

Item No.	Classification:	Date:	Meeting Name:
7.	Open	3 March 2015	Planning Committee
Report title:		Application of the Vacant Building Credit in Southwark	
Ward(s) or groups affected:		All	
From:		Director of Planning	

RECOMMENDATIONS

That Planning Committee:

1. Note the proposed approach to implement the vacant building credit.

BACKGROUND INFORMATION

Background to the Vacant Building Credit

2. In March 2014 the DCLG consulted on a set of proposals designed to incentivise development through the introduction of new concessions on affordable housing contributions. On 28 November 2014 the Minister of State for Planning and Housing, Brandon Lewis MP, revised national planning policy concerning the use of section 106 planning obligations through a written ministerial statement (WMS). The national Planning Practice Guidance (PPG) was simultaneously updated to set out detailed implementation guidance.
3. The amended guidance introduced the vacant building credit (VBC). This states the floorspace of any vacant building which is demolished or brought back into use, excepting when the building has been abandoned, will be discounted when calculating any required affordable housing contribution. Effectively, affordable housing contributions can only be sought on uplifts in floorspace. Southwark's adopted policy requires a minimum 35% affordable housing contribution based upon the entire development proposal, irrespective of any existing vacant floorspace. Southwark's policy also takes viability into account. However, viability is irrelevant in respect of the VBC.
4. The VBC came into effect in December 2014.

KEY ISSUES FOR CONSIDERATION

5. Policy enacted through a WMS succeeds locally adopted policy where there is a conflict between national and local policy. As such, the council's adopted policy, which is to seek affordable housing contributions on the entirety of all new major residential development, can no longer be applied where a development is eligible for the VBC. Planning authorities may introduce local policy which departs from national policy enacted through the PPG. However, any amendments must be through the plan making process and will be subject to examination by the Planning Inspectorate. The VBC policy has the potential to significantly reduce the local affordable housing supply because most major residential developments in Southwark involve the demolition or refurbishment existing buildings.

6. The VCB guidance fails to provide a practical definition for 'vacancy' or 'building'. Therefore the council needs to adopt a local approach to implement the policy. The key issue is how a building should be assessed as being either vacant or in-use. It is also necessary to adopt a practical definition of 'building'. The Community Infrastructure Levy (CIL) Regulations 2010 (as amended 2014) allow in-use buildings to benefit from CIL relief and provides useful guidance on these definitions. The Minister has explicitly referenced the CIL Regulations in explaining that the VBC is intended to mirror the CIL Regulations.
7. The CIL Regulations state 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.
8. An applicant for CIL relief must demonstrate that the building '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'. Furthermore, the whole building must be 'in-use' rather than just a part of it. It is proposed the council apply the CIL in-use building test in determining eligibility to benefit from the VBC where the vacancy period pre-dates 28 November 2014¹. To be eligible for the VBC the relevant building must be vacant in its entirety. This will enable the council to assess CIL and VBC claims consistently.
9. In order to ensure the VBC does not incentivise unsustainable development, such as the forceful eviction of businesses or neglect of viable commercial premises, a higher standard of evidence of vacancy must be provided by applicants on eligible buildings which became vacant following 28 November 2014. Applicants must demonstrate that the relevant vacant buildings have been actively marketed on realistic terms over a period of at least 24 months within the previous 36. In considering the adequacy of the marketing which has been undertaken, the council will take account of the methods used, the price at which it has been marketed, and the nature of the response. Appendix A sets out the relevant length of marketing which must be demonstrated according to when an application for VBC is received and when the relevant building became vacant.

¹ The date on which the PPG VBC guidance was published

10. The following diagram demonstrates the proposed approach to determining whether a building is vacant or in-use for the purpose of determining eligibility for CIL relief and/or the VBC.

	CIL	VBC
In-Use Test: 'the building 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'	Eligible for CIL relief	Not eligible for VCB
Vacancy Test: 'the building has been in lawful use for a continuous period of fewer than six months within the period of three years ending on the day planning permission first permits the chargeable development'	Not eligible for CIL relief	Eligible for VBC (requires evidence vacant building(s) actively marketed for existing use for relevant period)

11. This approach will ensure that no development is able to benefit CIL relief, on the basis that a building is in-use, whilst simultaneously benefitting from the VBC, on the basis that the building is vacant. Furthermore, it is considered that the approach will moderate any immediate impacts of the VBC on the borough's affordable housing supply because it is unusual for buildings in Southwark to be vacant for extended periods prior to seeking planning permission for redevelopment.
12. It is further proposed that the council seek to amend its Development Plan to establish a local VBC exemption policy. Counsel advice, provided to the City of London Corporation and shared with London boroughs, stated that such a policy may be approved by the Secretary of State if there is sufficient evidence to demonstrate the following:
- There is little small scale development of the type that the Minister of State for Housing and Planning seeks to encourage in his policy statement of November 2014;
 - In Southwark there are very few vacant sites which it is not viable to redevelop if Affordable Housing contributions were payable on the entirety of the floorspace.
 - There is no need for the VBC in Southwark as a mechanism to 'kick start' development, as the Minister is keen to encourage.

