

Report of Director of City Development

Report to: Joint Plans Panel

Date: 30th November 2017

Subject: Vacant Building Credit

Are specific electoral wards affected? If yes, name(s) of ward(s):	☐ Yes x ☒ No
Are there implications for equality and diversity and cohesion and integration?	☐ Yes x ☒ No
Is the decision eligible for call-in?	☐ Yes ☐ No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	☐ Yes ☐ No

Summary of main issues

1. This report considers the vacant building credit (VBC) in relation to affordable housing, which has been introduced by national planning practice guidance (PPG). It also sets out the approach for Leeds in considering the VBC. The vacant building credit has a long history which has been the subject of a High Court challenge. Different Authorities have different approaches as to whether and how it be applied and how it is implemented, this report seeks to set out a consistent approach for Leeds.

Recommendations

Members are recommended to note the report.

1. Purpose of this report

- 1.1. The purpose of this report is to provide an update on the vacant building credit and to set out issues in relation to its implementation for Leeds. The report considers if the VBC should be applied in Leeds, in particular given that Leeds has an adopted Core Strategy which sets out its affordable housing requirement and makes recommendations as to how it should be applied.

1. Background information

- 1.1.1 The Core Strategy was adopted on 12th November 2014. Since that time on the 1 December 2014, the vacant building credit was introduced in a written ministerial statement. Subsequently on the 1st August 2015, the changes were reversed (as a result of the High Court challenge by West Berkshire and Reading Councils) and the PPG was amended. However, that decision was appealed and the VBC was reintroduced in May 2016 in PPG.

2. Main issues

- 2.1 The aim of the VBC is to promote development of brownfield sites to unlock genuine brownfield sites by providing an affordable housing credit. 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).
- 2.2 National guidance set out in Planning Practice Guidance provides limited advice on how the VBC should be applied. The PPG states, *'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. The vacant building credit applies where the building has not been abandoned. 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 is appropriate 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.'*
- 2.3 National guidance also states 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.

- 2.4 Local Authorities have applied different approaches to the VBC, some apply it to all applications where there is a vacant building on site and others do not apply it at all. There are a number of issues which affect the application of the VBC and its application in Leeds. Leeds has an adopted Core Strategy which requires affordable housing to be provided at appropriate levels. The PPG does not take primacy over the Development Plan but is a material consideration. The VBC was introduced to facilitate and to promote the reuse of genuine brownfield sites that would otherwise not be viable to develop and it is important to distinguish between those sites on which there happens to be some vacant buildings and others where an applicant would have brought the development forward in any event.
- 2.5 Whilst the criteria set out in paragraph 2.2 allow some assessment of the VBC, in addition any applications for the VBC will need to be assessed on a case by case basis, to ensure that only genuine cases are accepted. In Leeds, where it is clear that a site is to be or has been made vacant for logistical or other reasons then there shall be a presumption that VBC should not be allowed.
- 2.6 There is no definition of vacant within legislation or the PPG for the purposes of VBC. In the absence of a definition, it is proposed that it is appropriate to consider (and apply) the Community Infrastructure Levy (CIL) definition. The CIL regulations set out a 'vacancy test', and state that to be considered 'vacant' buildings must have not been in use for six continuous months out of the last three years.
- 2.7 There is also no link with the VBC to viability in the PPG which results in developers being able to apply for VBC irrespective of viability. If a development is not considered viable (either with or without VBC) then a viability appraisal can be submitted by an applicant in the usual manner and any reduction in affordable housing (or other policy) requirements can be adjusted according to the viability assessment .
- 2.8 It is considered that given the local circumstances in Leeds, that the VBC be assessed on a case by case basis. Applications must be assessed in accordance with the Local Plan unless material considerations dictate otherwise, VBC is but one material consideration which must be considered. Relevant policies in the Local Plan as well as the governments policy relating to VBC are material considerations which must be considered in their entirety. Where a development is not considered viable there is a need for applicants to demonstrate how VBC is needed in order to allow the development to come forward and as such, in Leeds, a viability appraisal is considered the most appropriate mechanism for doing this.

3. Corporate considerations

3.1 Consultation and engagement

- 3.1.1 This report is presented for information.

3.2 Equality and diversity / cohesion and integration

As part of the decision making process equality has been considered as an integral part of the process in particular consideration to the equality characteristics.

3.3 Council policies and best council plan

- 3.3.1 The effective and expedient determination of planning applications contributes to

the overall prosperity of the City and plays a key part in the regeneration and growth agenda.

3.4 Resources and value for money

3.4.1 There are no specific implications arising from this report.

3.5 Legal implications, access to information, and call-in

3.5.1 How and when Vacant Building Credit should be granted is set out in National Planning Practice Guidance. PPG is a material consideration when assessing planning applications however the Local Plan for Leeds takes primacy.

3.5.2 The purpose behind VBC is to facilitate the unlocking of genuine brownfield sites which, without VBC, would not be developed.

3.6 Risk management

3.6.1 PPG sets out national guidance and whilst this is a material consideration when assessing planning applications the Local Plan for Leeds takes primacy. Relevant policies in the Local Plan as well as government's policy are material considerations which must be considered in their entirety.

4. Conclusions

4.1.1 It is considered that the Local Plan as well as the VBC are material considerations which must be considered. The PPG does not take primacy over the Development Plan but is a material consideration. Where a development has a viability issue there is a need for applicants to demonstrate how VBC is needed to pursue development and as such a viability appraisal is considered the most appropriate mechanism. This will ensure that in Leeds the delivery of affordable housing is maximised in compliance with the Core Strategy whilst enabling genuine brownfield sites to be developed which, without VBC would not otherwise be possible.

5. Recommendations

5.1 Members are recommended to note the report.

6. Background documents¹

6.1 Planning Practise Guidance.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.