

PART A	
Report of: DEVELOPMENT MANAGEMENT SECTION HEAD	
Date of Committee	4th June 2015
Site address:	Mecca Bingo, 19, King Street
Reference Number:	15/00417/FULM
Description of Development:	Retention of existing façade to King Street, demolition of remaining building to rear and erection of a part 4 storey, part 3 storey building to provide a ground floor Class A1/A2 unit and 25 flats with 13 parking spaces (duplicate of ref. 14/01574/FULM without the provision for affordable housing).
Applicant:	Héronslea Group
Date received:	19th March 2015
13 week date(major):	18th June 2015
Ward:	Central

SUMMARY

This application is a duplicate of application reference 14/01574/FULM which was granted planning permission on 12th March 2015. This permission included the provision of 4 shared ownership affordable housing units, a reduction on the normal policy requirement of 9 units for a scheme of this size, which was agreed following the submission of a viability appraisal. It was also subject to a Section 106 agreement to secure financial contributions towards infrastructure and community facilities and to exclude the development from the local controlled parking zone. The only difference with the current application is that the applicant is arguing that a “vacant building credit”, as announced by

the Government on 28th November 2014 and further clarified on 25th March 2015, be applied to the scheme, thereby removing any need for the provision of affordable housing.

At the time of the determination of the previous application, the Development Management Section Head was of the opinion that vacant building credit was not appropriate to apply to applications in Watford and the reasons for this were explained in detail in the report to committee. Following the updating of the guidance on vacant building credit in the Planning Practice Guidance by the Government on 25th March 2015, the Development Management Section Head remains of the opinion that vacant building credit should not be applied to this application. As such, the application should provide 4 units of affordable housing as previously agreed for application reference 14/01574/FULM.

The Development Management Section Head therefore recommends that planning permission be refused, as set out in the report.

BACKGROUND

Site and surroundings

The site is located on the southern side of King Street at the junction with Granville Road. It is roughly rectangular in shape with a site area of 0.10 hectare. It is currently occupied by the Mecca Bingo building, which has recently closed. The building is locally listed and was originally constructed in 1913 as a cinema. In the 1930s the existing Art Deco façade was installed as part of a comprehensive refurbishment of the building. The site is also located within the High Street/King Street Conservation Area. This encompasses the commercial buildings fronting King Street and High Street and the adjoining residential roads of Granville Road, The Crescent, Smith Street and Cambridge Road.

Proposed development

The application proposes the retention of the existing Art Deco façade on King Street, the demolition of the remainder of the building and the erection of a part 4 storey, part 3 storey building attached to the rear. The ground floor of the retained frontage is to be used for

Class A1 (shops) or Class A2 (financial and professional services) purposes with the upper floors converted into 6 flats (2 on each floor). The new building will comprise 19 flats to give a total of 25 flats in the scheme. The 4 storey element will include an undercroft parking area for 13 cars and a communal bin store. A small communal amenity area and a cycle store are also proposed.

This application is a duplicate of application reference 14/01574/FULM which was granted planning permission on 12th March 2015. This permission included the provision of 4 shared ownership affordable housing units, a reduction on the normal policy requirement of 9 units for a scheme of this size, which was agreed following the submission of a viability appraisal. It was also subject to a Section 106 agreement to secure financial contributions towards infrastructure and community facilities and to exclude the development from the local controlled parking zone. The only difference with the current application is that the applicant is arguing that a “vacant building credit”, as announced by the Government on 28th November 2014 and further clarified on 25th March 2015, be applied to the scheme, thereby removing any need for the provision of affordable housing.

Planning history

The building was constructed in 1913 as Watford’s first large cinema and it opened in December 1913 as the Central Hall Cinema. It was refaced in its current Art Deco style in the 1930s as part of a comprehensive renovation. It ceased use as a cinema in 1968 and subsequently became a bingo hall. This use has now also ceased and the building is vacant.

The High Street/King Street Conservation Area was designated in 2006. This included the application property as a Locally Listed Building. In April 2013 the building was made the subject of an Article 4 Direction to restrict permitted development rights relating to the painting of the exterior of the building.