- The effect of the VBC in Southwark is to significantly reduce the obligation to make affordable housing contributions. This undermines the aims of the council's Development Plan in relation to the provision of affordable housing and will have a significant negative impact on future affordable housing supply.
13. Proposals to amend the Local Development Scheme (LDS) and prepare to amend the Local Development Plan (the Core Strategy) are being considered by Councillor Mark Williams, Cabinet Member for Regeneration, Planning, and Transport. The council will work to implement a local exemption policy as a minor amendment to the Core Strategy in the quickest time-frame achievable. Assuming the council can produce evidence which supports a local exemption policy the council must consult on the proposed minor amendment alongside the supporting evidence. Any representations received will be reviewed prior to submitting the minor amendment to the Planning Inspectorate for examination. Depending on the availability of an inspector and a positive recommendation the council expects to adopt a local VBC exemption policy from January 2016.

Consultation

14. Amendments to the Core Strategy will be undertaken in accordance with the National Planning Practice Guidance and The Town and Country Planning (Local Planning) (England) Regulations 2012. The proposed amendments will be subject to a thorough consultation and all consultation responses will be reviewed by the council prior to examination by the Planning Inspectorate.

Community impact assessment

15. The amendment to the local plan will be subject to a sustainability appraisal incorporating a strategic environmental assessment to ensure that principles of sustainable development are thoroughly considered. The council will also undertake an equalities analysis if the impacts of the amendment are shown to have an impact on any protected strand through an equalities analysis scoping report.

Director of Legal Services

16. As the report outlines, the DCLG consulted in 2014 on the possibility of encouraging the development of brownfield sites. Following this, the Government announced in November 2014 the introduction of a scheme known as vacant building credit which requires local authorities to give developers a financial credit in the event that any vacant buildings are brought back into use.
17. The report refers to the possibility that vacant building credit might adversely affect affordable housing contributions. This is because the credit has been included within the Planning Practice Guidance issued on 28 November 2014 and, as such, is a material consideration which should be taken into account when determining any planning application.
18. The weight to be attached to these changes in national policy will be critical in dealing with future applications. It does seem that significant weight will need to be given to the vacant building credit policy and that existing development plan policies will as a result be undermined because they were adopted before the new policy came into force.

19. It is for this reason that the Council is proposing the approach to vacant building credit as set out in this report and this includes establishing a local exemption policy as explained at paragraphs 13 and 14 of the report
20. At this stage, Planning Committee is simply being asked to note the approach.

BACKGROUND DOCUMENTS

Background Papers	Held at	Contact
Planning Performance and Planning Contributions (June 2014)	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/295035/140320_Planning_Performance_and_Planning_Contributions_-_consultation.pdf	philip.waters@southwark.gov.uk
Planning Contributions (Section 106 obligations) planning response to consultation (November 2014)	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/381349/Planning_Contributions__Section106_planning_obligations_.pdf	philip.waters@southwark.gov.uk
Written ministerial statement by Brandon Lewis on support for small-scale developers, custom and self-builders (November 2014)	https://www.gov.uk/government/speeches/small-scale-developers	philip.waters@southwark.gov.uk
National Planning Practice Guidance - Planning obligations – Vacant Building Credit (December 2014)	http://planningguidance.planningportal.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/	philip.waters@southwark.gov.uk
Amendment to the Planning Practice Guidance – Affordable Housing Contributions and the Vacant Building Credit - Advice	On request	philip.waters@southwark.gov.uk

APPENDICES

No.	Title
Appendix A	Relevant length of marketing which must be demonstrated

AUDIT TRAIL

Lead Officer	Simon Bevan, Director of Planning	
Report Author	Philip Waters, Planning Policy Officer	
Version	Final	
Dated	19 February 2015	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
	Comments Sought	Comments Included
Director of Legal Services	Yes	Yes
Departmental Finance Manager	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	19 February 2015	