

# Building Safety Levy

## Consultation response

14 October 2021

### Summary

The National Housing Federation supports the policy intent of the levy, to contribute to the costs of making all buildings safe. However in order to minimise the impact of the Building Safety Levy on the supply of affordable homes, we recommend the following measures:

1. Affordable housing should be excluded from the Building Safety Levy, including affordable homes contributed under planning obligations, as anticipated in the consultation document.
2. The following developers should be excluded from paying the levy:
  - Non-profit registered providers of social housing; and
  - Companies that are wholly owned by non-profit registered providers of social housing.

This would be consistent with the exclusion afforded to such entities in relation to the Residential Property Developer Tax.

3. There should be a mechanism whereby the Building Safety Levy can be clawed-back in the event that any part of a building in respect of which the levy was paid is subsequently transferred to a registered provider of social housing and used to provide affordable homes.
4. As a transitional measure, the Building Safety Levy should not be payable in relation to developments that had been granted planning permission before the Building Safety Levy is introduced.

## Response

We write in response to the request for views and evidence on the high-level design principles of a new Building Safety Levy, as set out in the consultation document published on 21 July 2021 by the Ministry of Housing, Communities & Local Government (now the Department for Levelling Up, Housing and Communities).

The National Housing Federation is the representative trade body for housing associations in England. We are the voice of England's housing associations. Our members provide homes for around six million people, and are driven by a social purpose: providing good quality housing that people can afford. We support housing associations to deliver that social purpose, with ambitious work that leads to positive change.

Our members are non-profit registered providers of social housing, whose activities are overseen by the Regulator of Social Housing (RSH, an executive non-departmental public body, sponsored by the Department for Levelling Up, Housing and Communities). According to the 2020 global accounts of private registered providers, as published by the RSH, registered providers of social housing invested £13.7bn in new housing supply during the year ended 31 March 2020, which included the development of 49,000 social homes.

Clearly, therefore, registered providers of social housing are absolutely critical to the delivery of affordable homes in the UK. Housing associations' developments constitute between a quarter and a third of all new homes developed in England every year.

The consultation document acknowledges that increasing housing supply, particularly the supply of affordable housing, is a priority of the government, and seeks views on the extent to which affordable housing should be excluded from the Building Safety Levy.

In the above context, our response to the consultation document is limited to selected questions raised in the consultation document. In preparing our response, we have consulted extensively with our members and with our tax advisers, RSM. We are also grateful for the opportunity for us and our members to discuss our concerns with the Department for Levelling Up, Housing and Communities.

**Q2: Do you agree that affordable housing should be excluded from levy charges? Please explain.**

Housing associations are committed to ensuring all homes are safe. Since the tragic fire at Grenfell Tower, housing associations have worked hard to assess safety risks and take urgent action to remediate buildings where needed. We therefore support the broad policy intent of the levy, to contribute to the costs of making all buildings safe.

The National Housing Federation is, however, concerned that the levy could, without appropriate safeguards, have a negative impact on the supply of affordable homes.

Scope of exclusion

We agree with the position taken in the consultation document that affordable housing should be exempt from the Building Safety Levy, including affordable homes contributed under planning obligations. However, it is our view that the exemption needs to go further than this.

Non-profit registered providers of social housing typically consist of a 'parent' housing association, which undertakes regulated social housing activity, including in particular the development, maintenance and provision of affordable homes.

The parent housing association will often hold investments in commercial subsidiary companies, the activities of which may include the development of properties for sale or rent on the open market, the development of affordable homes on behalf of the parent housing association and the provision of design and build services to other entities within the corporate group. The parent housing association may also hold interests in joint ventures with, for example, commercial housebuilders or local authorities.

Ultimately, the profits from commercial activities undertaken by a housing association's subsidiary companies will be returned to the housing association (e.g. by way of gift or dividend), providing essential funds to enable the housing association to invest in additional affordable homes. The funds from commercial activities play a vital role in 'bridging the gap' between the amount that needs to be spent on affordable housing, on the one hand, and the funding available from government grants and debt, on the other.

