

Department for Levelling Up, Housing and Communities consultation on the design and implementation of the Building Safety Levy
Response from Propertymark
January 2023

Background

1. Propertymark is the UK's leading professional body of property agents, with over 17,000 members. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry leading training programme and mandatory Continuing Professional Development.

Overview

2. The Department for Levelling Up, Housing and Communities (DLUHC) consultation seeks views on the design and implementation of the Building Safety Levy. The Levy will be paid by developers and charged on new residential buildings requiring building control approval in England, for the purpose of meeting building safety expenditure.
3. The levy was announced in February 2021 and will ensure the taxpayer and leaseholders do not pay for the necessary remediation of building safety defects.

Summary

4. We are supportive of a Building Safety Levy (BSL), which will complement the existing package of measures that the Department for Levelling Up, Housing and Communities have already introduced to ensure that the burden of paying to fix historical building safety defects does not fall on leaseholders. However, this must be done fairly to ensure that those developers who have made the most profit and have the broadest shoulders, contribute most towards making safe buildings and that smaller developers are not disadvantaged and further excluded from the market.

Questions

Relationships with other taxes and charges on the sector

Question 1: Do you think the Building Safety Levy charge will impact on other charges made in relation to residential buildings including Community Infrastructure Levy and Section 106 payments or the Infrastructure Levy that will replace the existing system of developer contributions? If so, what are they likely to be?

5. Yes, we do think there will be one impact and two considerations that the UK Government must take note of because of the Building Safety Levy and developer contributions. In relation to the impact, the UK Government had earlier this year proposed that the developer pledge

provides "potential for higher rates for those developers who do not cooperate in finding a workable solution" to the cladding situation. However, there remains no explicit connection made between the pledge and how the proposed levy operates. As a result, responsible developers who have committed to the pledge will require clarification on their obligation to pay the Building Safety Levy in lieu of their commitments.

6. There are two things the UK Government must consider. Firstly, the UK Government must consider the cumulative impact the Building Safety Levy along with the Community Infrastructure Levy (CIL), Section 106 payments or any other levy implemented to replace these charges could have on the delivery of affordable housing and the ability of small and medium developers to access to the market. We hope that the implementation of the Building Safety Levy will not cause additional delays in providing affordable housing or will cause confusion to the level of costs which developers will be accountable for. These sorts of delays and uncertainty are to the greatest detriment to smaller developers who already are disadvantaged over larger developers. Furthermore, the UK Government should consider the implications on the Homebuilding industry that according to the Home Builders Federation are already subject to twelve new taxes, levies and regulation amounting to £4.5 billion a year adding £20,000 to the cost of building a home¹. While we are supportive of the UK Government's efforts to ensure that leaseholders are protected, the UK Government must consider the uneven playing field between smaller and larger developers as well as non-domiciled and untraceable developers. The UK Government should also be mindful of the possible impact all additional costs could have on smaller developers' contribution in increasing the supply of homes especially affordable units. This is on the back of commitments made by developers under the Building Safety Pledge and the introduction of the Residential Property Developer Tax. Secondly, the UK Government needs to make an announcement of when the Building Safety Levy will be in action, and they should allow a reasonable period for smaller developers to prepare for its introduction.
7. Additionally, the current economic climate is challenging for developers, especially small and medium ones. Developers face the challenge of increased labour costs. Costs of building materials and energy has increased because of Russia's war on Ukraine. Developers already must undertake many safety precautions which add to the time and delivery of development project. While these are all necessary, the UK Government needs to consider the balance between the impact of small and medium developers and legislation requirements.

Overview of the design of the levy including delivery process and sanctions

Question 2: Who do you think should act as the collection agency for the levy? Please give reasons for your answer.

8. We think that local authorities are in the strongest position to collect a levy for development within their area. We think this for two reasons. Firstly, there would be a strong synergy between the collection of data, planning departments responsible for permitting

¹ [HBF Report - Building Homes in a Changing Business Environment](#)

development rights and any local knowledge and data local authorities may have. Secondly, with support from the UK Government, local authorities can resolve any complex cases including hard to trace developers or non-domiciled developers. These may require significant case work and local authorities might not have the resources to investigate these cases even if a proportion of the levy collected can be used for administrative costs.

