



Affordable Housing and the impact of changes made to national planning guidance

Report by the Director for the Economy

1.0 Summary

- 1.1 In recent years the Government has been keen to incentivise house building, particularly for small sites. Changes to national planning policy were advanced in 2014 but, following a number legal challenges and appeals, these only became set in national Planning Practice Guidance (PPG) in 2016. As a result, the Vacant Building Credit and changes made to the threshold for developer contributions are now a material planning consideration.
- 1.2 This report provides the background to these changes and explains the impact that they have had nationally and within Worthing. It goes on to outline how some authorities are seeking to minimise the impact that these changes will have on the future on the delivery of affordable housing. Finally, the report recommends an approach to be taken in Worthing. This will establish the policy position for the Borough, at least for the interim whilst a new Local Plan for Worthing is being prepared.

2.0 Background

- 2.1 To respond to what was seen as the disproportionate burden of developer contributions on small-scale developers Brandon Lewis MP published a Written Ministerial Statement in 2014 which set out various changes to the government's planning policies. Subsequently, the PPG was amended to take on board the changes announced. In summary, the main changes affecting Worthing Borough were:

- Tariff style contributions should not be sought for sites of 10-units or less

- A financial credit, equivalent to the existing gross floorspace of any vacant buildings brought back into any lawful use or demolished for redevelopment, should be deducted from the calculation of any affordable housing contributions sought from relevant development schemes.
- 2.2 There was considerable concern in local authorities, and in other sectors, on the changes made to the PPG and the way that the change had been brought in. In response, a legal challenge was launched to the changes by a partnership of local authorities. The local authorities were successful in their judicial review.
- 2.3 As a consequence the paragraphs that had been added to PPG were deleted. However, the Government successfully appealed against the High Court decision, and the policy was reintroduced to the PPG in May 2016.
- 2.4 The reinstatement of the Vacant Building Credit and the ‘10-dwelling threshold’ means that this guidance now forms a material planning consideration for planning applications. However, the High Court judgement made it clear that it is still up to the decision maker (the local planning authority) to decide how much weight to give to the national policy in light of local circumstances. Although it was acknowledged that the precise effect of this would be unclear the judgement confirmed that there would be cause for exception in some circumstances.
- 2.5 This report provides more detail on issues relating to firstly, the Vacant Building Credit and then secondly, the ‘10-dwelling threshold’. It then considers the local circumstances for Worthing and recommends an approach for how the guidance should be applied and interpreted.

3.0 Vacant Building Credit

- 3.1 Vacant Building Credit (VBC) was introduced by the Government to promote and incentivise development on brownfield sites that contain vacant buildings. It allows the floorspace of existing buildings that are to be redeveloped to be offset against the calculations for Section 106 affordable housing requirements (whether financial contribution or provision). It applies to any building that has not been abandoned and is brought back into any lawful use, or is demolished to be replaced by a new building.
- 3.2 The PPG explains that existing gross floorspace (assuming it has not been abandoned) should be credited against that of the new development. Where

there is an overall increase in floor space in the proposed development, the Council should then calculate the amount of affordable housing contribution or provision required from the development as set out in their local plan on the basis of that additional floorspace.

- 3.3 The example given in the PPG is as follows: 'where a building with a gross floorspace of 8,000 square metres is demolished as part of a proposed development with a gross floorspace of 10,000 square metres, any affordable housing contribution should be a fifth of what would normally be sought'.

How has Vacant Building Credit been applied?

- 3.4 The PPG offers little in the way of guidance as to how the VBC is intended to be applied. In particular, it is not clear when a building can be considered 'vacant', 'empty' or 'unused' but not 'abandoned'. The guidance merely states that when considering how the credit should apply, local planning authorities should consider whether the building has been made vacant for the sole purpose of redevelopment, and whether the building is covered by an extant or recently expired planning permission for the same development (in which case the credit should presumably not apply). This lack of clarity gives rise to concerns that VBC may incentivise landlords to force the vacation of offices, industrial buildings or even houses to benefit from VBC.
- 3.5 No reference is made to time limits, in contrast to how the Community Infrastructure Levy ('CIL') operates. For CIL, an offset is available for buildings that have been in lawful use for 6 months out of the previous 3 years.

What have been the implications nationally?

