

# SHEFFIELD CITY COUNCIL PLANNING APPLICATION OFFICER REPORT

**APPLICATION:** 16/04679/OUT

**PROPOSAL:** Application to remove requirement for provision of affordable housing (Application under Section 73 to remove condition 22 (Affordable housing provision) from planning permission 16/01169/OUT)

**ADDRESS:** Site Of Oughtibridge Mill Sheffield Site  
22 - 24 Main Road  
Wharncliffe Side  
Sheffield  
S35 0DN

## INTRODUCTION

The application relates to the site of Oughtibridge Mill, a former paper mill that lies on the eastern side of Main Road/Langsett Road North (A6102).

Members may recall that outline planning permission was conditionally approved in October 2016 for the demolition of the site's existing buildings and structures and the development of the site for residential use (Use Class C3). The permission was granted subject to thirty nine conditions, one of these conditions (No. 22) secured the delivery of affordable housing equivalent to 10% of the gross internal floor area of the total number of dwellings. The full wording of the condition reads as follows:-

*Save for any Advance Infrastructure and Enabling Works approved pursuant to Condition 5, no development shall begin until a scheme for the provision of affordable housing (as defined in Annex 2 of the National Planning Policy Framework (or any revocation or modification thereof in force from time to time)) which equates to 10% of the total number of dwellings gross internal floor area to be provided by the development has been submitted to and approved in writing by the Local Planning Authority. The scheme may provide for the provision of the affordable housing on a phase by phase basis. The development (and each phase thereof) shall be carried out in accordance with the approved scheme.*

Oughtibridge Mill is located in both the administrative boundaries of Barnsley MBC and Sheffield CC. On account of this, discussions between the two authorities took place in advance of the outline application being submitted in order to establish the procedural matters relating to the cross boundary nature of the site. It was agreed between the two authorities that the decision making authority in respect of the application (and all subsequent applications for the approval of reserved matters, S73 applications, NMAs and applications to discharge conditions) be delegated to Sheffield CC. Despite the largest part of the site being within Barnsley, the site's location along Langsett Road North adjoining the two settlements of Wharncliffe Side and Oughtibridge, and its remoteness from the main built up areas of Barnsley,

would mean that it will function and draw mainly if not entirely upon the services located in Sheffield and not Barnsley.

## LOCATION AND PROPOSAL

The Oughtibridge Mill site is located relatively equidistant between Wharncliffe Side to its north and Oughtibridge to its south. The site covers an area of approximately 13.79 hectares and is bisected by the River Don. The land to the south and west of the River Don is located within the administrative boundary of Sheffield City Council, and is designated a General Industry Area (without Special Industries), whilst the land to the north and east of the River Don is located within the administrative boundary of Barnsley MBC. The land located within Barnsley's area is designated as Green Belt.

The application site sits on the valley floor with the main area of the site either side of the river being relatively flat ranging from 90m (AOD) to 102m (AOD). This is in contrast to the steep valley sides and undulating sloping landform.

The application comprises previously developed land including a number of existing buildings and structures that include traditional 19<sup>th</sup> C stone buildings fronting onto Langsett Road North, a large 20<sup>th</sup> C warehouse shed, in addition to areas of cleared land, hardstandings and metalled roads. Building heights vary from two storey buildings fronting Langsett Road North, to the site's much higher warehouse buildings, which are up to 13m in height. Details submitted at the outline stage state that the site's remaining buildings provide in excess of 32,000 square metres of floorspace and have an overall mass of 215,000 cubic metres. The majority of the site's buildings and structures including the large warehouse building is located on the northern side of the River Don within the administrative area of Barnsley MBC. The level of existing buildings within the administrative boundary of Sheffield are minimal by comparison.

Planning approval is being sought to remove Condition No. 22 (Delivery of affordable Housing). The removal of the condition is being sought through a Section 73 application.

## RELEVANT PLANNING HISTORY

16/01169/OUT - Demolition of existing buildings and structures and erection of residential development (Use Class C3) with means of site access including a new vehicular bridge and a pedestrian/cycle bridge across the River Don, and associated landscaping and infrastructure works (As amended by drawings received on the 11 and 16 August 2016) – 28 October 2016

16/01676/FUL - Erection of a new pedestrian/cycle bridge over River Don onto Langsett Road North (As amended by drawings received on the 17 November 2016 and 1 December 2016) – 5 December 2016

16/01677/FUL – Erection of a vehicular bridge over River Don – 18 October 2016

## SUMMARY OF REPRESENTATIONS

A number of representations have been received in response to the application. These include objection letters from Barnsley MBC, Bradfield Parish Council, Loxley Valley Protection Society and Campaign for the Protection of Rural England (CPRE). Objection letters have also been received from three local residents. A summary of all the representations are listed below:-

#### Barnsley Metropolitan Borough Council (BMBC)

Barnsley Metropolitan Borough Council has raised an objection to the proposal based upon the following summary of reasons:-