14/01574/FULM - planning permission granted on 12th March 2015 for the retention of existing façade to King Street, demolition of remaining building to rear and erection of a

part 4 storey, part 3 storey building to provide a ground floor Class A1/A2 unit and 25 flats with 13 parking spaces.

Relevant policies

National Planning Policy Framework

- Section 1 Building a strong, competitive economy
- Section 2 Ensuring the vitality of town centres
- Section 4 Promoting sustainable transport
- Section 6 Delivering a wide choice of high quality homes
- Section 7 Requiring good design
- Section 10 Meeting the challenge of climate change, flooding and coastal change
- Section 12 Conserving and enhancing the historic environment

Hertfordshire Waste Core Strategy and Development Management Policies Document 2011-2026

- 1 Strategy for the Provision for Waste Management Facilities
- 1a Presumption in Favour of Sustainable Development
- 2 Waste Prevention and Reduction
- 12 Sustainable Design, Construction and Demolition

Hertfordshire Minerals Local Plan Review 2002-2016

No relevant policies.

Watford Local Plan Part 1 - Core Strategy 2006-31

- WBC1 Presumption in favour of sustainable development
- SS1 Spatial Strategy
- SPA1 Town Centre
- SD1 Sustainable Design
- SD2 Water and Wastewater
- SD3 Climate Change
- SD4 Waste

TLC1	Retail and Commercial Leisure Development
HS1	Housing Supply and Residential Site Selection
HS2	Housing Mix
HS3	Affordable Housing
T2	Location of New Development
T3	Improving Accessibility
T4	Transport Assessments
T5	Providing New Infrastructure
INF1	Infrastructure Delivery and Planning Obligations
UD1	Delivering High Quality Design
UD2	Built Heritage Conservation

Watford District Plan 2000

SE7	Waste Storage and Recycling in New Development
SE27	Flood Prevention
SE39	Tree and Hedgerow Provision in New Development
T10	Cycle Parking Standards
T21	Access and Servicing
T22	Car Parking Standards
T24	Residential Development
T26	Car Free Residential Development
S7	Secondary Retail Frontage
L8	Open Space Provision in Housing Development
L9	Children's Playspace
U15	Buildings of Local Interest
U18	Design in Conservation Areas
U20	Demolition in Conservation Areas
U24	Shopfronts

Supplementary Planning Guidance and Supplementary Planning Documents

Locally Listed Buildings in Watford (2010)

Watford Character of Area Study (2011)

High Street/King Street Conservation Area Character Appraisal (2013)

Shopfront Design Guide (2013)

Residential Design Guide (2014)

CONSULTATIONS

Neighbour consultations

Letters were sent to 47 properties in King Street, Granville Road, The Crescent and Smith Street. No replies have been received.

Advertisements in local paper/ site notices

A public notice was published in the Watford Observer on 27th March 2015. Two site notices were placed outside the site on 7th April 2015, one on each road frontage.

Consultations

Thames Water

With regard to surface water drainage it is the responsibility of a developer to make proper provision for drainage to ground, water courses or a suitable sewer. In respect of surface water it is recommended that the applicant should ensure that storm flows are attenuated or regulated into the receiving public network through on or off site storage. When it is proposed to connect to a combined public sewer, the site drainage should be separate and combined at the final manhole nearest the boundary. Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer Services will be required.

Thames Water would advise that with regard to sewerage infrastructure capacity we would not have any objection to the above planning application.

No impact piling shall take place until a piling method statement (detailing the type of

piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority in consultation with Thames Water. Any piling must be undertaken in accordance with the terms of the approved piling method statement. Reason: The proposed works will be in close proximity to underground sewerage utility infrastructure. Piling has the potential to impact on local underground sewerage utility infrastructure.

