

Worcester City Council, Wychavon District Council and Malvern Hills District Councils' formal position with respect to affordable housing and tariff style developer contributions following the re-introduction of the Written Ministerial Statement and changes to the National Planning Practice Guidance.

Tariff Style S106 Contributions

Background

The South Worcestershire Development Plan (SWDP) was adopted on 25th February 2016 and it included policies for seeking developer contributions towards infrastructure including affordable housing (Policy SWDP15). That policy requires affordable housing contributions from sites which include 1 dwelling or more, including conversions. The south Worcestershire councils (SWC) i.e. Worcester City, Malvern Hills and Wychavon also collect open space contributions (SWDP39) from developments of 5 or more dwellings and whilst these are related to specific projects, they are still considered to be tariff style planning obligations. Additionally, tariff style contributions can be sought on cycling (SWDP4), waste and recycling and education (SWDP7).

Written Ministerial Statement (WMS)

The Minister of State for Housing and Planning, Brandon Lewis MP issued a WMS on 28th November 2014¹ announcing that Local Authorities should not request affordable housing contributions on sites of 10 dwellings or less (and which have a maximum combined gross floor space of 1,000sq m), or 5 dwellings or less in designated protected rural areas. The National Planning Practice Guidance (NPPG) was updated accordingly.

Reading and West Berkshire Councils sought to challenge the WMS at the High Court (Case Ref 76.2015) and on 31st July 2015 Mr Justice Holgate found the WMS to be unlawful. The Government subsequently withdrew relevant commentary from the NPPG. The Examination of the SWDP continued and the Plan was adopted, with the assumption that the WMS was still unlawful and could not be implemented as national policy.

The Government challenged the High Court decision through the Court of Appeal which over turned Mr Holgate's decision on 11th May 2016 (Case Ref C1/2015/2559). Consequently the WMS was reinstated and on 19th May 2016 the NPPG was amended again to reflect that. Importantly the WMS was confirmed as Government policy, not simply guidance. In addition the Housing and Planning Act gained Royal Assent on May 12th 2016 and it gives power to the Government to make secondary legislation to achieve the same result – i.e. set minimum thresholds for affordable housing contributions.

¹ <http://www.parliament.uk/documents/commons-vote-office/November%202014/28%20Nov%202014/2.%20DCLG-SupportForSmallScaleDevelopersCustomAndSelf-Builders.pdf>

In accordance with the view of the Planning Inspectorate it is considered that the WMS is a material consideration. Therefore, it is **accepted** that the WMS applies as a significant material consideration in the determination of a planning applications which means that the SWC will not automatically require an affordable housing contribution for applications for 10 or less dwellings and less than 1,000sq m floor area where the site is not located in a Designated Rural Area.

The majority of the rural parts of Malvern Hills District and Wychavon District are Designated Rural Areas². Within these areas, the WMS and NPPG allows for a lower threshold to be applied and therefore, commuted sums, payable on completion of the development, will be sought from sites of 6-10 dwellings (viability evidence may still inform the level of contribution required).

Starter Homes

As set out in the Starter Homes WMS of 2nd March 2015, starter homes exception sites will not be required to make affordable housing or tariff-style section 106 contributions.

Applying the National Threshold

The SWC will now implement SWDP15 differently, to take into account the national threshold as set out in the WMS and the NPPG as well as the Designated Rural Areas. This means that the following affordable housing contributions will be sought (where sites have a total combined gross floorspace of 1,000 sq m or more, SWDP15 will be applied as written in the SWDP regardless of the number of dwellings provided):

- On sites of 15 or more dwellings on greenfield land, 40% of the units should be affordable and provided on site.
- On sites of 15 or more dwellings on brownfield land within Worcester City and Malvern Hills 30% of the units should be affordable and provided on site. On sites of 15 or more dwellings on brownfield land within Wychavon, 40% of the units should be affordable and provided on site.
- On sites of 11-14 dwellings, 30% of units should be affordable and provided on site.
- Within the Designated Rural Areas, on sites of 10 dwellings, a financial contribution towards the local affordable housing provision should be made, based on the cost of providing the equivalent in value to 30% of the units as affordable housing on site. The sum will be payable on completion of the development.
- Within the Designated Rural Areas, on sites of 6-9 dwellings, a financial contribution towards local affordable housing provision should be made, based on the cost of providing the equivalent in value to 20% of the units as affordable housing on site. The sum will be payable on completion of the development.
- Outside of the Designated Rural Areas, on sites of 10 dwellings or less, no affordable housing contributions will be sought.

² SI 2016 No.587, Housing, England, The Housing (Right to Buy) (Designated Rural Areas and Designated Regions) (England) Order 2016 http://www.legislation.gov.uk/uksi/2016/587/pdfs/uksi_20160587_en.pdf

- On sites of 5 dwellings or less, no affordable housing contribution will be sought across the whole of the plan area.