- A development of such considerable magnitude and value should be expected to make a contribution towards the affordable housing needs of the Authority in accordance with the aims and requirements of national and local planning policies.
- Sheffield City Council's adopted CIL & Planning Obligations Supplementary Planning Document (October 2015) has determined that a developer contribution equivalent to 10% of gross internal floor area is viable on the majority of sites in the Rural Upper Don Valley AHMA, in which the application site is located. At the time of the outline application being submitted, and as outlined in the supporting planning statement at Paragraph 8.10, the applicant had agreed to provide a commuted sum equivalent to 10% on-site provision. This suggests that this level of provision is not a hindrance on the viability of the development. Conversely the application may be regarded as being speculative and opportunistic.
- It is questionable whether the Vacant Building Credit (VBC) outweighs objectively affordable housing needs taking into account of the findings of appeal decisions APP/K3605/W/16/3146699 and APP/Q1445/W/16/3147419.
- If VBC were to be applied on all eligible sites regardless of other policy objectives allowing the application would set a precedent that could be used by applicants elsewhere in many former industrial areas of the north, including Barnsley to diminish the number of affordable homes that could be delivered through new development.

#### Campaign for the Protection of Rural England (CPRE)

Sheffield City Council (SCC) agreed with CPRE's submission at the outline application stage that the site was abandoned at the time of the application, and that therefore the application was not eligible for Vacant Building Credit (VBC). The applicant's agents Nathaniel Lichfield & Partners (NLP) assert that there is no evidence of its abandonment, and that a continued industrial use would have been entirely possible. However, the Capita press release announcing the sale of the site, dated 3<sup>rd</sup> March 2015, states:-

'The 110 acre (45ha) site includes 350,000 sq ft of former industrial buildings, and a number of development and residential opportunities within the sale. [Capita's review] has included decommissioning the former mill, and demolition of a section of the industrial complex which had become unsafe. Production of paper at the mill ceased in 2007.'

CPRE consider that it is abundantly clear that at the time of the site's sale, not only was it effectively abandoned as a usable complex of buildings, but that the purchase was made with the express purpose of marketing the site for residential redevelopment. With this in mind, we are no doubt that SCC's assessment was correct: that the site was abandoned, and therefore not eligible for VBC.

In the event that the scheme was deemed eligible for VBC, it is inevitable that any new residential development, unless at extremely high densities, would have a significantly lower built footprint than the entire complex of previous buildings, and that the calculation would therefore result in the affordable housing requirement being reduced to zero. However, as the scheme is not eligible for VBC, the affordable requirement remains.

Even if the scheme were eligible for VBC, it is at SCC's discretion to determine the weight of this as a material consideration. NLP seeks to argue, using appeal decision APP/D0840/W/16/3142537, that the applicability of VBC is quite a separate issue from the Core Strategy Policy CS40 to deliver affordable housing. However, the important point here is that the purpose of VBC and Policy CS40 are entirely different. CS40, along with the 2014 Interim Planning Guidance, exist in order to secure the delivery of affordable housing, and it is routine that this policy is implemented by use of a S106 planning obligation. A planning obligation is used to make an otherwise unacceptable development acceptable in planning policy terms. By contrast, VBC is an incentive to make the implementation of an acceptable planning permission more financially attractive to the developer. Therefore, if SCC had considered the scheme to eligible for VBC, they would then have had to weigh up whether the re-use of the brownfield site is an acceptable planning outcome in and of itself, if affordable housing were not provided.

In our view, one of the most significant factors in assessing the weight to be attributed to affordable housing is the rate of affordable provision being achieved through the pattern of planning permissions within the housing market area. This rate is in fact painfully low, and is reflected in the fact that the adopted CS40 target of 30-40% across Sheffield has been subsequently reduced to 10%, despite no reduction in levels of need, on the pragmatic basis that it had more likelihood of being delivered. NLP asserts:

'It is certainly not the case... that SCC is so heavily reliant on the re-use of brownfield sites for the delivery of affordable housing that affordable housing policies should be attributed greater weight than the application of VBC in this case.' This assertion masks four fundamental issues:-

1. SCC is heavily reliant on every site for the delivery of affordable housing, and becomes more heavily reliant on each site every time a developer secures planning permission with a below-target affordable contribution;
2. Oughtibridge Mill is one of the largest development sites in the Upper Don Valley, and therefore to develop it without securing a meaningful affordable contribution would disproportionately undermine overall affordable delivery in the area;
3. The applicant had already indicated that a 10% affordable housing provision would be viable for the development, and in SCC's view this adds weight to their conclusion that developing the site without the affordable contribution would be unacceptable in planning terms;

4. Accepting that the site's eligibility for VBC is a matter of some judgement, whereas the need to deliver affordable housing is objective fact, allowing the application of VBC to produce a planning outcome that is, on balance, unacceptable, would be a poor decision.

Therefore, in CPRE's view, SCC took an entirely correct and appropriate approach to assessing both the eligibility for VBC and the weight that this should carry compared to the need to deliver affordable housing.

