBC, some apply it to all applications where there is a vacant building on site and others do not apply it at all. There are a number of issues which affect the application of the VBC and its application in the two east Suffolk councils. Both councils have an adopted Local Plan which requires affordable housing to be provided at appropriate levels on sites delivering 10 or more units (financial contributions in the AONB where there are between 5 and 10 units). It should be noted that the NPPG does not take primacy over the two Local Plans but it is a material consideration. The VBC was introduced to facilitate and to promote the reuse of genuine brownfield sites that would otherwise not be viable to develop and it is important to distinguish between those sites on which there happens to be some vacant buildings and others where an applicant would have brought the development forward in any event.
- 2.5 Whilst the criteria set out in paragraph 2.2 allow some assessment of the VBC, it is suggested that the contents of the attached Advice Note in Appendix 1 be considered by the two councils to determine whether the VBC is applicable or not. In addition any applications for the VBC will need to be assessed to ensure that only genuine cases are accepted. In the two councils, where it is clear that a site is to be, or has been made vacant for logistical, or other reasons, then there shall be a presumption that VBC should not be allowed.
- 2.6 As set out in the attached Advice Note there is no definition of “vacant” within legislation or the NPPG for the purposes of VBC. In the absence of a definition, it is proposed that it is appropriate to apply the Community Infrastructure Levy (CIL) definition. The CIL regulations set out a ‘vacancy test’, and states that to be considered ‘vacant’ buildings must have not been in use for six continuous months out of the last three years. This approach is used by many councils when considering VBC.
- 2.7 There is also no link with the VBC to viability in the NPPG which results in developers being able to apply for VBC irrespective of viability. If a development is not considered viable (either with or without VBC) then a viability appraisal can be submitted by an applicant in the usual manner and any reduction in affordable housing (or other policy) requirements can be adjusted according to the viability assessment.
- 2.8 It is also recommended that the VBC does not apply in the consideration of rural exception sites where the primary purpose of setting aside planning policy is to provide affordable housing for a community where there is an identified need.
- 2.9 It is concluded that given the local circumstances in the two council’s areas varies considerably, that the VBC be assessed on a case by case basis. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise”. The Local Plan therefore takes primacy unless material considerations indicate otherwise, VBC is but one material consideration which therefore must be considered. Where a development is not considered viable there is a need for applicants to demonstrate how VBC is needed in order to allow the development to come forward and as such a viability appraisal is considered the most appropriate mechanism for doing this.

**3 HOW DOES THIS RELATE TO EAST SUFFOLK BUSINESS PLAN?**

3.1 The effective and expedient determination of planning applications contributes to the overall prosperity of the two councils and plays a key part in the regeneration and growth agenda.

**4 CONSULTATION**

4.1 The report and Advice Note are presented for information as to how each council will apply VBC given the guidance in the NPPG is not definitive.

**5 REASON FOR RECOMMENDATION**

5.1 S38/6 of the Act sets out that the two council’s adopted Local Plans are the starting point for assessing an application unless material considerations indicate otherwise. The consideration of VBC is one such material consideration which must be considered when determining an application. The NPPF does not take primacy over the Local Plans but it is also a material consideration. It is recommended that this report and the Advice Note clearly set out how VBC will be applied on a case by case basis in each council and subsequently East Suffolk Council. Where a development has a viability issue there is a need for applicants to demonstrate how VBC is needed to pursue development and as such a viability appraisal is considered the most appropriate mechanism. This will ensure that in the east Suffolk council’s areas the delivery of affordable housing is maximised in compliance with the Local Plans whilst enabling genuine brownfield sites to be redeveloped which, without VBC would not otherwise be possible.

<b>RECOMMENDATIONS</b>	
1. That the Planning Committee endorses the contents of this Report and the Advice Note, attached at Appendix A, to set out how Vacant Building Credit will be considered and applied.	
2. That the Head of Planning and Coastal Management be given delegated authority to determine whether VBC applies, in accordance with the Advice Note, when considering and determining applications that would otherwise not need to be determined by the Planning Committee.	

**APPENDICES**

<b>Appendix A</b>	Advice Note on the application of Vacant Building Credit
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