Hertfordshire County Council (Highway Authority)

The Highway Authority does not wish to restrict the grant of permission subject to the following conditions:

1. Prior to the commencement of demolition works details of the method of washing of vehicle wheels exiting the site shall be submitted to and approved in writing by the Local Planning Authority in conjunction with the Highway Authority and the agreed method shall be operated at all times during the period of site works.
2. The development shall not begin until details of the disposal of surface water from the drives and parking areas have been submitted to and approved in writing by the Local Planning Authority in conjunction with the Highway Authority. No dwelling shall be occupied until the works for the disposal of surface water have been constructed in accordance with the approved details.
3. The development shall not begin until details of the layout and construction of the access to The Crescent have been submitted to and approved in writing by the Local Planning Authority in conjunction with the Highway Authority. The development shall not be brought into use until the accesses have been laid out and constructed in accordance with the approved details.

4. All materials and equipment to be used during the construction shall be stored within the curtilage of the site unless otherwise agreed in writing by the Highway Authority prior to commencement of the development.

5. Prior to the commencement of the site works details of on-site parking for all contractors, sub-contractors, visitors and delivery vehicles shall be approved in writing by the Local Planning Authority in conjunction with the Highway Authority and that area shall be maintained available for use at all times during the period of site works.

Informative:

If there are any gates for the proposed entrance, the entrance gates shall be set back a minimum of 6.0m or at least 5.5m from the edge of carriageway/back of footway and shall open inwards into the site.

Access and parking:

The parking and access arrangements as shown on drawing title "Landscape Plan" are acceptable. There is sufficient turning space and vehicles will be able to enter and leave the site in a forward gear. The LPA as Parking Authority will determine the appropriate level of parking for the proposed, however, the Highway Authority considers the proposed level of parking should prevent any overspill onto the surrounding highway network. The existing on street parking restrictions will prevent any overspill onto the surrounding highway network.

Hertfordshire County Council (Development Services)

No comments received.

Hertfordshire Constabulary (Crime Prevention Design Advisor)

Detailed comments have been made, not all of which are planning matters. Comments can be summarised as follows:

Secured by Design part 2 physical security

To alleviate my concerns regarding security for the proposed development, I would look for the development to be built to the physical security of Secured by Design part 2, which is the police approved minimum security standard. National sustained research proves that Secured by Design housing developments suffer at least 50% less burglary, 25% less vehicle crime and 25% less criminal damage.

Parking

Underground/basement car parking *will* be problematic if not adequately secured and users will feel vulnerable. The plans HL-005 and HL-006 appears to show this as open, although plan HL-008 (elevations) appears to show it gated? If the undercroft parking area were not secured with access control and was left open, I would wish to formerly object as security for the development would be compromised. The site is a town centre location and the development opposite in Granville Road has its rear parking area secured by full height electronically controlled gates.

a) A barrier arm would not be sufficient and the entrance exit should be controlled by a visually permeable roller shutter or similar. The bottom metre of the shutter could be solid laths to prevent litter and leaves being blown into the parking area, whilst above this it could be visually permeable. The shutters should start to close within 5 seconds of vehicles leaving or entering the parking area, so as to prevent unauthorised persons tailgating into the parking area or on foot sneaking into the parking area when a vehicle leaves. The sensor that detects motion to close the gate should also be mounted on the inside of the gates to prevent tampering by offenders.

b) Painting the walls and ceiling white of the underground car parking area can greatly aid lighting and help make residents feel safe. Lighting levels should be to the appropriate British Standard.

Pedestrian path to rear amenity/parking area

On the southern boundary with the next door dwelling is a footpath that is shown open on plans HL-005 (Landscape plan) & HL-008 (elevations) and gives access to the private rear amenity and parking area for the proposed development. This must be gated and locked to prevent access by offenders. If it were left open I would wish to formerly object as security for the development would be compromised.

Planning Policy

No comments received.

APPRAISAL

In accordance with s.38 of the Planning and Compulsory Purchase Act 2004, the Development Plan for Watford comprises:

- (a) the *Watford Local Plan Part 1 - Core Strategy 2006-31*;
- (b) the continuing “saved” policies of the *Watford District Plan 2000*;
- (c) the *Hertfordshire Waste Core Strategy and Development Management Policies Document 2011-2026*; and
- (d) the *Hertfordshire Minerals Local Plan Review 2002-2016*.