- 3.6 Across the country evidence has emerged of developers using VBC to achieve substantial reductions in affordable housing payments, not least in relation to the redevelopment of large sites. This is noteworthy as a primary reason for the introduction of VBC was on the basis it would assist smaller developers to deliver viable schemes. However, the Government did not build the necessary clarity into the guidance to ensure that it is only small developments which benefit from the credit.
- 3.7 Despite this, the Government would argue that the VBC has allowed some previously unviable sites to come forward for development. However, it has been seen that there is no guarantee that VBC will assist those it was intended to. It also remains to be seen what the overall impact will be on

housing supply but it seems likely that the provision of affordable housing will be hit, severely in some cases. As a consequence VBC's long-term impact on affordable housing remains potentially damaging at a time when the need for affordable homes remains critical.

What have been the implications locally?

- 3.8 As explained, VBC reduces the requirement for affordable housing contributions based on the amount of vacant floor space being brought back into use or redeveloped. This has significant implications for the delivery of affordable housing in Worthing where a high proportion of development is on brownfield land where there are existing buildings. This impact is crucial when the level of affordable housing need in the Borough is considered. Whilst it is acknowledged that there are many areas of the country with high levels of affordable housing need there is evidence to demonstrate that this situation is even more acute in Worthing.
- 3.9 The difficulty for Worthing residents in accessing market housing was clearly demonstrated within the Centre for Cities study published in January 2017. This identified Worthing as having the 8th highest affordability ratio for housing in the country (i.e. the average house price in the Borough of £279,900 when compared against the average annual wage £26,100 resulted in an affordability ratio of 10.7). Similarly, the average market rent for residential property is beyond many households, for example, the net income required per year to rent a two bedroom property (assuming 35% of income spent on rent) is £30,891.
- 3.10 As a consequence, it is perhaps not surprising that there are a high number of households on the housing register across all sectors of society. In May 2017 there were 1,277 households on the Worthing Housing Register and the lack of available property means that people are often housed in temporary, and sometimes inappropriate, accommodation. In 2016 the average waiting time for a social housing property in Adur and Worthing was: Band A: 6-9 months / Band B: 9-12 months / Band C: 4-5 years. All current evidence indicates that the demand for affordable housing in the borough is likely to increase.
- 3.11 Given the level of affordable housing need in the Borough and the impact that the imposition of VBC could have on its delivery it is not surprising that concerns have been raised by elected Members and the local community. In recent months the issue of VBC has gained greater prominence during the consideration of a number of applications for development. There has been concern raised about the loss of funding for affordable homes, confusion as to

how and when it should be applied and questions relating to its relationship with the vacancy test for CIL. In October 2017 the Worthing Herald highlighted this issue on their front page when reporting that since the start of the year 'more than £2m to build affordable housing in Worthing & Adur has been lost'. The use of VBC was given as one of the reasons for this.

- 3.12 However, it should be noted that removing VBC it does not automatically mean that the full quota of affordable housing would be delivered, as developers would still be able to argue that the scheme would be unviable.

What have other authorities done to address issues / concerns?

- 3.13 Given the lack of clarity included in guidance local authorities have been left to make sense of how to apply VBC. Given some of the impacts outlined above this has inevitably resulted in Councils creating methods and policies for approaching VBC in a way which will minimise its impact on affordable housing delivery. Of those local authorities that are putting in place policies for calculating VBC, it is clear that there is no standard approach. Emerging practice includes:

- interpreting 'vacant' as being opposite to the 'in use' building test set out in the CIL Regulations. This ensures that a development is unable to benefit from both VBC and the demolition credit which can reduce the amount of CIL payable;
- requiring the entire building to be vacant, not just part of it;
- requiring the building for which VBC has been sought to have been actively marketed for a specified period;

- 3.14 Additionally, it is important to note that Sections 38(6) and 70(2) of the Town and Country Planning Act 1990 are clear that the determination of an application must be made in accordance with the development plan unless material considerations indicate otherwise. The Court of Appeal decision, which upheld the VBC, states that 'the policy's unqualified terms do not demonstrate that it was intended to countermand or frustrate the effective operation of the statute'. This reinforces the position that legally it is for the decision maker to assess how much weight the revisions made to guidance have. Whilst it is acknowledged that VBC is a material consideration when planning applications are determined it is not capable of being applied in a 'blanket' manner. As a consequence many local authorities have taken comfort from this and have reviewed, or are reviewing, whether they can disapply VBC altogether.