Question 3: What proportion of receipts do you think the Collection Agency should retain? What administration costs will that need to cover?

9. We believe that organisations in line to be collection agencies would be best placed to answer this question. However, collection agents, be those local authorities or a separate agency, should be able to recuperate all costs for the administration. To this end, we are pleased to learn that the UK Government wishes to work with collection agents to help shape the levy design including identifying the administrative and costs burden. We are further satisfied to learn that the UK Government intends to allow the collection agency to retain a proportion of levy receipts to pay for the additional administrative burden, as provided for in the Building Safety Act, section 58. As a useful comparator, collection agents can withhold 5% of receipts from the Community Investment Levy. We believe this should be more than adequate to support administration costs and should be permitted to whoever the government decides to be a collection agent.

Question 4: How frequent should revenue returns be provided to DLUHC? Please give reasons for your answer.

10. We believe that the revenue return to DLUHC from collection agents should not be so frequent as to be a burden on the collection agent. We would recommend either quarterly or biannually would strike the right balance between timely financial returns and administrative burdens.

Levy Review Point

Question 5: Do you think that there should be regular review points? If so, how frequent should they be?

11. We agree that there should be review points to assess the level of funding is adequate for building's needs. We also agree that these review points should be set at three years to assess the viability of funding. However, after the initial three years, we believe once the UK Government has sufficient knowledge of the needs of buildings, these review periods could be extended to every five years up to the ten years of the levy. This will strike a balance between the needs of safety and allowing smaller developers to plan accordingly towards their projects if the demands of the levy were to change.

Delivery process and timings

Question 6: We welcome views on the two-step process and charging points for the levy. Do you agree or disagree, please give reasons?

12. We believe payment of the levy should be as simple and straight forward as possible as to not delay development. However, until we are aware of the levels of the levy it will be difficult to test the soundness of the two-step process. While we wait to understand the charge of the levy, we believe that charging the levy at the point of occupation is beneficial to developers and to the detriment of local authorities in ensuring that key infrastructure is in place as part of the development. Therefore, we believe for major development, the levy should be paid before construction has been completed.

Question 7: What are your views on the percentage split, i.e., charging 60% of the levy prior to commencement stage and 40% at final certification. Are these the right amounts? If not, why not – please give reasons.

13. Until the secondary legislation on the level of the levy has been made, then it is difficult to respond to this question at present. If the levy is high, then it might be advantageous to reconsider the percentage splits to limit the costs at the commencement stage to support smaller developers.
14. The consultation states that developers who build less than ten units will be exempt from the levy. We would recommend greater flexibility of payment of the levy for developers who build less than fifty units. In these cases, the payment of the levy could be paid 100 per cent at the commencement stage. While the consultation notes that there is a concern that developers will not pay this on commencement, surely this would be a role for local authority Building Enforcement Teams to ensure the levy is paid on sign off.

Question 8: If you consider yourself a small or medium enterprise, what impact will these levy payment points have on your ability to build? If so, what could help? To note we intend to exempt developments under 10 units or the square metre equivalent.

15. We welcome the proposal that small and medium developers who build less than ten units will be exempt from the levy in a similar fashion to affordable housing contributions. However, developers who build slightly above this threshold are often still considered as small and medium and consequently face many challenges not least from the current economic climate. As a matter of urgency, we would recommend that the DLUHC starts an inquiry into how the access to the planning system can be improved for small and medium developers and how there can be a more level playing field with high volume developers.

Sanctions and appeals

Question 9: What do you think should be the principal sanction to ensure the levy is paid?

16. We think that collection agents should have access to a full range of sanctions depending on the type of offence and size of development. We think there should be three principal sanctions. Firstly, developers could be sanctioned with a stop notice or withholding final certification. Secondly, we believe that developers who send misleading information,

withholding information, late payments or seeking to evade or non-payment of the levy should be subject to a fine. The level of the fine would depend on the number of development units impacted and the severity of the offence. Thirdly, for persistent offenders, local planning authorities may wish to consider persistent failures as a breach to future permitted development rights within the local authority area. We also believe that local authority building control teams have a role in allowing sign offs of development with compliance of the levy.

Question 10: Do you think that the failures outlined above may occur in operation of the levy? If so, how best can they be avoided?