Land allocation

On the Proposals Map of the Watford District Plan the site is located within a Secondary Retail Frontage within the defined Town Centre. In the Core Strategy it is located within the Town Centre Special Policy Area (SPA1). The objectives of the Town Centre SPA are to strengthen and consolidate Watford’s position as a regional centre in the retail hierarchy; seek a more balanced provision of town centre facilities and infrastructure, including retail, leisure, entertainment and other town centre uses; seek access improvements for people of all ages, interest and backgrounds; redevelop the existing shopping centre at Charter Place; and deliver around 3,300-4,200 additional jobs in the wider town centre area in the retail, leisure, office and service sectors.

Approved development under ref. 14/01574/FULM

The current proposal is identical to that approved under application ref. 14/01574/FULM. The report to committee on 12th March 2015 discussed the proposed development in detail in relation to the principle of the development; shopping policies; layout and design; impact on heritage assets; housing policies; impact on adjoining properties; flood risk and drainage; transport, access and parking; and sustainability, energy and waste. There have been no changes in policy relating to these issues since 12th March 2015 and the proposal remains acceptable in all these respects. The application was subject to a viability appraisal and, as a result of this, it was agreed that the proposal should include 4 shared ownership units for affordable housing. This was a reduction on the requirement for 35% (9 units) as set out in Policy HS3. No further viability appraisal has been submitted with this application. Due to the short time period that has elapsed since planning permission was granted, this is considered acceptable.

The planning permission was also subject to a Section 106 unilateral undertaking to secure not only the 4 units of affordable housing but also:

- i) financial contributions towards community facilities, open space, children's playspace and sustainable transport measures;
- ii) a payment of £2,000 towards the variation of the relevant Traffic Regulation Order to exclude the site from the controlled parking zone, thereby preventing residents' parking permits being allocated to this site;
- iii) a payment of £1,500 towards the remarking of parking bays on Granville Road outside the application site; and
- iv) fire hydrants, as required, to serve the development.

On 1st April 2015 the Council implemented its Community Infrastructure Levy (CIL) charging schedule which covers the financial contributions secured under (i) above. Under the Community Infrastructure Levy Regulations 2010, payments towards infrastructure and facilities covered by CIL can no longer be sought by section 106 planning obligations

unless there are site specific requirements which are necessary to make the development acceptable. CIL is charged on the relevant net additional floorspace created by the development. The charge for residential floorspace is £120/m². The CIL charge is non-negotiable and is calculated at the time planning permission is granted. The obligations under (ii), (iii) and (iv) above remain directly related to the development, fairly and reasonably related in scale and kind to the development and necessary to make the development acceptable.

The only main issue to consider as part of this application is the applicant's case for vacant building credit to be applied to the application.

Planning Practice Guidance

On 28th November 2014, the Government announced (by way of a Written Statement to Parliament) that it was making changes to national policy. This included the announcement of a financial credit, equivalent to the existing gross floorspace of any vacant buildings brought back into any lawful use or demolished for re-development, that should be deducted from the calculation of any affordable housing contributions sought from relevant development schemes. This was referred to as the vacant building credit.

An amendment relating to this change in 'policy' was subsequently made to the national Planning Practice Guidance (PPG). It is relevant to note that no changes were made to the National Planning Policy Framework (NPPF), despite the Government announcement referring to changes in national 'policy'.

On 25th March 2015, the Government announced by way of a further Written Statement to Parliament that the changes announced in the Written Statement of 28th November 2014 were a change in national policy and the Government would be updating the PPG to make this clear. Revisions to the PPG were made on 26th March 2015 giving clarification on the application of vacant building credit. The revised guidance is as follows:

Paragraph: 021 Reference ID: 23b-022-20150326

What is the vacant building credit?

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.

Paragraph: 022 Reference ID: 23b-022-20150326

What is the process for determining the vacant building credit?

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.

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 metres 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.

Paragraph: 023 Reference ID: 23b-023-20150326

Does the vacant building credit apply to any vacant building being brought back into use?

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

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 purpose of redevelopment.
- Whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development.

