

Hertsmere Borough Council

Advisory Note for applying the Vacant Building Credit (updated March 2020)

This note has been produced to provide guidance on how Vacant Building Credit (VBC) is applied in Hertsmere.

It takes into account the revised National Planning Policy Framework (NPPF) of February 2019 and Planning Practice Guidance (PPG) concerning Planning Obligations of March 2019.

Government policy with regard to VBC is a material consideration in making planning decisions and the Council will take this into account in determining planning applications where relevant. The guidance in this note will be kept under review.

Government policy

Paragraph 63 of the NPPF in the section concerning the aim of *'Delivering a sufficient supply of homes'*, sets out the government's policy in relation to the vacant building credit. It indicates that the purpose of government policy in this respect is to support the re-use of brownfield land. Specifically, paragraph 63 says that *'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.'* This proportionate amount is defined in footnote 28 as being equivalent to the existing gross floorspace of the existing buildings.

Government guidance

The PPG (Planning Obligations) provides further guidance on the nature and application of VBC and provides an example of how it is to be calculated. It reiterates at paragraph 26 that national policy provides an incentive for brownfield development on sites containing vacant buildings. Paragraph 26 continues: *'Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new buildings, 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.'* Paragraph 26 concludes with *'Affordable housing contributions may be required for any increase in floorspace.'*

Paragraph 27 of the PPG makes it clear that VBC will only apply where there is an overall increase in floorspace in the proposed development. Where an affordable housing contribution would normally be required as a consequence of the proposed development, a credit, being the equivalent of the gross floorspace of any relevant vacant buildings being brought back into use or demolished as part of the scheme, should be deducted from the overall affordable housing contribution calculation.

Paragraph 28 of the PPG emphasises that the policy is intended to incentivize brownfield development, including the reuse or redevelopment of empty and redundant buildings. It advises that 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 and that in so doing, 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

How does Hertsmere apply the VBC?

The Hertsmere housing market is one where there are huge affordability pressures.

Hertsmere accordingly has an established policy in relation to the proportion of affordable units which are required on any site providing 10¹ or more residential units. Full details are set out in the Affordable Housing SPD but in essence the starting point is that the full policy compliant number of units are required to be provided, and provided on site, when any relevant development proposal is approved.

The Government's VBC policy, the effect of which is to reduce the number of affordable units required from that set out in the Development Plan, is a material consideration in the determination of relevant planning applications. There are however constraints set out in Government guidance, which limit the circumstances under which VBC might apply. In order to safeguard as far as possible the delivery of affordable homes to meet the needs of local communities, all applications for VBC will be rigorously assessed in order to ensure that the VBC is properly applicable.

The intent of national policy is to incentivise brownfield development.

When might VBC apply?

If VBC is being sought, Hertsmere Borough Council will use a number of criteria to assess whether the development proposal may be eligible for VBC. The onus is on the applicant to provide sufficient evidence to enable a proper assessment to be made. All applicants should be able to demonstrate that their proposal complies with national policy and the guidance contained in Planning Practice Guidance in place at the time of the application. It should be noted that national guidance concerning the application of VBC does not expressly define what constitutes 'vacant' nor how Local Planning Authorities should determine whether the building has been made vacant for the sole purpose of re-development. However, the VBC is specifically intended to incentivise brownfield development and the reuse / redevelopment of empty and redundant buildings. It is not intended to incentivise the eviction of existing businesses or the neglect of premises which are currently in use.

Applicants who consider their proposals are eligible for VBC should set out their evidence in a VBC Statement accompanying their planning application.

For VBC to potentially apply, a development proposal must comply with the following:

| Criteria | Basis | Evidence required |
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| The site must be brownfield, and buildings must be permanent | NPPF para 63 | Satisfactory demonstration that the site and buildings meet the definition of PDL as set out in the NPPF Glossary |
| Any existing buildings in respect of which a credit is being sought must not have been demolished prior to determination of an application | NPPF para 63 | Evidence that all buildings to which the application applies and the credit is being sought have not been demolished prior to determination of the application. A site visit will also be undertaken to corroborate such |

¹To comply with PPG Planning Obligations paragraph 23 which indicates that planning obligations, which include affordable housing, should only be sought for residential developments that are major developments. The NPPF defines major development as development where 10 or more homes will be provided.

