

**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 publication of National Planning Policy Framework 2019**

(June 2019)

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 6 or more dwellings and whilst these are often 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).

The NPPF is a material planning consideration and the 2019 version post dates the adoption of SWDP and the south Worcestershire Affordable Housing SPD. This note explains how the 3 south Worcestershire councils will apply the changes to the above policies until they are superseded by policies adopted through the SWDP Review. In the meantime the note may be updated further e.g. to accommodate any subsequent changes to national policy.

National Planning Policy Framework (Feb 2019)

The NPPF states that:

“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 out 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.

Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups. Exemptions to this 10% requirement should also be made where the site or proposed development:

- a) provides solely for Build to Rent homes;*
- b) provides specialist accommodation for a group of people with specific needs (such as purpose-built accommodation for the elderly or students);*

c) is proposed to be developed by people who wish to build or commission their own homes; or

d) is exclusively for affordable housing, an entry-level exception site or a rural exception site. "

The NPPF defines major developments for housing development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more.

Applying the National Threshold

The following changes will not apply to planning applications that have been reported to and deferred by Planning Committee or are awaiting the signing of a S106 Agreement. They may also not apply to applications that are so far through the application determination process that the Council agrees it would be difficult to raise the issue at this stage.

The majority of the rural parts of Malvern Hills District and Wychavon District are Designated Rural Areas¹. Within these areas, the NPPF and NPPG allows for policies to set out a lower threshold of 5 units or fewer. Therefore in these areas policy SWDP15B will be applied in its entirety (viability evidence may still inform the level of contribution required). The SWC will now implement SWDP15 differently, to take into account the national threshold as set out in the NPPF 2019 as well as the Designated Rural Areas. This means that the following affordable housing contributions will be sought:

- 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 10-14 dwellings, 30% of units should be affordable and provided on site.
- Within the Designated Rural Areas or for sites of 0.5ha or more:
 - on sites of 5 -9 dwellings, 20% of units should be affordable and provided on site.
 - On sites of less than 5 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 contribution will be payable on the commencement of development.
- Outside of the Designated Rural Areas, on sites of 9 dwellings or less and where the site area is less than 0.5ha, no affordable housing contributions will be sought.

¹ 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

- In accordance with the NPPF, 10% of the homes on major sites² will need to be for affordable home ownership products and these will count towards the affordable housing provision. A worked example is set out below:

Example: for a scheme of 200 dwellings:

- 10% should be available for affordable home ownership
 - 10% of 200 = 20 dwellings;
- 40% affordable dwellings
 - 40% of 200 = 80 dwellings;
- Calculate how many of the affordable dwellings should be available for rent
 - 80 affordable dwellings in total minus 20 dwellings available for affordable home ownership equals the number of affordable dwellings for rent
 - $80 - 20 = 60$ affordable housing for rent
- Therefore 20 dwellings should be available for affordable ownership with the remaining 60 as affordable dwellings for rent.

Tariff style developer contributions for open space, cycling, waste and recycling (where applicable) will continue to be sought on development, subject to pooling restrictions.

In accordance with Worcestershire County Council's Education Planning Obligations Table of Charges³, where larger developments are proposed and there is a requirement for at least half a form of entry⁴, or where the development site has been identified on the CIL Regulation 123 List, an educational contribution via a S106 agreement will be sought and developers are advised to contact Worcestershire County Council at the earliest opportunity to discuss the size of the expected developer contribution.

Education contributions between 11 and 35 dwellings will only be required where there is an exceptional need to increase capacity in the related schools. It is anticipated that most exceptional cases will be in rural settlements or where an accumulation of smaller scale developments will put pressure on local school places. This will be assessed on a case by case basis, with relevant evidence provided to the local planning authority.

A contribution will not be required from sites of 10 dwellings or fewer as it is anticipated that the impact on education infrastructure will be low and pooling restrictions curtail the usage of S106 contributions to mitigate the cumulative impact of multiple small sites.

Therefore, education contributions are unaffected by the changes to the NPPF.

² Major development: For housing, development where 10 or more homes will be provided, or the site has an area of 0.5ha or more (NPPF Glossary)

³ http://www.worcestershire.gov.uk/downloads/file/6848/table_of_charges_document_2018_to_2019

⁴ Half a form of entry is equivalent to 15 pupils per year group

Implementation of the Vacant Building Credit (VBC)

In accordance with paragraph 63 of the NPPF affordable housing contributions will only be sought on any additional floorspace created by 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 NPPF and NPPG.

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. Use SWDP15 to calculate the amount of affordable housing that would be required from the development if no Vacant Building Credit were applied
2. Calculate the proposed total gross floorspace for all dwelling units.
3. Calculate the floorspace of vacant buildings eligible for the credit.
4. Calculate 'proposed total gross floorspace for all new dwellings' minus 'floorspace of vacant buildings eligible for the credit'; i.e. (2) – (3)
5. Divide the answer calculated in (4) by the amount of proposed floorspace; i.e. (4)/(2);
6. Multiply the number of affordable dwellings (calculated in (1) above) by the answer calculated in (5) above; i.e. (1) x (5), to give the number of affordable dwellings required on the site after taking into account the VBC.

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 is for 5.6 dwellings, then 5 units should be provided on-site and the remaining 0.6 of a dwelling paid as a financial contribution.

Example

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

For a brownfield site of 25 units in Worcester City 30% of the dwellings should be affordable.

1. 30% of 25 dwellings = 7.5 affordable dwellings
2. The proposed total gross floorspace for all new dwellings units is 2225sqm
3. The floorspace of vacant buildings eligible for the credit is 900sqm
4. $2225 - 900 = 1325$
5. $1325/2225 = 0.6$
6. $7.5 \times 0.6 = 4.5$

Therefore, 4 affordable dwellings to be provided on site and a financial contribution paid equivalent to 0.5 dwelling.

Date 19 June 2019