Finally, we must turn to the S106 Agreement and the conditions imposed on 16/01169/OUT. NLP states that:

"The outline planning permission was granted on 28<sup>th</sup> October 2016 following the completion of the associated Section 106 Agreement." Therefore, in law, at that point the applicant had agreed to fulfil the conditions imposed upon them by the permission. This is starkly at odds with their assertion that Condition 22 should never have been imposed in the first place. Planning Practice Guidance ID 23b -008-20140306 states: "Applicants do not have to agree to a proposed planning obligation. However, this may lead to a refusal of planning permission or non-determination of the application. An appeal may be made against the non-determination or refusal of planning permission."

It is clear, then, that by signing the S106 Agreement the applicant has already accepted Condition 22. If they did not consider it to have been correctly imposed then they should not have signed the agreement; and if this had resulted in a refusal of the application then they should have appealed or re-applied. By seeking to challenge the condition almost immediately upon granting of the permission the applicant is, in our opinion, attempting to subvert the planning process, and this undermines the trust that local communities place in the local planning authority to make decisions in good faith.

Loxley Valley Protection Society (LVPS)

LVPS objects to the application for the following reasons:-

- LVPS considers that the system for the provision of affordable housing in this country is, to all intents and purposes, "broken", while planning law states it is for the developer to provide for this, this is what should be happening.
- The outline application was submitted with a commitment to provide 10% affordable housing in line with Core Strategy Policy CS40. Given that the application was submitted prior to the reinstatement of the VBC in PPG on the 19th May 2016, it should be taken from this that the development at Oughtibridge Mill is not one where VBC would be applicable.
- The idea that developers can agree to the provision of affordable which is later conditioned in the decision to grant the application, and then after granting apply to have that condition removed places the Council and general public in a completely untenable position.
- In order to qualify for VBC, the site would need to be deemed vacant and not abandoned. In this case, due to both the economic situation pertaining and

flooding, the then owners of Oughtibridge Mill decided to halt production. The Council was engaged in a “call for sites” and this site was put forward. Based on those factors, any reasonable person would feel the factory had been abandoned as a place of production by the company running it and the most likely scenario of it being put forward in the call for sites would be to develop the site for housing (As in the Wednesbury Principle of reasonableness).

- If developers are consistently going to agree to affordable housing provision then withdraw it on the granting of permission, local authorities will find it impossible to grant permission under these circumstances, due to the breach in trust between LPA and developer.

Bradfield Parish Council

Bradfield Parish Council recommends that the application be refused.

Three representations have been received from residents of neighbouring properties. Their comments are summarised as follows: -

- Support the development of this brownfield site with the inclusion of affordable housing. The only reason for the developer to renege on their commitment to provide affordable housing is greed;
- The need for affordable housing increases year on year, which should be supported at every level;
- This is a large proposed housing development that will have a significant impact on neighbouring villages. There is no reason why affordable housing should not be provided;
- Young people born and bred in Sheffield are unable to find starter homes.
- The housing site will provide considerable profit to the developers;
- Villagers need a range of property types to maintain a sustainable diversity not just properties for commuters who often have no interest in being part of village life and contributing to the community.

## PLANNING ASSESSMENT

A condition of granting outline planning permission to develop the site for housing in October 2016 was the delivery of affordable housing equivalent to 10% of total number of dwellings gross internal floor area. The condition (No. 22) was attached in line with Core Strategy Policy CS40, which states that in all parts of the city, developers of all new housing developments will be required to contribute towards the provision of affordable housing where this is practicable and financially viable. The applicant did not submit any evidence to show that an affordable housing contribution would make the scheme financially unviable. As such, the Council's development plan requires them to make the contribution in full.

Government policy on planning conditions and obligations is contained at Paragraphs 203-206 (inclusive) of the NPPF. Paragraph 203 states that Local Planning Authorities should consider whether otherwise unacceptable development could be

made acceptable through the use of conditions or planning obligations. Paragraph 204 sets out the three tests of a planning obligation, i) necessary to make the development acceptable in planning terms, ii) directly related to the development, and iii) fairly and reasonably related in scale and kind to the development.

The implementation of Core Strategy Policy CS40 is through the CIL & Planning Obligations Supplementary Planning Document (SPD, October 2015). Guideline GAH1 of the SPD sets out that financial contributions will be required from housing developments on sites with a capacity for 15 or more dwellings. Guideline GAH2 sets the required developer contributions for each of the city's 12 Affordable Housing Market Areas (AHMAs). In the Rural Upper Don Valley AHMA, where the site of Oughtibridge Mill is located, it has been shown that a developer contribution equivalent to 10% of gross internal floor area is viable on the majority of sites, and is therefore the requirement for this part of the city. The SPD at Guideline GAH3 sets out circumstances where the Council may accept a commuted sum in lieu of an on-site contribution, for instance, where significantly more affordable housing of a high quality could be provided in the local area through off-site provision. In general, the Council's preference is for developers to provide an off-site contribution towards the delivery of affordable housing in the city as this approach allows a greater number of affordable housing units than with on-site provision.