Recommended Approach for Worthing Borough Council

- 3.15 As explained above, it is up to the decision maker how much weight to give national policy and the application (or otherwise) of VBC in light of local circumstances. A number of local authorities across the country are now proposing and adopting a variety of approaches to provide an exception to the policy. These are largely areas, like Worthing, where there is a significant under provision of affordable housing and where viability evidence demonstrates that there is no disproportionate burden on the developer.
- 3.16 In Worthing, it is considered that the VBC is unlikely to help bring forward a significant amount of additional development. Brownfield land already delivers the majority of Worthing's housing, and housing requirements are already subject to viability testing. Since the adoption of the Worthing Core Strategy (2011) and prior to the introduction of VBC, there have been some examples across the Borough of developments that have involved the redevelopment of vacant buildings which have met or partially met the policy requirements for affordable housing. However, it is clear that since the adoption of CIL many schemes have failed to meet affordable housing requirements and rising construction costs have affected the viability of brownfield development. Whilst this has not affected the number of brownfield developments coming forward this has been often at the expense of affordable housing provision. The Government would argue that this supports the application of VBC. However, given the level of affordable need it is considered that an assessment of viability is a more effective way of testing the ability to provide affordable housing rather than VBC being applied automatically on all brownfield sites containing vacant buildings.
- 3.17 The Council has recently undertaken a 'call for sites' alongside a consultation on the draft Brownfield Land Register. All landowners and developers with an interest in sites in Worthing were consulted during this process and invited to put forward potential sites for development and/or reaffirm and update the position on sites in their interest. In addition, a bespoke letter was sent to the promoters of all sites that are likely to be included in the emerging Local Plan as allocations or Areas of Change. This letter asked specific questions relating to any development constraints and the deliverability of each opportunity. As already highlighted, a high number of these sites are previously developed and contain vacant buildings. It is noteworthy that the VBC was not raised or mentioned within any of the responses received during this consultation. This could be considered to indicate that the VBC is not critical to the delivery of development in the borough.

3.18 Taking into account: the pressing need for affordable housing; a highly constrained supply of housing land; and the nature of the land supply (which is highly dependent on the redevelopment of vacant buildings) it is considered that there is strong justification not to apply VBC in the Borough. This position is reflected in the statement (Appendix A) which clarifies how the current Core Strategy policy will be applied in the interim until such time that the new Worthing Local Plan is adopted.

4.0 Restrictions on affordable housing - '10 dwelling threshold

4.1 Alongside the introduction of the VBC, the PPG now sets out the circumstances in which affordable housing and tariff style planning obligations should no longer be sought, namely for:

- developments of 10 units or less, or
- developments which have a maximum gross floorspace of not more than 1000sqm (gross internal area)

4.2 This measure also received resistance from local planning authorities, again fearful that affordable housing delivery could plummet. However, it is acknowledged that, much like the VBC, as it is part of the PPG it is now a material planning consideration. Despite this, a number of authorities (including Worthing Borough Council) have held firm and are applying their development plan policies for affordable housing in preference to this new national policy, reasoning that it is for them to balance competing policies.

4.3 In Worthing, Core Strategy Policy 10 (affordable housing) seeks to deliver a mix of affordable housing to meet local needs on all but the smallest sites. The adopted policy requires the following:

- on all sites of 6 to 10 dwellings, 10% affordable housing will be sought via a financial contribution
- on all sites of 11 to 14 dwellings, 20% affordable housing will be sought via a financial contribution
- on all sites of 15 or more dwellings, 30% affordable housing will be sought

4.4 This stepped approach, which was informed by robust evidence published during the preparation of the Core Strategy (2011), ensures that a disproportionate burden is not placed on smaller developments in the Borough. This helps to mitigate the key concern raised by Government which formed their main justification for the introduction of the 10-dwelling threshold.

4.5 For the reasons provided earlier in this Paper Worthing Borough Council has continued to apply the full provisions of Core Strategy Policy 10 and contributions have been sought from 6-10 dwellings. This position is reiterated within the Position Statement attached as Appendix A.

5.0 Viability

5.1 The Worthing Core Strategy (2011) was based on robust evidence and tested through examination in public. A key test during the examination of the Core Strategy was whether the policies, obligations and requirements it included were deliverable and that they did not put the implementation of the development plan at serious risk. When finding the Core Strategy to be sound the Inspector endorsed the Council's approach and supported key evidence which demonstrated that affordable housing requirements could be met without making schemes unviable that would have otherwise been viable.

5.2 More recently, the viability assessments that were prepared to inform the setting of the Council's Community Infrastructure Levy (CIL) took all development costs into account. This included all planning policy requirements including affordable housing. In summary, the findings of this work concluded that the viability of most development scenarios tested in the Borough could meet the full requirements for affordable housing and pay an additional charge through CIL.

5.3 Since the publication of the Core Strategy, and in another effort to deliver new housing and economic growth, the Government has sought to ensure that local authorities are not imposing requirements for community benefits that are such that they would prevent or deter from development coming forward. In this regard, paragraph 173 of the NPPF states: *'To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable'*.

