

## REPORT TO CABINET

<b>Open</b>		Would any decisions proposed :			
<b>Any especially affected Wards</b>	Operational	Be entirely within Cabinet's powers to decide		YES	
		Need to be recommendations to Council		NO	
		Is it a Key Decision		NO	
Lead Member: Cllr Blunt E-mail: <i>Richard.Blunt@West-Norfolk.gov.uk</i>		Other Cabinet Members consulted: N/A			
		Other Members consulted:			
Lead Officer: Nikki Patton & Karl Patterson E-mail: <i>Nikki.patton@west-norfolk.gov.uk</i> Direct Dial:616726		Other Officers consulted: Geoff Hall & Alan Gomm			
Financial Implications YES	Policy/ Personnel Implications NO	Statutory Implications /NO	Equal Impact Assessment YES/NO If YES: Pre- screening/ Full Assessment	Risk Management Implications NO	Environmental Considerations NO

Date of meeting: 7 January 2020

### **APPLICATION OF THE VACANT BUILDING CREDIT WHEN CALCULATING S106 AFFORDABLE HOUSING CONTRIBUTIONS**

#### **Summary**

Local Planning Authorities are required to apply a Vacant Building Credit when calculating affordable housing contributions. The guidance within National Planning Policy Guidance for implementing the Vacant Building Credit is limited. Therefore, further formal guidance setting out the Council's approach would offer clarity in dealing with planning applications.

#### **Recommendation**

**Members are asked to formally adopt the application of the Vacant Building Credit in line with the CIL regulations in order to offer increased clarity for applicants and decision makers.**

#### **Reason for Decision**

To adopt a clear and transparent approach to applying the Vacant Building Credit and avoid uncertainty when dealing with planning applications.

## **1 Background**

1.1 Vacant Building Credit (VBC) was first introduced in a ministerial statement in November 2014. The measure is included in the National Planning Policy Framework, February 2019 which states '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'

- 1.2 NPPG provides guidance on how VBC should be calculated and when it should be applied. This suggests that authorities consider “*whether the building has been made vacant for the sole purposes of re-development*” and “*whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development*”.
- 1.3 Since the credit was introduced, we have taken the approach of applying the credit to any brownfield proposal with vacant building(s), provided they have not been abandoned. We have relied on information provided to us in the planning application, usually the Design & Access Statement and requested further evidence where necessary.
- 1.4 Neither NPPF nor NPPG define how long a building should be vacant for in order to qualify for VBC or clarify what constitutes a building for the purposes of the vacant building credit. To date it has been down to the officer to decide whether or not the building is vacant and whether the credit should be applied. This has led to a high level of subjectivity as to what constitutes a vacant building.
- 1.5 However, the CIL regulations apply a credit for in-use buildings and define an in-use building as
- “contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development”.*
- 1.6 The CIL regulations also clarify that “building” does not include
- (i) a building into which people do not normally go;*  
*(ii) a building into which people go only intermittently for the purpose of maintaining or inspecting machinery; or*  
*(iii) a building for which planning permission was granted for a limited period;*
- 1.7 Therefore, it follows that a vacant building can be defined as a building (not including the above exemptions) that is not in-use, this would lead to a vacant building being defined as
- “a building that has not been in use for a continuous period of at least six months within the past 3 years.”*
- 1.8 This approach has been taken by a number of other authorities including Norwich City Council where the use of the vacant building credit is common due to the built up nature of the city.
- 1.9 Under the current approach, in some circumstances applicants are able to claim both the In Use Building Credit for CIL and the Vacant Building Credit for Affordable Housing. Applying the Vacant Building

Credit to all Vacant Buildings regardless of how long it has been vacant also creates the opportunity for applicants to make buildings vacant purely for the purposes for reducing the affordable housing contribution. This reduces the affordable housing contributions that the Council is able to secure under policy CS09.

- 1.10 By adopting the proposed approach in line with the CIL regulations, applicants would no longer be able to claim that a building is both “in use” and vacant” and the scope for making buildings vacant in order to reduce the affordable housing contribution would be reduced.
- 1.11 If this new approach is taken, applicants wishing to have the VBC applied to their proposals would need to submit a Vacant Building Credit Statement at the time of making the application. The statement should include evidence the building has not been abandoned or vacated solely for the purpose of redevelopment and evidence that the building is vacant. Evidence such as Council Tax, Business Rates or Electoral Register records may be required to determine whether or not the building is vacant in accordance with the above definition. Any applications submitted without a statement will not have the credit applied.
- 1.12 The attached guidance note provides guidance for applicants on how the authority applies vacant building credit and how applicants should apply for it based on the above approach.

## **2 Options Considered**

### **2.1 Option 1**

- 2.2 To apply a definition of vacant building which mirrors the definition of “in use building” within the CIL regulations as set out above. This would provide greater clarity and ensure consistency in decision making

### **2.3 Option 2**

- 2.4 To apply the Vacant Building Credit to all vacant buildings on brownfield land regardless of how long the building has been vacant. In some circumstances, this would enable applicants to claim both the In Use Buildings Credit for CIL and the Vacant Building Credit for affordable housing and would result in an overall loss of affordable housing.

### **2.5 Option 3**

- 2.6 Not to apply the Vacant Building Credit. This would be contrary to NPPF and therefore would be highly challengeable.

## **3 Recommendation**

- 3.1 It is recommended that Option 1 is adopted in order to give greater clarity for applicants and officers and safeguard the provision of affordable housing.

#### **4 Policy Implications**

- 4.1 This approach would provide more clarity for applicants and decision makers and ensure that applicants cannot claim that the building is both “in-use” for the purpose of calculating CIL and vacant for the purpose of calculating affordable housing contributions.

#### **5 Financial Implications**

- 5.1 The application of the Vacant Building Credit will have an impact on the level of Affordable Housing Contributions received on certain developments but this is a requirement of NPPF. Adopting the recommended approach will minimise the loss of affordable housing contributions.

#### **6 Personnel Implications**

- 6.1 None

#### **7 Environmental Considerations**

- 7.1 None

#### **8 Statutory Considerations**

- 8.1 None

#### **9 Equality Impact Assessment (EIA)**

(Pre screening report template attached)

#### **10 Risk Management Implications**

- 10.1 None

#### **11 Declarations of Interest / Dispensations Granted**

- 11.1 None

#### **12 Background Papers**