The applicant's case

It should be noted that the case made by the applicant in their application submission is in relation to the wording in the PPG introduced on 28th November 2014. They have quoted extensively from the guidance issued in early 2015 by the Planning Advisory Service. Some of this guidance has since been clarified or superseded by the Government's updates to the PPG on 25th March 2015. The relevant parts of this guidance quoted by the applicant are given below:

17. Does the financial credit for vacant buildings mean that on regeneration sites, where industrial floorspace is being replaced by residential, we can no longer get any affordable housing?

Provided the floorspace in the industrial buildings has not been abandoned that amount of vacant floorspace will have to be deducted from the amount of new

floorspace, and it will only be the new additional floorspace that will have to provide affordable housing in accordance with your policies. Therefore, if there is no additional floorspace you cannot request any affordable housing.

19. The financial credit refers to 'gross' floorspace- how should this be calculated? Is it gross external floorspace, as referred to in most planning application considerations, or gross internal, as referred to in CIL?

This method of measurement is not specified and is therefore open to the interpretation of the authority. It would seem logical to opt for Gross Internal Area (floorspace -GIA) as this provision is very similar to the CIL provision.

20. What is a 'vacant building'? Is it defined by planning unit? Or does the whole of a physical building structure need to be vacant e.g. if a small retail unit is occupied on the ground floor of a mixed a multi-storey retail and office building (with numerous planning units) the 'building' is not vacant (like CIL).

There is no definition given for this - it could potentially be any of these and local authorities will have to decide on a definition and await case law.

21. What constitutes being 'vacant' and 'abandoned' for the purpose of this paragraph – how long does a building have to be vacant before it potentially benefits from the credit? How long does it have to remain vacant before it is abandoned? How is abandoned defined for the purposes of this policy, is it the same as in the CIL regulations i.e. - contains a part that has been in lawful use for a continuous period of at least six months within the period of three years?

It is not the same as the CIL requirement - there is no reference to time period in this affordable housing financial credit policy or the guidance. The case law on abandonment should be used to assess whether or not the financial credit applies. However, as assessing whether something is abandoned can take a great deal of

research, it would be advisable to have a working definition of abandonment, whilst ensuring that all those involved in assessing whether the policy applies understand that there is a more complex legal position.

The applicant then goes on to refer to the published advice of selected other councils:

Some Councils have published advice, the City of London state in their Committee Report on the matter:

"Counsel's advice has been sought on the weight to be attached to the Government's new policies and the scope to seek exemption for the City of London. This advice indicates that the Government and the Planning Inspectorate are likely to attach significant weight to the new national policy and would be unlikely to allow the policy to be undermined by existing local development plan policies. If the City Corporation wishes to seek an 'exemption' from the new national policy this would need to be promoted and justified through a review of the recently adopted City of London Local Plan."

They are clear that the PPG supersedes their recently adopted Local Plan (adopted January 2015). In addition Norwich City and Solihull too agree that that the PPG supersedes their Core Strategies, the Norwich Core Strategy was adopted January 2014 and Solihull December 2013 respectively, these were both adopted after the Watford Core Strategy (January 2013).

As a result of the new guidance we have assessed this against our planning application for Mecca Bingo and the results are now as follows;

Mecca Bingo ceased trading at the site on the 9th November 2014 and the property has remained vacant since then.

Watford Borough Council have provided no guidance on the vacant building credit. This application is for part demolition and new build with retention and conversion of the front facade of the building. We are therefore bringing this vacant building / site back into use.

As set out in Paragraph: 022 Reference ID: 23b-022-20141128 of the NPPG, the existing floor areas is credited and discounted against the affordable housing requirement. The existing building has a floor area of 15,491 sq ft and the proposed, 17,134 sq ft, as a result the net floor space increase is 1,643 sq ft.

*Affordable Housing Calculation based on the new guidance is as follows;
25 units @ 35% (being WBC Local Plan /Core Strategy threshold) = 8.75 units
should be provided.*

Credit - (Existing building size) - 15,491 sq ft

We have calculated the average size of our units which equals = $17,134 / 25 = 685$ sq ft

Policy requirement 8.75 units x 685 sq ft = 5993 sq ft

Credit to be applied against the policy requirement = 15,491 sq ft

Total = -9,497.25 sq ft credit and as such no affordable housing is required to be provided.