The applicant agreed to the attachment of this condition in order to receive outline planning permission, this however was despite their view that the requirement to provide affordable housing in connection with the development should not be sought following the reintroduction of the Vacant Building Credit (VBC) in the Government's Planning Practice Guidance (PPG) in May 2016, following the Court of Appeal decision to overturn the High Court decision to quash the Written Ministerial Statement (WMS) that introduced such. This occurred 5 months before the application was determined. Officers disagreed with the applicant's position in this regard and this was supported by Members. Without the condition, officers contend that the application would have been refused for the failure to deliver affordable housing contrary to the provisions of Core Strategy Policy CS40, the CIL and Planning Obligations SPD, and government guidance contained in the National Planning Policy Framework (NPPF).

The application has been accompanied by a supporting letter from the applicant's agent (NLP), a letter from Walton & Co Solicitors and an appeal decision (APP/D0840/W/16/3142537). The applicant details in their supporting submissions that in their opinion, the site is eligible for VBC, which the Council should have applied in respect of the outline planning permission and as such, the condition seeking the delivery of affordable housing should not have been attached. The applicant contends that if VBC was applied to the site no affordable housing would be required since the proposed floorspace of the development would be less than that of the existing buildings on the site. The applicant contends that VBC is not subject to viability testing, a view that is supported by the appeal decision submitted, and that there is no basis on which to conclude that the industrial use has been abandoned to disqualify the site from the application of VBC. In terms of the supporting appeal decision, a mixed use scheme of both housing and retail, the Planning Inspector concluded that the appeal proposal would be eligible for the Vacant Building Credit and that the viability of the scheme in relation to affordable housing is not, a determining factor in this case.

For Members' information, Vacant Building Credit (VBC) was introduced as Government policy via a Written Ministerial Statement (WMS) titled '*Support for small scale developers, custom and self-builders*' in November 2014. The Government Minister introduced this statement by saying "*I would like to update hon. Members on the action that the Coalition Government has taken to free up the planning system and the further new measures we are now implementing to support small scale developers and hard-working people get the home they want by reducing disproportionate burdens on developer contributions.*" This followed a consultation on a series of measures intended to tackle the disproportionate burden of developer contributions on small scale developers, custom and self-builders. Amongst other measures the policy stated that vacant buildings brought back into use, or demolished for redevelopment, should benefit from a 'credit' equivalent to the floorspace of the vacant building to be offset against affordable housing contributions (unless they had been abandoned). The WMS concluded by stating "*We expect the implementation of these measures to have a significant positive impact on housing numbers by unlocking small scale development and boosting the attractiveness of brownfield sites. This will provide real incentive for small builders and to people looking to build their own home.*" It is the view of officers that the intention of the new policy was clearly to support small scale developers and incentivise the development of brownfield sites.

Following a successful legal challenge in July 2015 against the WMS the Government removed all reference to the VBC from the PPG. This remained the case until the Court of Appeal overturned the earlier decision of the High Court in May 2016, and as a result the Government's policy on VBC was reinstated as lawful. Contrary to submissions made by the applicant, the Council did make their decision in accordance with government policy that existed at the time of the decision (not that which existed at the time of the application). Government policy on VBC was treated as a material consideration when determining the outline planning application in October 2016. However, for reasons that will be repeated later in this report it was felt that the policy should not apply to this scheme.

Planning guidance regarding VBC is contained in Planning Practice Guidance – Planning Obligations (PPG) Paragraphs 021, 022 and 023. VBC is an important material consideration, to which weight must be given in the determination of the application. The guidance states that: '*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.*'

It details that 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. The guidance advises that VBC would not be applicable to development proposals where the building has been abandoned, or in instances where the building has been made vacant for the sole purpose of redevelopment.

When considering the merits of the outline planning permission and the imposition of Condition No. 22, officers were of the opinion that in the first instance VBC is not applicable with regard to the development of the site and secondly, that even if it

was, the weight that should be attached to the Council's policies in respect of the delivery of affordable housing should be given greater weight than the weight afforded to the Government policy. Having regard to all the supporting information and examining a number of recent planning appeal decisions (including the appeal decision accompanying the application), officers' position as set in the planning officer's report to committee remains unchanged and officers consider that the condition seeking the delivery of affordable housing should remain. The reasons for this view are discussed in detail below: -

Vacant Building Credit should not be applied to this site

#### Intention

The application of VBC to this, and any, site is at the decision maker's discretion. It does not form part of the Council's development plan but is an important material consideration that must be taken into account when decisions are made. The Court of Appeal was very clear when handing down its judgment in May 2016 that the Government policies set out in the WMS should not be applied in blanket fashion (the position that many authorities, including Sheffield, believed was the case when it was first introduced in 2014). It is for the Council to consider every case on its merits before deciding (i) whether or not the policy should apply; and if so (ii) how much weight it should be afforded in the planning balance.

