

Vacant Building Credit: Guidance Note

Introduction:

This Guidance Note is to clarify for applicants how the Council applies Vacant Building Credit in accordance with the NPPF and NPPG.

Vacant Building Credit (VBC) 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 (LPA) calculates any affordable housing contribution which will be sought. Affordable housing contributions may be required for any increase in floorspace. This does not apply to any buildings which have been abandoned.

Notes for applicants: VBC v CIL Credit

Parts of the Somerset West and Taunton district are subject to Community Infrastructure Levy.

Applicants must clearly state if they are applying for VBC or CIL Credit. .

For VBC, if the **whole** of the building has been vacant for 3 years immediately preceding the grant of permission, the developer can offset the floor area of the existing building against the floor area of the new scheme for the purpose of calculating affordable housing (AH) requirement

For CIL Credit , existing 'in-use' buildings act as a credit on the chargeable development for the purposes of the CIL charge. A square metre of existing in-use building on the site, will reduce the CIL charge by one metre. . Any CIL offsetting is only applicable if the existing buildings have been in lawful use (**in part or whole**) for a continuous period of at least six months within the 3 year period immediately preceding the day that planning permission first permits the chargeable development If buildings on the site have been vacant for more than 2 years and six months immediately preceding that date, then CIL offsetting cannot apply. .

The day planning permission first permits the chargeable development is either the date of the grant of full planning permission or the day of the last reserved matters approval on an outline planning permission.

For the above reasons, if applicants are claiming VBC on existing buildings, that area cannot then be offset from the CIL liability of the proposed development.. Applicants should therefore not seek to claim 'in-use' buildings for CIL credit, while at the same time arguing vacancy for VBC.

Applicants claiming VBC may still be entitled to apply for specific CIL Exemptions. Further details of these exemptions are provided at: www.somersetwestandtaunton.gov.uk/cil

Notes for applicants: Applying for VBC

VBC will only be available where the building meets the relevant criteria and robust evidence is provided. Applicants applying for VBC should set out their evidence in a VBC Statement as part of their planning application – this may be included in the Planning Statement or as a separate document.

The VBC Statement should provide the following evidence and information:

1. Applicants must demonstrate that the application site is brownfield as defined in the National Planning Policy Framework (NPPF). There are some buildings excluded from the definition of brownfield; such as those in agricultural or forestry use, land in built-up areas such as residential gardens, parks, recreation grounds and allotments.
2. Applicants must provide robust evidence to show that the whole of the building is vacant and has not been in continuous use for any 6 month period within the 3 years immediately preceding the date the planning application is validated. VBC will not be available for a building demolished prior to the date of the validation of the planning application or brought back into lawful use prior to the grant of planning permission. This will need to be verified with the applicant prior to determination of the application.
3. Applicants will need to show that the building has not been made vacant solely for the purposes of the redevelopment and will be expected to demonstrate that the vacancy has arisen for other reasons.
4. Applicants must demonstrate that the building has not been 'abandoned' -see Definitions below.
5. The VBC Statement must include the calculation of gross floor space of the existing building(s) and that of proposed residential dwellings. Non-residential floorspace should not be included in the calculation (see

Definitions below). Applicants may wish to provide a calculation of what they think is a justifiable VBC set against the policy compliant level of Affordable Housing. It is expected that this will be supported by an Independent Surveyors report by a suitable qualified person (RICS or similar).

6. When submitting an application for outline permission, applicants can seek agreement in principle to VBC. However, the LPA will not be able to assess the precise credit until exact floorspaces have been approved through reserved matters. In these cases, a Section 106 Agreement will be required which will apply a formula to establish the exact deduction following reserved matters approval.
7. VBC should be considered before any viability assessment is undertaken. If viability remains an issue following the application of VBC, then a Viability Appraisal should be submitted clearly set out the amount of VBC being applied, how this has been calculated and the further reduction in Affordable Housing that is sought. The Council uses the current viability guidance in the NPPG¹.

Notes for applicants: Definitions:

Types of Development:

VBC is only applicable to schemes which include an element of residential development. For wholly residential schemes this will be the total area of all proposed dwellings; for mixed use schemes only the area of the proposed future residential elements will be used in the calculation.

The NPPG definition of exception sites are those of small scale where the principle of market housing would not ordinarily be accepted. It follows that VBC should not be applied in circumstances where this might result in no affordable housing being provided on an exception site; therefore VBC will not apply to rural exceptions sites.

Vacancy:

VBC will only be applicable if the whole of the building is vacant and has not been in continuous lawful use for any 6 month period within the 3 years immediately preceding the date the planning application is validated.

