

Vacant Building Credit – Advice Note

The delivery of affordable housing in Suffolk Coastal and Waveney DCs is challenging and demand is rising. Policies in the current and emerging local plans promote the delivery of affordable housing on schemes of greater than 10 units (and for commuted sums for schemes between 5 and 10 units in the AONB) but delivery is not meeting the demand and not anywhere near the overall requirement as evidenced in the joint Strategic Housing Market Assessment 2017(SHMA).

Amendments made to the National Planning Practice Guidance (NPPG) in May 2016 changed the way that affordable housing contributions can be sought from development as an acknowledgment that with demands for affordable housing increasing the viability of delivering affordable housing on some sites was challenging. A report on these changes was presented to the Planning Committee of Suffolk Coastal DC on 29th June 2016 which confirmed Vacant Building Credit would be re-instated.

The recently published National Planning Policy Framework (NPPF), July 2018, at paragraph 63 states:-

“Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount” the Footnote sets out this is to be calculated as “Equivalent to the existing gross floorspace of the existing buildings. This does not apply to vacant buildings which have been abandoned.”

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 Suffolk Coastal and Waveney District Council's will apply the Vacant Building Credit in line with the NPPG. It is considered that given the local circumstances in the two council's areas vary considerably, that the VBC be assessed on a case by case basis. Applications must be assessed in accordance with the relevant Local Plan unless material considerations indicate otherwise, VBC is but one material consideration which must be considered. Relevant policies in the two Local Plans as well as the government's policy relating to VBC are material considerations which must be considered in their entirety.

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 two Council's will apply 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. This approach has been used by a number of councils across the country.

In addition it will not apply in situations where there is a valid live consent on the site, or where consent has recently lapsed, or where a site has had an application considered since the reintroduction of the guidance in the NPPG and the VBC was not sought.

It is intended that the application of VBC 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 apply 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 was last occupied by agricultural or forestry buildings; land that has been developed for minerals 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. "

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, or has there been an application submitted but not determined since the VBC was reintroduced and VBC not sought? VBC will not be applied in these circumstances.

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..

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 justified, the Council's off site affordable commuted sum as set out in the annual update provided by the DVS Property Specialists shall be applied to the net number of affordable dwellings which would be required after the credit has been applied.

The affordable housing obligations will be calculated as a representative mix of the overall residential development for the purposes of calculating any subsequent commuted sum.

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.