The PPG very clearly states '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.' It is the view of officers that VBC should not be applied to this site because it is not required to incentivise development as per the intention of the PPG. In support of this position, officers give significant weight to the fact that the outline application was submitted with a commitment to pay the full 10% affordable housing contribution. The applicant made no attempt to claim viability issues in order to reduce the required contribution. It is accepted that national policy changed during the course of the application (and, as has been stated, the Council determined the application in accordance with the policy that existed at the time of the decision) however officers are of the view that it was significant that the application was submitted when there was no policy on VBC evidencing that it wasn't needed to incentivise the development of this brownfield site. To clarify this point, while it is clear from the officer's report that the decision was made in full knowledge of VBC following its reinstatement in May 2016, which significant weight was given, it is material in officers' opinion that the viability of the development with a 10% affordable housing contribution was never questioned by the applicant at any stage of the application. Officers would surmise from this that the development of this site is not one where an incentive through a financial credit is warranted. In their supporting argument, the applicant has detailed that VBC would comprise an extremely limited incentive if its only effect was to make schemes viable, citing that such mechanisms are provided elsewhere under Paragraph 173 of the NPPF. Officers consider that the viability of a scheme runs at the heart of pursuing sustainable development, and despite the applicant's view that it cannot be the only incentive of VBC, it is nevertheless the key component in most instances in the deliverability of a site and ensuring competitive returns to the developer.

As detailed above, the planning guidance relating to VBC at Paragraph 023 states that when considering how the vacant building credit should apply to a particular development, LPAs should have regard to the intention of national policy. Officers therefore contend that the policy does not apply with regard to bringing this brownfield site forward for development. The policy is worded clearly to incentivise the reuse of brownfield sites, for example where the likely costs of bringing forward the site, including the obligation to provide affordable housing, would otherwise render it unviable, which is not the case with the redevelopment of this site. Importantly, officers also assert that the policy is not relevant with regard to the development at Oughtibridge Mill, a site over 13.7 hectares, which would provide some 320 homes. As stated previously the WMS that led to the introduction of VBC in Planning Practice Guidance clearly stated its intention was to help support small scale developers by reducing disproportionate burdens on developer contributions. Officers would therefore contend that the intention of the policy is to lift the financial burden of small scale developers, custom and self-builders in order to bring brownfield sites forward for redevelopment and is not therefore applicable or representative of major housing sites such as the redevelopment of Oughtibridge Mill.

In terms of viability, the required developer contributions towards affordable housing are set out in Guideline GAH2 of the Council's CIL & Planning Obligations SPD (October 2015). This Guideline divides the city into 12 Affordable Housing Market Areas, which have required contributions of either 0%, 10% or 30%. These contributions were set based on the analysis of four main sources of evidence:

- Strategic Housing Market Assessment – need
- Strategic Housing Land Availability Assessment (2013) – land availability
- BNP Paribas Affordable Housing Viability Study (2009) – viability
- BNP Paribas CIL Viability Study (2013) – viability

As a result of this work, where a 10% or 30% contribution is expected, these should be viable on most sites in the area. The Council therefore expects developers to provide the full contribution, unless an independent viability appraisal deems that the contribution renders the scheme unviable. The site is located within an area where 10% affordable housing is considered to be viable.

It is of note that the average house price in Sheffield in Quarter 3 of 2016 was £152,730, compared to an average of £209,637 in the Rural Upper Don Valley AHMA. The average across all of the six AHMAs which require a 10% affordable housing target was £147,653. This suggests that development values for new housing on the site will be significantly higher when compared to many areas of Sheffield indicating that a 10% contribution would be viable.

It is noted that the Oughtibridge Mill site was bought by ASE II Developments in October 2015 for £7.4m, to be brought forward by CEG. Companies House records the nature of ASE II Developments' business as 'development of building projects.' At the time of purchase, the VBC had been removed from national guidance following the Court of Appeal's decision. On this basis, the Council asserts that the purchase was made in full knowledge that developing this site would require compliance with the Council's development plan policy for affordable housing, and with the intention of undertaking a building project as per the company's stated business. This, officers

would suggest, is further evidence that VBC was not necessary to incentivise the development of this site and as such, as per national guidance, should not apply.

Further to this, NLP on behalf of CEG made submissions to Barnsley MBC in respect of their Local Plan consultation in December 2015. The submission promoted this site for residential development, and requested its removal from the Green Belt. In their submissions they stated that their indicative scheme was “considered to be fully deliverable in the short term and would likely generate considerable interest from house builders, with whom CEG would enter into partnership with, in order to bring the site forward for development.” This document concludes by stating “CEG, on behalf of the ASE who own the site, are committed to bringing forward a residential redevelopment of the wider site at the earliest opportunity”. This clearly supports the Council’s view that the development of this site is viable and deliverable without the application of VBC and that VBC is clearly not needed to incentivise the development of this site.

Following ASE II’s purchase of the site, a representative from CEG is reported in the media as saying ‘This is one of the prime housing development opportunities in Yorkshire. The riverside and woodland setting at the gateway to the Peak District is unrivalled and CEG looks forward to unveiling a new high quality residential-led proposal which will benefit the scenic Oughtibridge village.’ Again, this was during the period in which the WMS had been quashed and any application would be expected to provide 10% affordable housing. Further evidencing therefore that VBC was not needed to incentivise the development of this brownfield site.