As a result of this new legislation of the NPPG and the detailed calculations shown above, no affordable housing contributions are now required as part of this application.

The latest update of the PPG clarifies how the vacant building credit should be calculated. The method used above does not accord with this latest guidance.

The Council's case

Notwithstanding the interpretation to be placed on the wording of the PPG in relation to

vacant building credit, there is a broader question to consider regarding the relationship between the provisions of the development plan and any other material considerations. Under section 38(6) of the Planning and Compulsory Purchase Act 2004 an application for planning permission must be determined, “in accordance with the policies of a development plan unless material considerations indicate otherwise”. The Courts have held that the section 38(6) obligation “requires the decision maker not merely to have regard to the plan but to offer it priority” (*R (on the application of Ash Parish Council) v Guildford Borough Council* [2014] EWHC 3864 (Admin)). In *South Northamptonshire Council v Secretary of State for Communities and Local Government* [2013] EWHC 11, the Court held that:

the section (section 38(6)) requires not a simple weighing-up of the requirement of the plan against the material considerations but an exercise that recognises that while material considerations may outweigh the requirements of a development plan, the starting point is the plan which receives priority. The scales do not start off in an even balance.

In *Ash Parish Council* the Court also pointed out that:

Although the NPPF is a material consideration it is not of equal legal force to the policies in the Development Plan: see *Sea and Land Power Energy Ltd v Secretary of State for Communities and Local Government* [2012] EWHC 1419 and *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 at [46]:

“All of this, one has to remember, sits within the statutory framework for the making of decisions on applications for planning permission, in which those decisions must be made in accordance with the development plan unless material considerations indicate otherwise. Government policy in the NPPF does not, and could not, modify that statutory framework, but operates within it – as paragraph 12 of the NPPF acknowledges.”

It is clear, therefore, that priority in the decision making process is to be given to the development plan. Moreover, if the NPPF is not of equal legal force to policies in the development plan then the guidance in the PPG must be even less so.

It is also well established law that the weight to be given to a material consideration is a matter for the decision maker not the Court, unless the decision maker has behaved irrationally (*Tesco Stores v Secretary of State for the Environment* [1995] 1 WLR 759 per Lord Hoffmann at 780).

The Council is entitled, therefore, to place greater weight on the provisions of the development plan than on the policy in the NPPF and the guidance in the PPG. The Council's adopted Core Strategy is up to date, has been the subject of examination in public and has been found to be sound and in conformity with the NPPF. The development plan also includes the "saved" policies from the Watford District Plan 2000, which are referred to in Appendix D of the Core Strategy.

The Council will therefore consider the individual circumstances of each case, having regard, firstly, to the provisions of the development plan and, secondly, to any other material planning considerations, including the NPPF and PPG. In particular the Council will take into account the length of time the site or building has been vacant and the matters referred to in *Paragraph: 023 Reference ID: 23b-023-20150326* of the PPG in deciding whether it is appropriate to apply the vacant building credit to an application for development.

It is worth noting that the purpose of the vacant building credit policy is to incentivise the development of brownfield land, including empty and redundant buildings. This implies that buildings have been empty or redundant for many years and have not come forward for redevelopment, possibly for reasons of viability. It is clear from the policy that it is appropriate for the local planning authority to consider the circumstances of the vacancy of a building and whether the site has recently been granted planning permission for

redevelopment. This implies that the vacant building credit should not apply as a blanket policy in all cases but that the local planning authority should use its discretion in when to apply the policy. The purpose in applying the policy would be to help release empty and redundant buildings for redevelopment that had not previously come forward. The application of vacant building credit would potentially provide a significant financial benefit to any development scheme through the substantial reduction in the amount of affordable housing that would need to be provided.