None of the surpluses or profits realised by a non-profit housing association or its subsidiary companies can be distributed by the housing association – all such surpluses and profits must ultimately be reinvested in affordable homes.

Many high-rise developments by registered providers of social housing would not be financially viable without this ‘cross-subsidy’ model (where profits from the development of homes for sale or rent on the open market are used to subsidise the development of affordable homes). Such buildings are typically (and necessarily) constructed in areas of high housing density where land values are high, and many incorporate community facilities on the ground floors that are operated on a non-commercial basis.

It follows, therefore, that the Building Safety Levy, if payable by non-profit registered providers of social housing or their subsidiary companies, would negatively impact the financial viability of developing ‘higher-risk’ buildings at a time when our members are already experiencing cost pressures due to increasing construction costs, wage inflation and the Health and Social Care Levy (which is to be introduced from 6 April 2022).

Registered providers of social housing are already undertaking significant remediation and mitigation works to buildings that need them, and are planning to do more in the future. The largest housing associations in London are planning to earmark a total of at least £3.6bn for this work over the next 15 years, and across the country housing associations expect to spend more than £10bn on making buildings safe.

We note that there are powers to exclude both developments and developers from paying the levy. For the reasons outlined above, it is our view that the following developers should be excluded from paying the Building Safety Levy:

- non-profit registered providers of social housing; and
- companies that are wholly owned by non-profit registered providers of social housing.

This exemption would be straightforward to apply, as the RSH is required by s111 Housing and Regeneration Act 2008 to maintain a register of all registered providers of social housing.

It is noteworthy that HM Treasury understands the negative impact that the Residential Property Developer Tax would have on the supply of affordable housing, if housing associations were to be within its scope. The latest draft legislation in relation to the Residential Property Developer Tax therefore excludes non-profit registered providers and their wholly-owned subsidiary companies from the scope of the tax. We ask that an equivalent exclusion is granted to non-profit registered providers and their wholly-owned subsidiary companies in relation to the Building Safety Levy.

#### Claw-back of levy on change of use

It is not uncommon for registered providers of social housing to acquire completed or partially completed buildings from commercial housebuilders other than under the terms of planning obligations. For example, a commercial housebuilder might have intended to develop a 'higher-risk' building with a view to selling leasehold interests in individual dwellings on the open market, but due to changes in the economic environment might subsequently decide to sell or lease some or all of the housing units to a registered provider of social housing, which would then use those units as affordable homes.

In these circumstances, the commercial housebuilder would have paid the Building Safety Levy at the Gateway 2 stage of the new building safety regime, and would inevitably seek to pass that cost on to the registered provider of social housing through an increase in the purchase price.

To ensure that the Building Safety Levy is not incurred indirectly by registered providers of social housing, we request a mechanism whereby the Building Safety Levy can be clawed-back in the event that any part of a building in respect of which the levy was paid is subsequently transferred to a registered provider of social housing and used to provide affordable homes.

**Call for evidence (A): The government would welcome views and evidence on the potential impacts of either applying the levy to affordable housing or excluding affordable housing from the levy; on how an exclusion for affordable housing might be delivered (including how the levy might be administered for mixed-purpose developments incorporating some affordable housing); on potential market impacts; and on how these impacts and potential “gaming” might be mitigated.**

We have gathered evidence and case studies from those of our members that would be impacted most if they were subject to the Building Safety Levy.

One of our members carried out viability assessments on their schemes that would be in scope of the levy. Using different scenarios depending on the potential rate of the levy, they calculated that the levy could lead to a reduction of around 30% of the affordable housing that would otherwise be financed through their development of homes for sale on the open market. They assessed that every £500,000 increase in financial contributions could result in the loss of approximately eight affordable homes (for mixed-tenure schemes based on a 60:40 ratio of market sale and affordable units).

