

1. Introduction

- 1.1. This statement accompanies a planning application to convert the former C2 premise to C3 permanent housing.
- 1.2. The application seeks to convert the empty building and deliver it as permanent housing, which is the priority land use in all levels of policy.

2. Site and Surrounds

- 2.1. Dene Holm is located in a residential area of Northfleet, a mile and a half's distance from Gravesend town centre with local amenities a short walk away. The building is constructed over two floors, and has a brick finish with concrete tile roof
- 2.2. The site has good transport links, with a bus stop directly outside. Residential properties abut the site to the north and west,

3. The Proposal

- 3.1. A fuller description of the proposal is provided within the Design and Access Statement, and need not be repeated here. The scheme seeks to deliver 23 flatted dwellings within the existing building envelope.

4. Policy

- 4.1. The Development Plan (September 2014) policy relevant to affordable housing is CS16, which was drafted and adopted before the existence of Vacant Building Credit.
- 4.2. The NPPF at para 65 states:
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
- 4.3. The footnote relevant to this sentence states:

Equivalent to the existing gross floorspace of the existing buildings. This does not apply to vacant buildings which have been abandoned.

National Planning Practice Guidance: The NPPG

- 4.4. Paragraph: 026 Reference ID: 23b-026-20190315 of NPPG states that '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.' This reference in NPPG specifically cross-references paragraph 63 of the NPPF 2019.
- 4.5. Paragraph: 027 Reference ID: 23b-027-20190315 of NPPG states that '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. This will apply in calculating either the number of affordable housing units to be provided within the development or where an equivalent financial contribution is being provided.
- 4.6. The existing floorspace of a vacant building should be credited against the floorspace of the new development. For example, where a building with a gross floorspace of 8,000 square metre building is demolished as part of a proposed development with a gross floorspace of 10,000 square metres, any affordable housing contribution should be a fifth of what would normally be sought.
- 4.7. Paragraph: 028 Reference ID: 23b-028-20190315 states that: -

"The vacant building credit applies where the building has not been abandoned.

The courts have held that, in deciding whether a use has been abandoned, account should be taken of all relevant circumstances, such as:

the condition of the property

the period of non-use

whether there is an intervening use; and

any evidence regarding the owner's intention Each case is matter for the collecting authority to judge.

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 may be appropriate for authorities 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”.

5. COMMENTARY ON THE RELEVANCE TO THIS APPLICATION

- 5.1. It is settled judicial authority that Central government policy is clearly capable of being taken into account as a material consideration in development control, in discharging the duty required by S70 of the Town and Country Planning Act. The SOS policies filter through to local planning authorities both through the forward planning system and through development control.
- 5.2. Furthermore, the provisions of the Development Plan may become outdated as national policy changes, or particular Development Plan policies may no longer meet current needs, or other changes may have occurred which make the particular provisions of the Development Plan less relevant – particularly so in this case where the Development Plan is a decade old. In such circumstances, other material considerations, such as more recent national policies, may assume greater importance and indicate that the application for planning permission should be approved ((see the comments of Lord Hope of Craighead in *City of Edinburgh v Secretary of State for Scotland* [1997] 1 W.L.R. 1447 at 1450B-E))

- 5.3. It is accepted that the NPPG is not formally binding on a local planning authority, but it is a material consideration that must be weighed in the balance when discharging their determinative duty pursuant to S70 of the 1990 Act. It must also be taken into account by the Secretary of State on appeal from their decision or on a called-in application, and the interpretation and application of the policy (although not its merits, nor the merits of the application) is liable to be reviewed in the courts.
- 5.4. In this instance, the NPPF 2023 is clear that in order “*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.*” The only proviso set out in NPPF 2023 is that the buildings should not have been made deliberately vacant.
- 5.5. NPPG advice is somewhat more detailed. It refers at paragraph 26 to the incentive offered to developers to bring vacant buildings or sites back into use, by offering a financial credit equivalent to the existing gross floorspace of the relevant vacant buildings when the local planning authority calculates any affordable housing contribution. Paragraph 27 expands on this and provides clarification as to how the credit should be calculated and how it relates to the starting point of what the relevant Local Plan may seek for affordable housing.
- 5.6. In determining whether to permit VBC to be claimed local planning authorities should have regard to *the intention of national policy*. It is undoubtedly the primary thrust of policy to encourage brownfield development and bring sites back into productive use. The application of VBC in this case will have that desired objective. Paragraph 28 of NPPG also provides details of what matters local planning authorities might consider in determining whether to permit VBC to apply in order to incentivise development. The first is whether the building has been made deliberately vacant for the sole purposes of re-development.
- 5.7. In relation to the first point (as per NPPG) the Applicant is clear from all of the information in the public domain that the motivation leading to the buildings on site being vacated were not the consequence of property speculation, but the closure of the nursing home after the adverse findings of the Care Quality Commission were published in early 2022.

The Applicant's interest in the site only came about fully 18 months after the homes closing.

- 5.8. The second point in NPPG that local planning authorities may wish to take into account in determining whether to apply VBC is "*Whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development*". As a statement of fact, there is no other recently expired permission for the same or substantially the same development. Accordingly, the second 'exclusion' contained in NPPG does not apply either and in the Applicants' view, VBC must therefore be concluded to apply.
- 5.9. The NPPG that the Government does not wish contributions to be sought in cases such as this, and the SOS recorded in the Court of Appeal that the policy should be attributed *very considerable weight*.
- 5.10. NPPF 2023 is clear that the Development Plan should be the starting point in the determination of planning applications and appeals. The scheme is compliant with the Development Plan and the only area where it departs from the Development Plan is in relation to the quantum of affordable housing.
- 5.11. However, Policy CS16 is silent on the question of VBC. It does not recognise it. This is hardly surprising because the Core Strategy (which includes CS16) was adopted in September 2014, and the Written Ministerial Statement introducing VBC was dated 28 November 2014 (copy attached at Appendix 9). What this means however is that Policy CS16 cannot be up-to-date and therefore the determination in relation to the delivery of affordable housing must be based on NPPF 2023 and NPPG. These are supportive of the fact that the application site is eligible for VBC and accordingly we would respectfully request that this policy be applied to the scheme.
- 5.12. One of the tests in CIL Regulation 122 is that the obligation is necessary to make the development acceptable in planning terms. To be acceptable in planning terms, a planning application must be determined in accordance with the development plan

unless material considerations indicate otherwise. Government policy is one such material consideration, and its applicability here is irrefutable.

6. Conclusion

6.1. Making the balancing exercise required by S70 of the 1990 Act the benefits of this development (which are not contested) are its contribution to the supply of housing generally in Gravesham and its contribution to the regeneration of the host building.

6.2. The proposal meets the identified requirements for VBC in National Planning Practice Guidance (NPPG). The buildings are vacant, but have not been abandoned. There is no recent planning permission in place for the same or a similar development without VBC.

6.3. It is considered that the proposal accords with the Development Plan, is a sustainable development and in accordance with the National Planning Policy Framework. In particular, the Proposed Development is considered to offer the following benefits:

- A development which optimise the potential of the site providing 23 residential units, contributing to meeting the housing needs of the borough;
- The provision of high quality residential units, which meet National Technical standards and provide high levels of amenity for the proposed occupants; and

6.4. For all of the above reasons, the Application should be permitted.