
**STATEMENT IN SUPPORT OF APPLYING VACANT BUILDING CREDIT IN RESPECT OF
APPLICATION FOR FULL PLANNING PERMISSION FOR THE CHANGE OF USE FROM
SOLICITOR'S OFFICE (CLASS E) TO MIXED OFFICE/RESIDENTIAL AT 11 MARKET PLACE,
SPALDING PE11 1SP**

1. This statement is made in support of applying Vacant Building Credit ('VBC') in respect of the accompanying planning application for full planning permission for the change of use of the former solicitor's office (Class E) to mixed office/residential use at 11 Market Place, Spalding PE11 1SP ('Property').
2. The Property is a Grade II listed building which fronts onto pedestrianised Market Place in Spalding town centre, which falls within Spalding Conservation Area. Market Place falls within designated Primary Shopping area for Spalding, and is also designated as Primary Shopping Frontage.
3. As set out in the Planning Statement, the Property is arranged over four floors at the front with significant two storey elements to the rear, and vehicle access from Drapers Place to the South of the Property. There's also a car park to the rear, with 16 marked out parking spaces.
4. The Property is currently vacant but was last occupied by Calthrops Solicitors. The proposal seeks to convert the building into 12 residential apartments with the commercial element located on the ground floor fronting Market Place. The proposal will not result in any new floorspace being created. The development if granted will secure an economically viable scheme to protect the long term condition of the Property as a listed building.
5. VBC was introduced by the Government through planning practice guidance that was published on 28 November 2014 to tackle the disproportionate burden of developer contributions on small-scale developers, custom and self-builders. The VBC policy was subsequently upheld by the Court Appeal in *R (on the application of West Berkshire District Council and Reading Borough Council) v Secretary of State for Communities and Local Government* [2016] EWCA CIV 441. The policy was not only re-introduced into the PPG but in July 2018 it was also included in the National Planning Policy Framework ('NPPF') reflecting the Government's clear intention to incentivise the development of Brownfield Sites.

6. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan unless material considerations state otherwise. The Court of Appeal in West Berkshire made it clear that neither the development plan (itself, of course, a policy) nor any other policy relevant to the matter in hand is to be applied rigidly or exclusively by the decision-maker. However, LJ Laws and LJ Treacy recognised at paragraph 20 of their judgement that a policy may overtake a development (outdated and superseded by more recent guidance).
7. Policy 18 of the South East Lincolnshire Local Plan provides that affordable housing need will be sought on market housing sites of 11 or more dwellings (or residential developments with an internal floor area of 1,000sqm. or more) with a requirement of about 25% being affordable housing on sites in South Holland.
8. Notwithstanding the fact that Policy 18 does not expressly refer to conversions, it is the Council's main policy for determining affordable housing requirements subject of course to viability and other material considerations.
9. The Council has published on its website the following statement in respect of Policy 18:-

'N.B AFFORDABLE HOUSING PROVISION ON HOUSING SITES – Policy 18 of the Local Plan indicates that affordable housing will be sought on "market housing site of 11 or more dwellings". Since this policy was finalised, the Government has published the National Planning Policy Framework (February 2019) (NPPF), and paragraph 63 of this document indicates that "provision of affordable housing should not be sought for residential developments that are not major developments...." Annex 2: Glossary of the NPPF indicates that, for housing, 'major development' is "development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more". These provisions of the NPPF are considered to be a significant material consideration which outweigh these particular provisions of Policy 18. Thus, affordable housing provision will be sought on market housing sites of 10 or more dwellings, sites with an area of 0.5 hectares or more, and residential developments with an internal floor area of 1,000sqm or more.'
10. The Council has accepted this as a material consideration of significant weight that outweighs policy 18 regardless of the merits of the application. By making this statement, the Council must therefore accept that applying policy 18 to minor developments would undermine National Planning Policy. This policy is now set out in paragraph 64 of the NPPF. That same paragraph of the NPPF also provides for VBC, which reflects the same political objective of supporting and incentivising the re-use of brownfield sites. Having adopted the approach it has, VBC should also be applied against policy 18 in the same way i.e. as a

material consideration of significant weight that outweighs policy 18. Paragraph 64 of the NPPF states as follows:-

*Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set a lower threshold of 5 units or fewer). 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** (our emphasis added)*