There is no definition of 'vacant building' in the PPG for the purposes of applying the vacant building credit; however, the definition contained in the CIL Regulations is instructive. If the existing floorspace is to be discounted for the purposes of CIL, a part of the building must have been occupied for a lawful use for a continuous period of at least 6 months within the previous 3 year period on the date of a permission being granted. If this is satisfied for the purposes of CIL, this would indicate that the building has not been subject to long term vacancy. Consideration would need to be given, however, to the percentage of the building that had been occupied as the CIL Regulations only require a 'part' of the building to be occupied without defining how much of the building a 'part' is. If this part is only a small percentage, the local planning authority could have regard to the fact that the majority of the building had been vacant for a longer period of time (i.e. more than 3 years).

Paragraph 023 of the PPG states that vacant building credit applies where the building has not been abandoned. However, it then goes on to make clear that local planning authorities should have regard to a number of material considerations in considering how vacant building credit should be applied to a particular development. This makes clear that it should not be considered as a blanket policy to be applied in all circumstances. Three material considerations are given:

i) *The intention of national policy*

This is unclear. It could be interpreted as referring to the purpose of the vacant building credit policy, i.e. to incentivise the development of brownfield

land, or could refer to the NPPF. In any event, the former interpretation accords with the general thrust of the NPPF to bring forward the development of brownfield land.

- ii) *Whether the building has been made vacant for the sole purpose of redevelopment*

In this case, if the building is been made intentionally vacant for the purpose of redevelopment, vacant building credit should not apply.

- iii) *Whether the site benefits from an extant or recently expired permission for essentially the same development*

In this case, the site could presumably be, or have been, developed but there is an implication that the applicant may be seeking opportunistically to benefit from vacant building credit and therefore has deliberately not developed the site. However, it may be that the viability of the development has changed significantly since the permission was granted so regard may need to be given to the reasons for this, if this is in fact the case.

Local planning authorities are required to have regard to all relevant material planning considerations in determining planning applications and so there would be no reason why the local planning authority should not consider other material considerations in applying vacant building credit to a particular development, in the same way as applying any other planning policy.

In the case of the current application, the building has not been subject to long term vacancy. Mecca Bingo closed in October 2014 and the applicant purchased the site in November 2014. The subsequent vacancy of the building has been due to the applicant going through the process of applying for planning permission to develop the site. Planning permission for redevelopment was granted in March 2015 under reference 14/01574/FULM. This was demonstrated by the applicant, through a viability appraisal, to be a viable development with the provision of a reduced number of 4 affordable housing

units. The applicant has deliberately not commenced this development in order to submit the current duplicate application, solely to seek to benefit from vacant building credit.

Having regard to case law, the latest guidance in the PPG, the fact that the site has not suffered long term vacancy, and that planning permission for a viable development of the site was granted only in March 2015, it is not considered appropriate to apply vacant building credit to this application.

The applicant's response to the Council's case

The applicant was made aware of the Council's position in an email exchange during the application process. They have commented as follows:

“As noted in your guidance there has been revised guidance, whilst the update provides more clarification than the previous provisions as to factors local planning authorities should take into account, uncertainty still remains as to how, in practice, the credit will apply, and actually how local authorities apply the guidance. For example, no time limit is specified for the period of time that has to elapse before the building is considered “vacant” or for that matter “abandoned”. The amendments explain issues to consider but actually doesn't state what impact these have on the application of the Vacant Building Credit.

With respect to the up to date Core Strategy - this was found sound in a period of overlap of the NPPF and RSS which as noted in many inspectors reports lead to a number of policy conflicts and the Council committed to keep the Core Strategy under review particularly with regard to housing - a number of recent appeal decisions have illustrated that Core Strategies from this period are now out of date - unless reviews have started.

In addition the Planning Advisory Service provide clarity on the PPG and recent changes for Local Authorities. It states:

It is Government policy as it was announced by Brandon Lewis, Housing and Planning Minister in the 'House' on 28th November 2014. This was re-emphasised by RT Hon Eric Pickles in his statement on the 25th March 2015. So it is just like the NPPF and has as much weight as the NPPF. It is a material consideration and it is up to the decision makers how much weight to give the material consideration – that said if it goes to appeal the Planning Inspector would base his decision on the new government policy.