5.4 Viability assessments are often used to make this judgement. These are financial appraisals carried out on planned developments that estimate the amount that the developer will spend on building the scheme and the profit that they will make from selling it. If the profit level is too 'low', the scheme can be said to be 'unviable' in which case the development may not proceed at all and a site may stand derelict or vacant for a significant period of time. As such, it is not uncommon for Councils to apply a degree of flexibility

against policy requirements for local infrastructure to ensure that the scheme remains viable and that much needed homes and jobs are delivered.

- 5.5 As CIL is a fixed charge somewhat inevitably these viability considerations have resulted in a 'squeeze' on affordable housing provision as, in many respects, the provision of affordable housing has now become the one 'negotiable' part of a development.
- 5.6 Although the Council has sought, and will continue to seek, the requirements for affordable housing established in local policy there are a number of examples of developments delivered or approved in the Borough in recent years that have not provided the full requirements (either on site delivery of affordable housing or financial contributions towards off-site provision). In these instances the developers have had to put forward robust viability evidence to demonstrate why full compliance would impact on the delivery of the scheme. In most cases this evidence is then independently assessed by viability specialists.
- 5.7 Given the acute need for affordable housing in the Borough this outcome is not ideal. However, on occasions, and if supported by strong evidence, a balance needs to be struck whereby the scheme remains viable (and is delivered) whilst at the same time ensuring that the delivery of infrastructure improvements (including affordable housing) is maximised.
- 5.8 The approach to viability that has been taken by the Council in recent years, and that will continue to be taken, is in line with the NPPF in that it ensures a 'competitive return' for willing landowners and developers. The ability to apply a degree of flexibility to the Council's policies in certain circumstances already addresses the issue of the impact of affordable housing requirements on viability. This reinforces the Council's view that there is no need for VBC or a reduction in the affordable housing threshold to provide new mechanisms and incentives when an effective system is already in place that ensures schemes remain viable whilst also ensuring that much needed affordable housing is delivered.

6.0 Proposals

- 6.1 Worthing Borough Council acknowledge that national planning policy and guidance as set out in the Written Ministerial Statement (WMS) of November 2014 and national Planning Policy Guidance with respect to affordable housing contributions and the application of Vacant Building Credit (VBC) are significant material considerations which should be taken into account in

decision taking. However, following the Court of Appeal decision (May 2016) regarding these matters, Worthing Borough Council note that the provisions of national policy are not mandatory and that local circumstances may justify an appropriate exception to the approach outlined in national policy and guidance.

- 6.2 Given the local circumstances set out in this report, it is considered that there is strong justification for the stance taken towards affordable housing as set out in the Position Statement (Appendix A). This position will mean that the Vacant Building Credit is not applied to schemes proposed in the Borough and that the Council will continue to require contributions towards affordable housing on smaller sites (6-10 dwellings) in line with Core Strategy Policy 10. This will form the Council's interim agreed position until such time that the new Worthing Local Plan is in place.
- 6.3 This approach will help to ensure that affordable housing is delivered in Worthing to meet a very significant need. The Council does not think that this position will have a significant impact on the viability of development in the Borough. However, it should be noted that where viability issues can be robustly demonstrated the Council will continue to apply a degree of flexibility against policy requirements to ensure that appropriate and sustainable development continues to come forward in the Borough.
- 6.4 It is considered likely that the approach outlined in this report will be reflected in policy within the emerging Local Plan and, as necessary, a Supplementary Planning Document (SPD). As with the Worthing Core Strategy, and in line with the requirements of the NPPF, the cumulative impacts of all policies to be included in the Plan / SPD will be tested to ensure that the scale of obligations and policy burdens would not threaten the viability and delivery of sustainable development.

7.0 Recommendation

- 7.1 That, in line with the Position Statement attached as Appendix A, the Committee recommends to the Executive Member for Regeneration that Vacant Building Credit should not be applied to brownfield developments and that the Council should continue to seek development contributions for less than 10 dwellings in view of the acute shortage of affordable housing in the Borough.**

Local Government Act 1972

Background Papers:

- Worthing Core Strategy 2011
- Written Ministerial Statement - Brandon Lewis 2014
- DCLG - Planning Practice Guidance - 'Planning Obligations'
- National Planning Policy Framework
- High Court Judgement - West Berks DC and Reading BC vs Secretary of State for Communities and Local Government - 2016

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Schedule of Other Matters

1.0 Council Priority

- 1.1 'Platforms for Our Places' in particular, Our Social Economies. The approach outlined in this report will enable the Council to collect contributions towards affordable housing from relevant developments will help to provide homes across Worthing. This in turn will help to tackle the challenge of an insufficient supply of housing across a range of tenures.