Similarly, tariff style developer contributions for open space, cycling, waste and recycling (where applicable) will continue to be sought on sites of 11 dwellings or more. Outside of the Designated Rural Areas, on sites of 10 dwellings or less, no tariff style developer contributions will be sought unless the gross floorspace exceeds 1,000sqm. Within the Designated Rural Areas, contributions will be sought on sites of 6-10 dwellings with the sum being payable on completion of the development.

Education contributions are currently only payable for sites of 35 units or more unless there is an exceptional need to increase places and then it is possible to seek contributions from schemes comprising of 11-34 units. Therefore, education contributions are unaffected by the changes to the NPPG.

Where sites of 10 dwellings or less exceed 1,000 sq m of gross floorspace, all relevant developer contributions will be sought in accordance with the SWDP. For outline applications, the local planning authority will require details of the total floorspace of dwellings to be submitted.

Implementation of the Vacant Building Credit (VBC)

The south Worcestershire councils will apply the VBC in accordance with the WMS dated 28th November 2015 and the NPPG. This means that where a site qualifies for the VBC, affordable housing contributions will only be sought on any additional floorspace created by the development. In applying the credit, the south Worcestershire councils will take into account the following:

Building

Applicants must be able to demonstrate that the floorspace is within a building and therefore, the following points will be considered:

- The building must not be ancillary to another continuing use, e.g. an attic, basement or a curtilage building within the grounds of a building which is not vacant would not be eligible for the credit.
- There may be an exception for commercial premises with separate entrances for separate floors in different uses and/or ownerships. The Government is supportive of the conversion of vacant floor space above shops and this is reflected in the SWDP policies. The VBC will be applied, where appropriate, to incentivise the re-use of these spaces.
- Evidence of vacancy of upper floors of commercial premises can sometimes be obtained from the Valuation Office Agency (VOA) website where space that is vacant will be zero rated for business rates calculation purposes. This evidence may be used to clarify whether or not the credit should be applied.
- The use should not be abandoned as per the NPPG.

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Vacant

The NPPG indicates that making a building vacant for the sole purpose of re-development is something a local planning authority should take into account for the purpose of calculating VBC. Therefore, the SWC will give consideration to the following points when determining whether or not an application is eligible for the credit:

- Where a building was vacant before VBC was introduced the credit would apply unless the use has been abandoned.
- Where a business has ceased trading then the credit would apply as the premises would not have been deliberately vacated for the sole purpose of facilitating redevelopment.
- Where there is evidence that occupiers of premises have been served notice to leave, or commercial property owners have decanted occupiers into other premises they control, then it is possible that the credit would not apply to the site. This is because the site would be considered to have been deliberately vacated for the purposes of redevelopment.
- There may be cases where parts of sites or buildings are vacant and other parts are not. In these cases careful consideration will be given to the calculation of the VBC and affordable housing contributions. The total size of the development should be used to determine if the threshold for requiring affordable housing contributions is triggered even if this means the affordable housing contribution is based on a number of units below the threshold. Please refer to the section below on calculating the VBC.
- The credit will not apply where the site has an extant or recently expired planning permission for the same, or substantially the same, development.
- Evidence will be sought to demonstrate eligibility for VBC. Where an applicant is asked to provide evidence to support a claim for VBC, the following evidence may be used to determine when a building was vacated (this list is intended to be indicative):
 - Evidence from the Valuation Office Agency that a premises has been deemed vacant and zero rated for business rate calculation purposes.
 - Written and signed confirmation from utilities providers that a building was vacated on a particular date.
 - Written confirmation from previous occupants and their solicitors as to when a building was vacated.
 - Evidence from South Worcestershire Revenues and Benefits that a building has been vacant.

Calculating the VBC

Where the VBC is applicable, it will be calculated as follows:

1. Calculate the proposed total gross floorspace for all dwelling units.
2. Calculate the floorspace of vacant buildings eligible for the credit.
3. Calculate the vacant floorspace as a percentage of the total gross floorspace
4. Apply the remaining percentage to the total number of dwellings on site to establish the number of dwellings against which policy SWDP15 should be applied.

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5. Apply policy SWDP15 to establish the affordable housing requirement.

Where the resulting calculation is not a whole number of dwellings, the fraction of a dwelling should be provided as a financial contribution. For example, if the requirement was for 5.6 dwellings, 5 units should be provided on-site and the remaining 0.6 as a financial contribution.

Example

Within Worcester City, an application on a brownfield site for 25 dwellings with a total gross floor space of 2,225 sq m and a VBC of 900 sq m

$$900/2225 \times 100 = 40.44\%$$

The VBC is therefore 40.44% and the remaining percentage of 59.66% is applied to the total number of dwellings on site (i.e. 25) to establish the number of dwellings that affordable housing contributions should be sought against, i.e.

$$59.66\% \times 25 = 14.9 \text{ dwellings}$$

Apply policy SWDP15 to 14.9 dwellings.

$$30\% \text{ of } 14.9 = 4.47 \text{ dwellings}$$

Therefore, the SWCs would seek four units to be provided on-site and a financial contribution equivalent to 0.47 (47%) of the cost of providing an affordable dwelling.