As a result it is quite clear that more weight should be applied to the PPG than has been said by the Council - particularly as ministers have stated that it has the same weight as the NPPF - which is clear in Annex 1 that this is a serious Material Consideration

With respect to your reasons for refusal [*note: these were not reasons for refusal but were given as reasons why it was considered that vacant building credit should not be applied to the application*] we consider each as follows:

1. The site was purchased by Heronslea as soon as it became vacant. The site did not, therefore, experience any long term vacancy.

The Rank Group had been advertising the building for some time - and were unable to provide any other operator. Heronslea purchased the property after the property became vacant. The PPG, nor the Council, provide any guidance on the period for vacancy prior to application of the vacant building credit.

[Comment: This is discussed in more detail in the report.]

2. The site benefits from a planning permission for redevelopment which has been demonstrated to be viable with a reduced provision of affordable housing.

The purpose of the policy is to incentivise the development of brownfield. The site is vacant as accepted by the Council. This site is a vacant brownfield site which the Government seek to incentivise - this is a separate matter to the viability approach

from the previous application. I also direct you to a decision by South Bucks Council recently where a revised application of a brownfield site was allowed with the vacant building credit. Having spoken with the agents and the Council for this application the council actively encouraged the approach. This application was approved following the revised guidance in the PPG. South Bucks (application 14/02354 FUL) were of the view that the legislation was there to ensure such developments were to occur despite any extant permissions. As you are well aware we wished to use the Vacant Building Credit guidance during the initial application and WBC stated that they did not recognise this and approved our application based on viability. It would appear that immediately after you granted our permission you then widely accepted VBC and used our application as the template at the forum [*this refers to the Developers Forum hosted by the Council on 23rd April 2015*], how can this be fair and reasonable practice? In addition, we did not agree with a number of points with the Councils viability consultant and could have further argued this thus reducing the provision however given the delays incurred we commercially needed to obtain consent.

[Comment: The Council takes a different view from South Bucks Council. The reasoning behind the Council's position is explained in detail in the report.]

3. As such, the site needs no incentive to bring it forward for development through the application of vacant building credit or any other incentive.

The purpose of the policy is to support the development of brownfield land, including empty and redundant buildings, and reduce the need for development in the Green Belt.”

[Comment: This is discussed in the report.]

Conclusion

The proposed development remains acceptable in its form, layout, scale, design and impacts on heritage assets and adjoining properties. The only matter for consideration is the application of vacant building credit to the application. The Development Management

Section Head has had regard to and given due weight to relevant case law, the latest guidance in the Planning Practice Guidance, and the particular circumstances of this case, and has reached the conclusion that vacant building credit should not apply in this case. As such, the application fails to provide 4 affordable housing units which, it has been shown, can be provided as part of a viable development, and is therefore unacceptable.

In the event that the applicant fails to complete a Section 106 unilateral undertaking to secure (i) the exclusion of the development from the local controlled parking zone, (ii) the remarking of parking bays on Granville Road, and (iii) the provision of fire hydrants, as required, these should also be used as additional reasons for refusal.

HUMAN RIGHTS IMPLICATIONS

The refusal of planning permission will have an impact on the human rights of the applicant to develop the land. However, this is considered justified in order to accord with the policies of the development plan and in the wider public interest.

RECOMMENDATION

That planning permission be refused for the following reasons:

1. The proposed development fails to make provision for affordable housing and as such is contrary to Policy HS3 of the Watford Local Plan Core Strategy 2006-31.
2. The proposal fails to make appropriate provision to restrict on-street parking in the surrounding Controlled Parking Zone and for the remarking of parking bays on Granville Road and, as such, is contrary to saved Policy T24 of the Watford District Plan 2000.

3. The proposal fails to make provision for fire hydrants to serve the development and as such is contrary to Policy INF1 of the Watford Local Plan Core Strategy 2006-31 and saved Policy H10 of the Watford District Plan 2000.

Drawing numbers

HL-001, 002, 003, 004(V2), 005(V2), 006(V2), 007, 008(V2), 009, 010

Case Officer: **Paul Baxter**
Email: **paul.baxter@watford.gov.uk**
Tel: **01923 278284**