

## COTSWOLD DISTRICT COUNCIL VACANT BUILDING CREDIT TECHNICAL ADVICE NOTE (MARCH 2023)

This Technical Advice Note explains how the Council will implement the provisions of national policy and guidance on Vacant Building Credit in Cotswold District.

### 1. Introduction

Vacant Building Credit was introduced by the Government (by way of a Written Statement to Parliament) on 28 November 2014. This allowed a financial credit, equivalent to the existing gross floorspace of any vacant buildings on brownfield land brought back into any lawful use or demolished for redevelopment, to be deducted from the calculation of any affordable housing contributions sought from relevant development schemes.

The Vacant Building Credit now forms part of the National Planning Policy Framework:

*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. [Equivalent to the existing gross floorspace of the existing buildings. This does not apply to vacant buildings which have been abandoned.]<sup>(1)</sup>*

The Planning Practice Guidance provides further explanation of the Vacant Building Credit:

#### **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.<sup>(2)</sup>*

### 2. Application of the Vacant Building Credit

The Planning Practice Guidance explains whether the Vacant Building Credit applies to any vacant building being brought back into use.<sup>(3)</sup>

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

*The courts have held that, in deciding whether a use has been abandoned, account should be taken of all relevant circumstances, such as:*

- *the condition of the property;*
- *the period of non-use;*

---

<sup>1</sup> National Planning Policy Framework - para 64 (MHCLG, July 2021)

<sup>2</sup> [Planning Practice Guidance: Planning obligations - paras. 26-29](#) (MHCLG and DLUHC; revision date 01.09.2019)

<sup>3</sup> [Planning Practice Guidance: Planning obligations - para 28](#) (MHCLG and DLUHC; revision date 15.03.2019)

- *whether there is an intervening use; and*
- *any evidence regarding the owner's intention.*

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

*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*

### **Council Position**

As the policy is to incentivise brownfield development, Vacant Building Credit will only apply to developments on previously developed land, as defined by Annex 2 of the NPPF (2021):

*Previously developed land: 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.*

### **3. 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 2010 (as amended). 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.**

### **Council Position**

To ensure that 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 in order to claim a Vacant Building Credit, the applicant will 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 that are covered by an extant or recently expired planning permission for the same or substantially the same development.

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

The Planning Practice Guidance explains the process for determining 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 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. The existing floorspace of a vacant building should be credited against the floorspace of the new development.<sup>(4)</sup>*

### **Council Position**

In order to apply for Vacant Building Credit, a vacant building credit statement must be submitted alongside a planning application. The following information will need to be included in the statement:

- Evidence that any referenced building is a 'vacant building'. A building is not considered as 'vacant' if the building has been in continuous use for any six month period during the last three years up to the date of the planning application is submitted.
- The whole building must be vacant to apply for the Vacant Building Credit.
- Evidence that any referenced building is not an 'abandoned building' or vacated solely for the purpose of redevelopment. The onus will be on the applicant to demonstrate this. The factors the Council will take into account include:
  - i) the physical condition of the building;

---

<sup>4</sup> [Planning Practice Guidance: Planning obligations - para 27](#) (MHCLG and DLUHC; revision date 15.03.2019)

- ii) the length of time that the building had not been used;
  - iii) previous use of the building and whether it had been used for any other purposes; and
  - iv) the owner's intentions.
- Information on the existing Gross Internal Area (GIA) and the proposed GIA. GIA is the area of a building measured to the internal face of the perimeter walls at each floor level. For the purposes of assessing floorspace, the Council will use the GIA definition used by the RICS in its Code of measuring practice.

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.

As is commonly the case with outline planning applications it may not be clear what the actual number of dwellings, or the size of those dwellings, may be. Therefore it will be difficult to quantify what Vacant Building Credit will be applicable. Where the local planning authority agrees that the Vacant Building Credit may be applicable, the applicant will enter into a S.106 Agreement at the outline stage to enable the matter to be deferred to a later stage when the relevant details of the scheme have been finalised. If the Vacant Building Credit is applicable to the proposed site, the information on floorspace will inform the level of affordable housing contributions. The amount of Vacant Building Credit to be set against the affordable housing contribution on Full and Reserved Matters applications will be assessed according to the example of Vacant Building Credit calculation provided below.

### Example of Vacant Building Credit calculation

<ul style="list-style-type: none"> <li>● <b>Proposal:</b> Housing development of 50 dwellings</li> <li>● <b>Affordable housing requirement:</b> 30% (for a brownfield site)</li> <li>● <b>Proposed Gross Internal Floor Area (GIA):</b> 5,000sqm</li> <li>● <b>Existing Gross Internal Floor Area (GIA):</b> 1,000sqm</li> </ul>		
<b>Step 1</b>	Calculate the affordable housing contribution based on the total number of eligible dwellings and the affordable housing percentage required by the Council's affordable housing planning policy (e.g. 30% for brownfield sites)	Affordable housing contribution 50 units x 30% = <b>15 units</b>
<b>Step 2</b>	Calculate the amount of existing floorspace, if any, as a proportion of the proposed floorspace of the development: E/P x 100 (where E = existing floorspace and P = proposed floorspace)	1,000 sqm / 5,000 sqm x 100 = <b>20%</b>
<b>Step 3</b>	Calculate the amount of affordable housing credit: Affordable housing units (Step 1) x Proportion of proposed floorspace that is vacant (Step 2)	15 units x 20% = <b>3 units</b>
<b>Step 4</b>	Deduct the affordable housing credit from the policy compliant affordable housing contribution: Affordable housing units (Step 1) – Affordable housing credit (Step 3)	15 units – 3 units = <b>12 affordable homes (to be delivered on-site)</b>