Another member provided an example of a joint venture regeneration scheme where the sale of homes on the open market will finance the demolition and rebuilding of over 250 affordable homes. They highlighted that the scheme has already received planning permission and will have eight high-rise buildings that might be under the scope of the levy once it reaches Gateway 2 stage. As a new cost, the levy is likely to affect the viability of the scheme and therefore lead to a reduction in the number of affordable homes delivered.

Another member highlighted several examples of market-sale schemes that would be impacted by the levy, including three joint venture high-rise buildings, a regeneration scheme, and other larger land-led developments. On all of these developments, all their private sales are used to cross subsidise the delivery of affordable units. The levy would therefore directly reduce their ability to deliver more affordable homes.

They pointed out, if they are subject to this new levy, the vast majority of regeneration schemes would struggle to deliver the required levels of affordable housing within the constraints around funding for replacement homes and increased Infrastructure Levy in many local authorities.

These examples clearly demonstrate that, without a wider exemption, the levy will directly impact the supply of affordable housing in England.

**Q13: How might developers seek to mitigate the impacts of a levy – including adjusting development plans, build out strategy, land acquisition strategy and pricing?**

Some of our members have indicated that, in order to maintain the level of essential investment on their existing 'higher-risk' housing stock, registered providers of social housing may well be tempted to prioritise future developments in lower-density areas, where local housing needs can be met without the development of 'higher-risk' buildings.

While housing associations remain committed to building homes of all types and tenure to address the shortfall in affordable housing in all parts of the country, we are concerned that an additional cost on high-rise buildings developed by housing associations will impact the supply of high-quality affordable homes in inner-city areas, where it is perhaps needed most.

**Q14: Is there anything further the government might want to consider in relation to the design of the levy which would help minimise the impact on housing supply?**

As outlined in our response to Call for Evidence A, our members are faced with the situation where certain mixed-use developments, which have already been granted planning permission, may not reach the Gateway 2 stage until after Building Safety Levy has been introduced. The levy may therefore result in an additional cost, which was not anticipated at the time planning permission was sought, and which could threaten the financial viability of the scheme.

We therefore recommend that, as a transitional measure, the Building Safety Levy is not payable in relation to developments that had been granted planning permission before the Building Safety Levy is introduced.

**Q15: Do you consider that the levy would have any impacts on local regeneration schemes? At what rate (as a percentage of market property value) would that impact be seen?**

Please see our response to Call for Evidence A.

**Call for evidence (C): We would welcome information from developers, local authorities, housing associations, and other interested parties on the characteristics of residential new buildings of 7 storeys / 18m and over which are expected to go through Gateway 2 approval to come forward over the next ten years (to the extent foreseeable).**

As part of this consultation, the NHF sent out a survey to housing association members to gather data on their plans to develop high-rise buildings (over 18m or 7 storeys). We had 30 responses, which is a limited number of housing associations compared with the size of the sector, therefore the results should be considered as broad estimates.

About a quarter of housing associations who responded said they were planning to develop high-rise buildings over 18m / 7 storeys. It is worth noting that almost three-quarters of the developments were contributed by G15 housing associations, which are the largest housing associations in London where density and land value are higher than other parts of the country.

Based on the housing associations who responded, we estimate that the housing association sector as a whole might build between 50 and 100 high-rise buildings (over 18m / 7 storeys) on average per year.

Regarding tenure, our survey found that approximately 60% of high-rise developments plans will be affordable housing, 7% market-value, and 33% a mix of both affordable and market-value housing. If mixed-tenure buildings have a 50:50 ratio of market and affordable units, market-value products will represent about a quarter of housing associations' high-rise developments.

Regarding height range, housing associations reported that 53% of high-rise developments will be 6 to 9 storeys, 27% will be 10 to 15 storeys, and 20% will be over 16 storeys. In terms of geographical spread, all but one of the buildings higher than 9 storeys will be developed by London-based housing associations.