

# DEVELOPING BROWNFIELD LAND

**FACT SHEET**  
**Property Team**

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# Making the most of Vacant Building and Community Infrastructure Levy credits

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Following the decision in the Court of Appeal on the 'West Berkshire' case, National Planning Practice Guidance has reintroduced an incentive for brownfield development on sites containing vacant buildings.

The incentive says that where a vacant building is brought back into lawful use, or replaced by a new building, the developer should be offered a vacant building credit (VBC) on its affordable housing contribution, calculated on the existing floorspace of the vacant buildings.

VBC applies where the use of the building has not been abandoned. There is some discretion to the application of the VBC. Local planning authorities need to consider national policy in relation to brownfield sites. In particular, they should look at whether the building has been made vacant for the sole purposes 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 VBC should not be confused with the restriction on tariff-style section 106 contributions. While the restriction on those contributions does not apply to rural exception sites, there is no such restriction on the use of the VBC, although that position is disputed by some local planning authorities.

## CIL – credit for 'in-use buildings'

Existing 'in-use buildings' act as a credit, or offset, on the 'chargeable development' Community Infrastructure Levy (CIL). Each square metre of existing buildings on the site reduces the CIL by one square metre.

While the CIL regulations define the credit as applying to 'in-use buildings', buildings meet this definition if they are:

1. *Present on the day that planning permission first permits the development.*
2. *Contain a part that has been in lawful use for a continuous period of at least six months within the period of three years ending before the planning permission first permits the chargeable development.*

The day planning permission first permits the chargeable development is the day the last reserved matter is approved, unless the applicant and local authority agree to defer until pre-commencement conditions are discharged.

## Using both credits

There are no restrictions on using both VBC and the CIL credits, but developers need to be careful: VBC may be denied if the buildings are in use, or have been made vacant for the purposes of redevelopment and also if the use has been abandoned.

When applying for CIL credit, there is a relatively strict timescale, particularly if you consider the amount of time required to prepare, obtain and implement a large outline planning application.

In cases our team has advised on, the VBC has tended to be significantly greater than the CIL credit, but it will depend on the circumstances of each case. Developers are advised to consider both credits carefully and plan their development accordingly.

## How we can help

Our specialist planning team fully understands the intricacies of planning across diverse sectors, including agriculture, leisure, retail and mining. And we provide it with a personable but professional approach and a dedication to your specific objectives.

As a fully engaged partner in your scheme, we can provide tailored insights on everything from VBC and CIL applications, to Section 106 agreements, enforcements, judicial reviews, strategic planning and more.

Our planning solicitors are highly ranked by Chambers' Guide to the Legal Profession and have extensive experience advising clients on all aspects of planning.

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