It is also of interest that the applicant’s own agent (NLP) provided advice on their website with regard to the interpretation of the WMS. They write that ‘Our view is that the judgement explains that a ‘blanket approach’ to these policies/ PPG paragraphs (or any government planning policy or guidance) is not correct, and that the weight to attach to the PPG’s approach to small sites not having to make s106 affordable housing contributions, and to VBC, would be for the decision-taker to decide. In this respect, where LPAs’ development plan policies are supported by up-to-date evidence, they will be able to continue to seek affordable housing in relation to small sites. And as regards VBC, an LPA might demonstrate, for example, that the credit should not be applied because the LPA’s housing requirement is heavily reliant on the re-use of brownfield sites for the delivery of affordable housing.’ Officers agree with this statement, particularly given that Sheffield does rely heavily on the re-use of brownfield sites to deliver both general needs and affordable housing with the most up-to-date figures showing that 94.7% of all new houses citywide are being delivered on brownfield sites.

At the time of the outline application being submitted, and as outlined in the applicant’s supporting planning statement at Paragraph 8.10, the applicant had agreed to provide a commuted sum equivalent to 10% on-site provision, which would be secured through a S.106 legal agreement, an approach supported by the Council’s Housing and Neighbourhood Regeneration Team. Based on estimated sales values for properties in this AHMA, the contribution would likely be in the order of £5million. This £5m would be incorporated in the Council’s Stock Increase Programme and matched against c. £7m of borrowing to deliver approximately 100 homes, assuming average purchase and repair costs of £120,000 and an average Affordable Rent of approximately £100/week. 100 homes is a significant proportion (roughly 14%) of Sheffield’s annual affordable housing shortfall.

## Abandonment

The WMS clearly states that the policy on VBC will not apply to vacant buildings which have been abandoned. This is repeated in the PPG which states that 'The vacant building credit applies where the building has not been abandoned.'

The applicant states that the Oughtibridge Mill site is subject to ongoing management and has not been abandoned with the site's existing buildings substantially vacant for some time for commercial reasons. They contend that the site was vacated for commercial reasons, and not for the sole purpose of development (which would also be a reason why VBC would not apply if that were the case).

In terms of whether the buildings have been abandoned, unfortunately the PPG offers no definition on this, and there have been no court cases or guidance issued specific to abandonment in the context of VBC that officers are aware of from which a definitive view can be drawn upon. However, case law does exist that helps give guidance on how abandonment should be considered generally when determining planning applications. Of particular relevance to this matter is the case of *Hartley v Minister of Housing & Local Government* [1970] 1QB 413. The approach of the Court in that case was to ask whether the use has "not merely been suspended for a short and determined period but has ceased with no intention to resume it." If you consider the applicant's response to Barnsley MBC's consultation the evidence suggests that the site had been abandoned in this context. Statements in support of this view were; (i) The site ceased manufacturing operations in 2007 and due to the economic viability of the site, has ceased all level of operations in early 2015. It is clear that over a period of time the site has become redundant and not viable for its previous industrial use; (ii) Importantly, the agents acting on behalf of SCA have advised that the marketing exercise did not elicit any serious interest from parties wishing to acquire the site for continued employment use. Future use of the entirety of the site for employment use is therefore not considered to be a realistic prospect; and (iii) CEG, on behalf of the ASE who own the site, are committed to bringing forward a residential redevelopment of the wider site (incorporating land within Sheffield) at the earliest opportunity. In addition the purchase price of the site at £7.4m would strongly suggest that the clear intention for the site was its redevelopment for housing. Notwithstanding the relatively short period of time that may be considered to have elapsed, on the basis of the above it would appear that the use of the site had ceased and there was no intention to resume it. As such it could be claimed that the use of these buildings have been abandoned and as such VBC would not be applicable.

**Affordable Housing** –The weight attributed to the Council's policy for the delivery of affordable housing and weight attributed to guidance contained in Planning Practice Guidance (PPG) following the reinstatement of the WMS

It is accepted that it is for the Council to decide on the weight that should be afforded to national policy and the guidance contained in the PPG. Both the National Planning Policy Framework (NPPF, paragraphs 17 and 111) and the Sheffield Plan Core Strategy (Policy CS24) promote the effective use of land by prioritising the development of previously developed (brownfield) land in the first instance. Over the period 2004/5 to 2014/15, 94.7% of housing completions were on previously

developed land. For the current 5-year supply of housing land (sites available from 2015/16 to 2020/21), 88% is on previously developed land. This illustrates the importance of previously developed land for Sheffield in order to meet the city's identified housing need. If VBC were to be applied on all brownfield sites that contain existing buildings regardless of other policy objectives, this would considerably diminish the number of affordable homes that could be delivered through new development.