17. We believe if the transitional grace period stage is used to educate developers, then failures of this kind will be reduced as the likelihood most cases of non-compliance will be from ignorance rather than a deliberate attempt to deceive payment of the levy. However, after the grace period, we think fines and sanctions should be severe enough to act as a deterrent.

Question 11: Is it reasonable to consider the sanctions regime of the RPDT in relation to the levy?

18. Yes, we believe the sanctions regime of the RPDT would be compatible with the levy. This would allow more severe sanctions for those developers who have been deliberately non-compliant other those that have been careless.

Question 12: How might levy design avoid mistakes, gaming, and fraud, or else maximise positive incentives?

19. One method could be to provide early payment of the levy or an incentive to pay a higher percentage of the levy at the commencement stage. This would have to be a discount that would not widen the gap between small, medium and larger developers to create the unintended consequences of making discounts a greater advantage for larger developers over small ones. Furthermore, all developers would be incentivised to avoid a fine by providing payment and information on time and accurately without deliberately withholding information. Those who fail to do this could be liable for fines. We believe that fines would have to be severe enough to avoid malpractice of any kind.

Basis on which to calculate the levy

Question 13: Which of the options above do you think is the best basis on which to implement the levy? Please give reasons for your answer.

20. We have concerns that by applying the levy on a per house basis this could result in developer's building fewer homes but on a larger basis to increase revenue and reduce the costs of the levy. This could be detrimental to the housing needs in some local authority areas where smaller or single person accommodation is required. We make the following two observations. Firstly, by applying the levy on a per square metre level, this will not have the negative consequence of disincentivising the development of smaller properties and it will raise the largest amount of levy revenue from those that development the most. Inevitably, larger developers will develop the most homes and will be subject to a larger per square metre

level of property. Secondly, the Community Infrastructure Levy is applied by square metre and will therefore be understood and recognised by industry. We are also very supportive of exempting the levy for housing units of ten and less.

Question 14: How best can we protect small and medium sized builders? Is exempting smaller developments the best way?

21. We believe there are three ways to best protect small and medium sized builders. Firstly, exempting smaller developers is a good start. However, smaller developers already have significant demands in terms of safety from requirements from local authority building safety teams. Some of these constraints include lack of access to planning authorities, costs of obtaining planning permission, time constraints with dealing with legislation as well as difficulty obtaining building materials with the escalating costs. Secondly, therefore we recommended DLUHC undergo a review of how greater support can be given to small and medium developers under the UK Government’s Levelling Up agenda. Propertymark would be pleased to work with the Department and engage our membership who work in land and new homes. Thirdly, ensuring a dedicated planning officer for small and medium developers in every local authority.

Differential levy rates

Question 15: Do you think government should set differential levy rates based on geography based on the different land values and house prices in different areas? Please give reasons.

22. We think the UK Government should set different levy rates based on geography based on the different land values and house prices in different areas. We believe this for two reasons. Firstly, it could act as an incentive for developers to develop in post-industrial areas over areas where land value and house prices are higher. Secondly, it could act as a catalyst for neighbourhood renewal and development in areas often overlooked and is in line with the Government’s Levelling Up agenda.

Question 16: Which of the two options outlined above would you prefer? Please give your reasons for your answer.

23. We would prefer that the levy rate be set at the local authority level. We think this for three reasons. Firstly, in our response to question two of this consultation, we stated that the levy should be collected by local authorities as the collection agent. We believe that to have a streamlined process the levy should be administered at the local authority level and set at the local authority level. Secondly, within regions of England there are great differences in house price levels between local authority levels within regions. According to the Land Registry, the average house price in the Northwest is £220,300. However, within the Northwest there is a great difference between local authority areas that command the highest house price sales and the lowest. For example, data from the Land Registry also reveals that the average house price in Trafford is £374,400. However, in Burnley it is £119,700.² That is a difference of £254,700 and clearly setting a flat rate for the levy by the Northwest average would not reflect values in some local authority areas. Thirdly, by adapting a levy based on regional data, we would be concerned that there could be implications in the supply of homes for areas where land value is less great resulting in less housing options especially for the most vulnerable.

² [HM Land Registry Open Data](#)

Differential rate by land type

Question 17: Do you think there should be different levy rate applied on brownfield and greenfield developments in the same geographic area? If so, do you think that the differential should be the same in every geographic area?