11. The VBC requirements are also set out in National Planning Practice Guidance (NPPG). The NPPG refers to National Policy incentivising 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, although in this case the development is not proposing any increase of existing floorspace.
12. The existing floorspace of a vacant building should be credited against the floorspace of new development. In this case the development involves the conversion of a vacant building with no overall increase in floorspace. As such, applying VBC and National Planning Policy, a 100% 'credit' should apply resulting in no requirement for affordable housing.
13. There are further points that are required to be addressed as set out in the NPPG. The first is that VBC does not apply to buildings that have been abandoned. The Property has not been abandoned.
14. The Property has been vacant since Calthorpe Solicitors ceased occupying it last year. There is no suggestion of any abandonment. The owner is seeking to secure an economically viable development that will secure the long term protection of the Property as a listed building.
15. The NPPG provides that it may be appropriate for authorities to consider:-
 - whether the building was made vacant for the sole purpose 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.

The Property was not made vacant for the purpose of re-development. The previous occupiers vacated the Property in order to relocate to a more suitable facility for their operational requirements. In relation to the second point, there are no extant or recently expired planning permissions for the same or substantially the same development.

16. Attached to this statement is Appeal decision APP/T4210/W/19/324597 dated 8 September 2020 ('**2020 Appeal**'). In the 2020 Appeal, the Inspector reached the view that even though there was a pressing for affordable housing, he still applied VBC. At paragraph 22 of his decision he states as follows:-

'Yet, it states in the Framework that any affordable housing contribution should be reduced by a proportionate amount (my emphasis). This seems clear to me that there is an acceptance that the level of affordable housing would be reduced where development involves re-use or redevelopment of vacant buildings on brownfield sites. I accept that paragraph 28 of the PPG provides supporting guidance, which gives the decision maker some limited discretion as to whether VBC applies. The Council has chosen to interpret this through application of the three criteria referred to earlier. It confirmed at the hearing that the appellant would not need to meet all three of those criteria in order for the building to be considered vacant. It is clear that one of those criteria is fulfilled. In relation to the other two, I am firmly of the view, in this instance, given the specific characteristics of the site and the existing planning permission on site, that they do not serve any practical purpose.'

The Inspector then goes on to state that VBC is not a blanket policy and it may not be applicable to all vacant buildings on brownfield sites. However, this has to be read in context because in the same sentence he refers to being satisfied that the building had not been made vacant solely for the purpose of redevelopment. Clearly, the Inspector was satisfied that because the criteria in National Planning Policy and Guidance were met (and the same applies here for the reasons set out in this statement) VBC should apply. The Inspector in his decision refers to the clear statement of National Policy to be applied by Councils within the wider application of the S.38 (6) balance.

In conclusion at paragraph 25 of his decision, the Inspector states as follows:-

'In not providing a policy compliant level of affordable housing the proposal would be contrary to the development plan as a whole. However, in this instance the Framework and PPG, which post-date the development plan and the Council's DCPGN and introduce the concept of VBC are a significant material consideration sufficient to

outweigh the conflict with the development plan whether or not policy H4/1 is up to date'

17. In conclusion:-

- There is a clear statement of national planning policy to be applied by councils within the wider application of the Section 38 (6) development plan balance.
- The Council considers that National Planning Policy not requiring the provision of affordable housing for residential developments that are not major developments is a material consideration of significant weight which outweighs policy 18 of the LP. The same approach should be taken in respect of VBC as this is also reflective of up to date national planning policy underpinned by the same planning and political objectives of supporting and incentivising the re-use of brownfield sites.
- Failing to apply VBC to this development would materially undermine the intention of national planning policy to incentivise development of brownfield sites. In this case the development will secure an economically viable scheme that will protect the long term condition of the building.
- The Property has not been abandoned nor has it been made vacant for the sole intention of re-development and the Property is not covered by an extant or recently expired planning permission for the same or substantially the same development.
- There is nothing in the NPPF or PPG which requires applicants to demonstrate that a proposed development would not be viable save for the application of VBC. This was also confirmed by the Inspector in the 2020 Appeal and the 2020 Appeal confirms that VBC is being applied by the Secretary of State regardless of whether there is a pressing need for affordable housing in the locality.

18. For the reasons set out in this statement VBC should be applied to this development and on this basis no affordable housing should be required in respect of this development.

December 2021

EMW LAW

SEEBECK HOUSE

SEEBECK PLACE

MK5 8FR