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| | | evidence. |
| Any existing buildings in respect of which a credit is being sought must be wholly vacant | NPPF para 63 | Evidence that the entire building is vacant. Council Tax, Business Rates or Electoral Register records may be required to determine whether or not a building is vacant. |
| The buildings must not have been abandoned | NPPF para 63 footnote 28, PPG para 28 | As per Court of Appeal decision Hughes vs SSE (2000), all relevant circumstances will be taken into account, including: <ul style="list-style-type: none"> • the condition of the property • the period of non-use • whether there is an intervening use; and • any evidence regarding the owner's intention |
| The buildings must not have been made vacant for the sole purposes of re-development | PPG para 28 | Evidence to show the circumstances of the building becoming vacant. The Council may require detailed evidence of how the site has been occupied in recent years, when and why it became vacant (Council Tax, Business Rates or Electoral Register records may be required to substantiate any claims), and how it has been actively marketed on realistic terms based on the current or any permitted use, typically for at least 24 months prior to the submission of a planning application. In considering the adequacy of the marketing exercise, the Council will take account of the methods used, the price at which it has been marketed, and the nature of any interest submitted to the applicant or landowner. Where necessary the Council may instruct an independent Valuer / Surveyor to verify this information, the cost of which shall be met by the applicant. |
| The buildings must not be covered by an extant or recently expired planning permission for the same or substantially the same development | PPG para 28 | HBC will check the application site for planning permissions for development of a similar basis or scale which are extant or have expired within the previous 12 months. |

If all the criteria are met to the satisfaction of HBC then the affordable housing contribution due will be reduced according to the calculation shown below. The Council encourages applicants to seek pre-application advice to identify whether or not the credit will apply and if so, the likely extent of the Affordable Housing contribution.

Calculation of VBC

The following examples demonstrate how the VBC would be calculated:

Proposed residential only scheme

An application is submitted for 15 flats in Potters Bar. A new building of 950 sq m Gross Internal Floorspace (GIA) is proposed. There is a vacant building on the site with a GIA of 350sqm which is to be demolished. 35% affordable housing is required in Potters Bar.

1. Calculate the Vacant Building Credit percent

Existing building (350sqm) divided by total floor space proposed (950sqm) = Vacant building credit of 36.8%

2. Calculate the policy compliant number of affordable housing units required

Amount of residential units proposed (15) multiplied by the adopted affordable housing policy (35%) = Policy compliant Affordable Housing (AH) Requirement of 5.25 units

3. Calculate the VBC credit to be applied to the policy compliant affordable housing requirement

Policy compliant AH requirement (5.25 units) multiplied by VBC (36.8%) = Vacant building credit of 1.93 units

4. Apply the VBC to calculate the revised AH requirement

Policy compliant AH requirement (5.25 units) less Vacant building credit (1.93 units) = 3.32 units

Proposed mixed use scheme:

An application is submitted for a development comprising 11 flats (1,000 sq m Gross Internal floorspace) and a 450sqm retail unit in Potters Bar. There is a vacant building of 750sqm on the site which is to be demolished. 35% affordable housing is required in Potters Bar.

1. Calculate the Vacant Building Credit percent

Existing building (750sqm) divided by total floor space proposed (1450sqm) = Vacant building credit of 51.7%

2. Calculate the policy compliant number of affordable housing units required

Amount of residential units proposed (11) multiplied by the adopted affordable housing policy (35%) = Policy compliant Affordable Housing (AH) Requirement of 3.85 units

3. Calculate the VBC credit to be applied to the policy compliant affordable housing requirement

Policy compliant AH requirement (3.85 units) multiplied by Vacant building credit (51.7%) = Vacant building credit of 1.99 units

4. Apply the VBC to calculate the revised AH requirement

Policy compliant AH requirement (3.85 units) less Vacant building credit (1.99units) = 1.86 units

Points to be taken into account when calculating VBC

Any calculation and VBC deduction will be applied uniformly across an application site, regardless of where the vacant floorspace was located, where the new units are proposed or the overall number of different buildings to be converted or replaced. When calculating the VBC, communal floorspace will be included within the total area of proposed floorspace; the Council will not deduct any proposed communal areas before the existing floorspace is calculated as a proportion of the new development.

The national guidance does not specify how measurements are to be taken. For consistency, all measurements in relation to proposals in Hertsmere will be Gross Internal Area as defined by the RICS Code of Measuring Practice.

The PPG states that the existing floorspace of a vacant building should be credited against the floorspace of the new development. In the case of mixed use developments, vacant floorspace will be calculated as a proportion of the entirety of the new development, rather than solely the proposed residential element.

Any rounding of figures takes place at the end of the calculation only.

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. The viability appraisal should reflect the impact of VBC and would need to demonstrate why the net affordable housing requirement cannot be met.