In determining whether a building is vacant for the purposes of calculating VBC, the LPA will require a statement from the applicant on how long the building has

¹ NPPG Paragraph: 007 Reference ID: 10-007-20190509 Revision date: 09 05 2019

been vacant and evidence to support that. This may include evidence such as Council Tax or Business Rates records, sworn statements and photographic evidence. The LPA may also consider:

- whether the building has been made vacant for the sole purposes of re-development;
- an applicant will need to demonstrate the reasons for the vacancy – evidence for this may include estate agents particulars and details of marketing and enquires, corporate tax records or accounting statements, sworn statements demonstrating that the existing use is no longer viable, that the building is beyond economic repair and/or that there are no preferable alternatives;
- whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development;
- whether the building has been abandoned – see below.

There may be instances where the LPA may accept occupancy exemptions. These may include where

- Property Guardians have been living on-site in the unoccupied building for the purpose of security;
- the building has been illegally occupied and the owners have sought eviction through the Courts.

When considering such exemptions, the LPA would require evidence in support such as invoices from the company supplying the Property Guardian service or Court listings and judgements in case of evictions.

A Property Guardian is deemed to be someone who has entered into an agreement to live in a building or part of a building that would otherwise be empty for the primary purpose of securing and safeguarding the property. Property guardianship agreements are usually licences to occupy, which differ from residential tenancies – most notably by only requiring 28 days' notice before eviction action can proceed, whereas for tenancies it can be up to 2 months' notice. However, the properties used in property guardianship schemes are generally not designed for residential use and, while many are effectively adapted, some buildings may be especially hazardous or dangerous.

Lawful Use

Lawfulness is defined in Town and Country Planning Act 1990.² A use of a building will be lawful if no enforcement action may then be taken against it (whether because the use does not involve development or require planning

² Section 191(2) Town and Country Planning Act 1990 - <https://www.legislation.gov.uk/ukpga/1990/8/section/191>

permission or because the time for enforcement has expired) and no enforcement notice is in force.

Abandonment

The Courts have determined that there are four main factors in determining whether a building has been abandoned³:

- the physical condition of the property;
- the length of non-occupation;
- whether there have been intervening uses; and
- the owner's intentions

If a property is totally derelict, lacking utility provisions and requires total rebuilding then it is likely that it will be considered abandoned. The period of non-occupation is also an indicator of abandonment, and the LPA would require evidence to be provided explaining periods of non-occupation. What other uses the property has had over a period of time are relevant, if it has been used for other than its lawful use then this would be considered as a period of abandonment.

VBC Calculation:

The LPA will consider the VBC Statement and confirm to the applicant the VBC which will be applied (if any).

The NPPG sets out the formula of:

(Difference between proposed and existing GIA floorspace / proposed GIA floorspace)

X

AH policy requirement⁴

The calculation will be made on a site-by-site basis but the following is an example of how the VBC will be calculated.

On-site for the former TDBC the Core Strategy Policy CP4 asks for 25% affordable housing. Calculation example:

proposed and existing difference = 10,000 – 8,000 = 2,000

³ Hughes v Secretary of State for the Environment [2000] EWCA Civ 506

⁴ Paragraph: 027 Reference ID: 23b-027-20190315; Revision date: 15 03 2019 - <https://www.gov.uk/government/collections/planning-practice-guidance>

$$\text{difference} / \text{proposed} = 2,000 / 10,000 = 0.2$$

multiplied by AH requirement: $0.2 \times 25\% = 5\%$ or $1/5^{\text{th}}$ of the AH

therefore the affordable housing contribution would be 5% rather than 25%

On-site for the former WSC the West Somerset Local Plan Policy SC4 asks for 35% affordable housing. Calculation example:

$$\text{proposed and existing difference} = 10,000 - 8,000 = 2,000$$

$$\text{difference} / \text{proposed} = 2,000 / 10,000 = 0.2$$

Multiplied by AH requirement: $0.2 \times 35\% = 7\%$ or $1/5^{\text{th}}$ of the AH

therefore the affordable housing contribution would be 7% rather than 35%

Where the above calculation results in whole units of affordable housing, these units should be delivered on site unless otherwise agreed with the Council in writing through the terms of the S106 Agreement.

Where the above calculation results in a requirement for part of an affordable housing i.e. less than a whole unit then a financial contribution will be required in lieu of on-site provision.

Where financial contributions are provided in lieu of on-site provision, including part thereof affordable housing as described above, the process applies a proportional credit.

The calculation will be on a site-by-site basis to take account of the different bed dwellings that would have required as part of that development, in line with the respective planning policies and supplementary planning documents for the former WSC and TDBC areas. The SWT Enabling team will be able to assist applicants with this calculation.

May 2021

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