2.0 Specific Action Plans

- 2.1 It is likely that the approach outlined in this report will be reflected in policy within the emerging Local Plan and, as necessary, a Supplementary Planning Document (SPD). In line with the requirements of the NPPF, the cumulative impacts of all policies to be included in the Plan / SPD will be tested to ensure that the scale of obligations and policy burdens would not threaten the viability and delivery of sustainable development.

3.0 Sustainability Issues

- 3.1 The provisions of Core Strategy Policy 10 will continue to apply to all types of residential development. The Core Strategy has been (and the emerging Local Plan will be) the subject of a formal Sustainability Appraisal.

4.0 Equality Issues

- 4.1 Issues relating to race, disability, gender and equality have been considered and it is not felt that the approach outlined in this report will have an adverse impact on any social group. The collection of affordable housing contributions in line with adopted policy will ensure that a range of housing tenures are delivered to meet an urgent need.

5.0 Community Safety Issues (Section 17)

- 5.1 Matter considered and no issues identified.

6.0 Human Rights Issues

- 6.1 Everyone has a fundamental human right to housing, which ensures access to a safe, secure, habitable, and affordable home. The approach outlined in the report will help to meet this aim.

7.0 Reputation

- 7.1 An approach that will help to meet the challenge of tackling an insufficient supply of housing across all tenures will enhance the Council's reputation. As explained in paragraph 9 (below) to approach will not prevent development, and associated economic growth, from coming forward.

8.0 Consultations

- 8.1 The Council's adopted Core Strategy was the subject of a number of periods of consultation which were undertaken in line with the Council's Statement of Community Involvement. A Briefing Paper setting out the issues covered in this report was considered by the Council's Local Plan Working Group in November 2017.

9.0 Risk Assessment

- 9.1 If the approach outlined in this report was not taken there is a serious risk that contributions towards much needed affordable housing in the Borough would be lost.
- 9.2 It is acknowledged that national planning policy and guidance as set out in the Written Ministerial Statement (2014) and PPG with respect to affordable housing contributions and the application of VBC are significant material considerations which should be taken into account in decision taking. However, following the Court of Appeal decision (2016) regarding these matters, it is noted that the provisions of national policy are not mandatory and that local circumstances may justify an appropriate exception to the approach outlined in national policy. Supported by robust evidence it is the Council's view that, on balance, local circumstances in Worthing do justify an exception.
- 9.3 It is not considered that the approach outlined will prevent development schemes from coming forward. In circumstances where viability issues can be robustly demonstrated the Council will continue to apply a degree of flexibility against policy requirements to ensure that appropriate and sustainable development continues to come forward in the Borough.

10.0 Health & Safety Issues

- 10.1 Matter considered and no issues identified.

11.0 Procurement Strategy

11.1 Matter considered and no issues identified.

12.0 Partnership Working

12.1 Matter considered and no issues identified.

APPENDIX 1

Interim Position Statement Clarification of the application of Core Strategy Policy 10 (affordable housing)

Worthing Borough Council acknowledge that national planning policy and guidance as set out in the Written Ministerial Statement (WMS) of November 2014 and national Planning Policy Guidance with respect to affordable housing contributions and the application of Vacant Building Credit (VBC) are significant material considerations which should be taken into account in decision taking.

Following the Court of Appeal decision (May 2016) regarding these matters, Worthing Borough Council note that the provisions of national policy are not mandatory and that local circumstances may justify an appropriate exception to the approach outlined in national policy and guidance.

In applying Worthing Core Strategy Policy 10 (Affordable Housing) Worthing Borough Council consider that there are specific and genuine local circumstances that justify an exception to national policy and guidance. This is specifically in terms of Planning Practice Guidance regarding site size thresholds for affordable housing contributions and the application of VBC. In summary, those local circumstances constitute:

- The significant need for affordable housing in the borough
- A highly constrained housing land supply
- The nature of land supply in terms of residential delivery from smaller sites and brownfield site conversions, changes of use and redevelopment including vacant buildings.

The provisions of Core Strategy Policy 10 will therefore apply to all types of residential development and financial contributions will continue to be sought from developments of 6-10 dwellings. The VBC will not be applied to schemes proposed in the Borough.

This is an interim position statement that establishes the Council's approach to these matters in advance of the adoption of the emerging Worthing Local Plan.

This approach will help to ensure that affordable housing is delivered in Worthing to meet a very significant need. The Council does not think that this position will have a significant impact on the viability of development in the Borough. However, it should be noted that where viability issues can be robustly demonstrated the Council will continue to apply a degree of flexibility against policy requirements to ensure that appropriate and sustainable development continues to come forward in the Borough.