

Planning Update

June 2016

SoS for Communities and Local Government v West Berkshire DC and Reading BC [2016] EWCA Civ 441

In November 2014 the Government published a Written Ministerial Statement (WMS) containing two key proposals which were later introduced through the National Planning Practice Guidance (NPPG):

- a. Developments of 10 residential units or less or with a gross floorspace not exceeding 1,000 sqm (5 or less in national parks, AONBs and designated rural areas) should be exempt from Section 106 affordable housing and other tariff-based contributions; and
- b. Vacant Building Credit would apply such that where a vacant building is brought back into use or demolished for redevelopment it would receive a credit equivalent to the existing gross floorspace which is vacant to be offset against any affordable housing contribution.

The two local authorities West Berkshire DC and Reading BC challenged the lawfulness of introducing these proposals through the NPPG. The two local authorities won in the High Court in July 2015 based on the following four grounds (and the relevant NPPG paragraphs were subsequently deleted by the Government):

- Inconsistency with the statutory scheme
- Failure to take into account material considerations
- Inadequate consultation
- Breach of the public sector equality duty

The Government appealed the High Court decision and this was recently overturned by the Court of Appeal in May 2016. The Government has since reinstated the relevant paragraphs in the NPPG.

It now remains to be seen how local planning authorities will in practice treat the NPPG guidance when determining planning applications and whether they will give this appropriate weight when considering this in conjunction with their own local planning policies on affordable housing contributions. We would recommend that any developers with live planning applications for smaller residential developments should be raising this issue with the local planning authority considering their application as a substantial saving may be made by not having to pay an affordable housing contribution.