As Members will be aware, Sheffield has a significant need for affordable housing, which is currently not being met. The 2013 Strategic Housing Market Assessment (SHMA) identified the backlog of existing need and projected arising need from newly forming households over the period 2013-2018. The assessment then compared this figure with the projected supply from planned new build programmes and through lettings within existing affordable housing stock. The SHMA arrived at a projected annual shortfall of 725 affordable homes. This equates to a shortfall of 3,625 affordable homes for that 5 year period. The shortfall figure of 725/year is therefore not the total need, but the number of affordable homes that would need to be delivered solely through the Affordable Housing planning policy if the city's Affordable Housing needs are to be met. To give this some context, in March 2016 there were in excess of 39,000 households with an application on the Council's rehousing register, of which between 4000 and 5000 were actively bidding for social housing. This further demonstrates the scale of need for affordable housing in Sheffield.

The applicant considers that Sheffield's SHMA is out of date and does not accord with Paragraph 158 of the NPPF. The Council does not accept that its SHMA is out of date as contended by the applicant. The SHMA was published in November 2013, and being only 3 years old, is still considered to be current for these purposes. The approach to estimating housing needs, outlined in chapter 6 of the assessment, follows DCLG's practice guidance.

The applicant has also previously stated that of Sheffield's twelve affordable housing market areas, the location of the application site (within the Rural Upper Don Valley Affordable Housing Market Area) is shown in the 2013 SHMA to have one of the lowest annual shortfalls in affordable housing (two units).

The applicant has misinterpreted the Council's CIL & Planning Obligations SPD in basing its position on the shortfall of affordable housing in the Rural Upper Don Valley Affordable Housing Market Area. The Council's approach is to consider the need for affordable housing delivery on a citywide basis (as opposed to setting required developer contributions based partly on viability in different market areas), and therefore it is not considered to be relevant that the AHMA where the site is located contains one of the lowest annual shortfalls in affordable housing.

If the Council were only to take full contributions towards AH from greenfield sites (or brownfield sites that have been cleared) then this would have a significant effect on its ability to meet the identified AH need. On this basis, officers' view is that with regard to the development of this site, officers consider that the weight given to the development plan policy for the delivery of affordable housing should carry more weight than the Government policy for VBC. As previously referred to, this site could deliver up to 14% of the Council's annual need and given the challenges of securing affordable housing on other sites this is a material consideration of significant weight.

In this regard officers also suggest that the weight afforded to the WMS should be reduced given the questionable nature of whether it is needed to incentivise this development (therefore taking account of 'the intention of national policy') and the lack of viability evidence submitted by the applicant that could support their position.

## **Relevant Appeals**

Since the granting of outline permission, several appeal decisions have demonstrated that it is for the decision maker to determine what weight to give to the reinstated national policy and what weight to give to the development plan and how these competing interests should be balanced against one another. For Members benefit it should be noted that the WMS introduced two main policies relevant to affordable housing; (i) Vacant Building Credit (which is the subject of this application); and (ii) a small sites threshold whereby developments of 10 units or less (or no more than 1,000m<sup>2</sup>) should not seek AH contributions. All of the appeal decisions that officers are aware of relate to the small sites threshold rather than VBC however it is felt that they are still helpful to the consideration of this application.

Each case is fact specific but it is clear that many Inspectors are supporting Local Planning Authorities' views that their own affordable housing policy requirement should outweigh Government policy contained in the reinstated WMS. Contrary to the position advanced by the applicant many of these decisions also clearly show that the viability of a scheme is a factor that Inspectors have taken account of when considering the planning merits of developments that seek to remove their affordable housing contribution. Brief details of a small selection these appeal cases are as follows:

APP/K3605/W/16/3146699 – 18 July 2016

In this case, the Inspector dismissed an appeal involving the erection of a single dwelling in Surrey, deciding that the WMS dealing with affordable housing provision did not outweigh the Council's Core Strategy. The Council's policy required a financial contribution towards the provision of off-site affordable housing for developments of between one and four dwellings. The appellant argued that this was overridden by the Court of Appeal judgment which reinstated the WMS and Government policy. In ruling in favour of the Council, the Inspector decided that the Council's policy was generally consistent with paragraphs 47 and 50 of the NPPF which required local planning authorities to meet the objectively assessed affordable housing need. In addition, house prices within the borough were considerably in excess of both the regional and national average. There was a serious problem with the affordability of housing and since a large number of planning applications in the borough involved small schemes, the financial contributions raised were significant in supporting the delivery of affordable housing. While the WMS carried significant weight the need for a financial contribution had been justified by the Council.

APP/W0530/W/16/3142834 – 22 September 2016

This appeal related to 8 dwellings in Cambridgeshire, which had been refused partly due to the lack of affordable housing provision. The Inspector noted that the incorporation of the WMS into the PPG was a material consideration, but that the WMS needed to be addressed alongside local policy. The evidence of affordable housing need was deemed to be substantial, and the Inspector attached significant

weight to this. The Inspector also had regard to the appellant's lack of evidence to show that affordable housing provision would render the development unviable.

APP/L5810/W/16/3155064 – 18 November 2016

An appeal regarding a single penthouse flat in a built-up area of Middlesex was refused for its lack of contribution to affordable housing. Although the Inspector gave weight to national policy, greater weight was given to the evidence of affordable housing need, and adopted local policy. The Council's policy required developments of less than 10 units to provide a financial contribution to an affordable housing fund in direct contrast to the more recent national policy. The Inspector referred to the national policy and guidance but also noted that small sites made a significant contribution to affordable housing supply. In addition, completion rates from larger sites were low meaning that the Council was heavily reliant on small sites to meet its high local affordable housing need. The Inspector also referred to the lack of viability evidence to show that the development could not proceed with the contribution included. In conclusion, the Inspector afforded greater weight to the need for the contribution in accordance with the development plan.

APP/Q1445/W/16/3147419 – 4 January 2017

In this appeal, the Inspector noted that there was a conflict between the Council's threshold for delivering affordable housing, and that in the WMS and PPG. The Council's case noted the number of households on the housing register; high housing costs in the local area; that small sites make up 50% of completions; and that the Council's policy was supported by a viability appraisal. The Inspector concluded that in light of these facts, the national policy did not outweigh the Council's development plan. In addition, the Inspector noted that the appellant did not indicate that the contribution would negatively affect the scheme's viability.

For completeness it should be noted that there are also appeal decisions whereby Inspectors have found that the Government policy can outweigh a Council's development plan. Each case is fact specific but the reason for highlighting a selection of appeals that support local policy over national policy is to give Members comfort that a decision to go against Government policy can be reasonable in certain circumstances.

It is clear from these recent appeal cases that vacant building credit should not be applied by default in all cases but instead a decision maker must use its discretion. Whilst it forms a material consideration, which significant weight must be given in the determination of the application, it is just one consideration to be set alongside others including policies in the adopted development plan.

## SUMMARY AND RECOMMENDATION

The application relates to Oughtibridge Mill, a 13.7 hectare brownfield site that is situated between the settlements of Wharncliffe Side and Oughtibridge. Outline planning permission was granted in October 2016 to develop the site for housing subject to 39 conditions, one of these conditions (No. 22) being the delivery of affordable housing equivalent to 10% of total number of dwellings gross internal floor area.

The applicant is seeking approval to remove Condition No. 22 of the outline planning permission and remove the requirement to make a contribution towards the Council's delivery of affordable housing. In support of the application, the applicant contends that following the reintroduction of the VBC in Planning Practice Guidance (PPG) in May 2016, the development of this site should not include any requirement to make provision for affordable housing. The applicant has stated that they consider that the development should benefit from VBC and as a result, given the amount of gross floorspace of the existing buildings that would be demolished as part of the development exceeding the gross floorspace of the proposed new houses, no contribution towards the delivery of affordable housing should be required.

The applicant contends that national policy and the guidance contained in PPG is a significant material consideration, to which greater weight should be afforded than that which should be attributed to the delivery of affordable housing pursuant to Core Strategy Policy CS40. The applicant also contends that VBC is not subject to viability testing, providing evidence of this in a recent appeal decision where an Inspector concluded that it was not relevant to the application of VBC, this was despite accepting there was a quantitative need for affording housing.

Despite the applicant's position, officers hold the view that VBC is not applicable in respect of the application. As stated at Paragraph 023 of PPG, the purpose of the VBC is to incentivise the development of brownfield land, including empty and redundant buildings with the policy implying that it is intended for brownfield sites which need an incentive to come forward for development. The WMS itself also indicates an intention to support small scale developments rather than large schemes such as this. The evidence presented by the Council shows that VBC was not needed to incentivise the development of this site and the PPG is clear that, in considering how VBC should apply to a particular development, local planning authorities should have regard to the intention of national policy. To reiterate; the outline application was submitted with a commitment by the applicant to provide 10% affordable housing (through a commuted sum) in line with Core Strategy Policy CS40 and the CIL and Planning Obligations SPD. Officers consider that the development of Oughtibridge Mill is not one where a VBC should be applicable since the site had already come forward for re-development without any financial incentive through VBC. It is the view of officers therefore that this application for VBC does not accord with the intention of the Government policy on such and therefore the policy should not apply in this instance.

In this case, the requirement for VBC to enable the delivery of this brownfield site has not been justified, with officers placing greater weight on the delivery of affordable housing pursuant to Core Strategy Policy CS40. The application was submitted on the basis that a policy compliant affordable housing contribution would be required and no effort has ever been made to demonstrate viability issues. For the applicant to now attempt to benefit from VBC in respect of this site, when a commitment of 10% affordable housing (through a commuted sum) had been given is considered to be at odds with the clear policy intentions of VBC and its reinstatement in Planning Practice Guidance. On the basis that the development of the site would be financially viable without the financial incentive of VBC and the Council's policy position of CS40 in terms of the delivery of affordable housing where viable, it is considered reasonable that a contribution is made.

It should also be noted that the outline planning permission does not specify a maximum permitted floorspace. Whilst it is accepted that the existing onsite buildings are significant, it is not certain that a scheme could not be delivered on this site that had a floorspace in excess of the current levels. Notwithstanding officers' overall views on this application, on this basis it could be considered premature to agree to waive an affordable housing requirement at this stage.

In light of the case presented by officers above, it is recommended that Members refuse this application.