24. Applying different levy rates for brown and greenfield sites would offer a joined-up approach with the recent announcement of the Brownfield Land Release Fund, where funding will help councils to transform unused, redundant, or derelict sites into high quality homes. Furthermore, we believe that increasing development on brownfield sites would have three main benefits. Firstly, increasing development on brownfield sites held by the public sector could unlock land needed for housing needs. Secondly, developing brownfield sites can help boost regional and local economies and increase local supply chains. Thirdly, it is also important for many communities that planning policy protects the local environment and greenfield spaces and to only use these after careful consideration.

Levy rate and transitional arrangements

Question 18: What amount of grace period should be set for projects that have already started the building control process on the date the levy goes live?

25. We cannot answer this question until further detail is provided on what the transitional arrangement will involve for the first year of the levy. For instance, what will this mean for enforcement of the levy and during this transitional stage will developers be liable for sanctions. Consequently, we would recommend for the first transitional year the sanctions should be in the form of warnings and educating developers on compliance. We also believe that developers who have undergone development before the implementation of the levy should be exempt as they would not have been able to calculate these costs into their costings.

Exclusions from payment of the levy

Question 19: What are your views on the above exclusions? Please set out whether you agree or disagree and give reasons for your answers.

26. We have commented on each of the exclusion below in more detail.

Question 20: Do you have any views on Build to Rent developments, purpose-built student accommodation, older people's housing. If so, please set them out.

Build to Rent developments

27. PropertyMark has completed research on the shrinkage in supply of Private Rented Properties.³ Our research has shown 53 per cent of buy-to-let properties sold in March 2022 left the private rented sector (PRS). More alarmingly, 84 per cent of respondents told us the number of investors had decreased over the last three years. With this concerning level of

³ [A shrinking private rented sector | PropertyMark](#)

supply for PRS accommodation, Build to Rent could stem the lack of supply and encourage more investors to increase the number of properties to rent. The advantage of this is that Build to Rent could deliver homes at different price points in the market, provide a choice of housing types suitable for a diverse housing market, provide an income for the public sector and can act as a catalyst for large scale development. Tenants can benefit from high quality and stable accommodation with developers being obligated to provide affordable housing options. Given the shortage of PRS supply, we believe that Build to Rent Accommodation should be exempt to further allow units to affordable for tenants and as a viable investment option for landlords.

Purpose Build Student Accommodation

28. In contrast, we disagree that Purpose Build Student Accommodation (PBSA) and older people's housing should be exempt. PBSA is often developed by international owned major developers, and they commend high rental yields from often overseas students. This can often be to the detriment of landlords operating in the PRS who have traditionally provided accommodation for students. For these reasons we see no reason why developers of PBSA accommodation should not be included within the levy.

Older people's housing

29. Considering that a recent report concluded that up to 50,000 new homes will be needed for older people each year⁴, to tackle the housing and care crises we do not think that developers building this type of property should be subject to the Building Safety Levy. To this end, local planning policy must encourage the building of more of all types of housing for older people to ensure they meet the current and future needs of older people. This can also have a positive impact of allowing people to 'right size' and freeing up larger property for second steppers and families looking to buy bigger property.

Question 21: Do you agree Affordable Homes should be excluded from payment of the levy?

30. Yes, we agree that affordable homes should be excluded from the payment of the Levy providing they meet or exceed their affordable housing contribution targets. Demand for affordable housing is outstripping supply. Propertymark has long campaigned for the UK Government to increase the supply of affordable housing in both the social rented and private rented sectors. Accordingly, we would be concerned that including the levy on affordable housing could further impact the available supply of housing options for the most vulnerable and increase the propensity for homelessness cases.

Question 22: Do you agree NHS Hospitals, NHS Medical homes, and NHS GP practices, should be excluded from payment of the levy?

31. We agree that NHS Hospitals, NHS Medical homes and NHS GP practices should be exempt from the levy. Such buildings are extremely important to public health, the economy and according to the Royal College of General Practitioners, there are regions in England that have very poor access to primary healthcare services⁵ We would be concerned that the levy could further exacerbate access to primary health care in hard-to-reach areas of England.

⁴ <https://www.insidehousing.co.uk/news/news/uk-needs-up-to-50000-homes-for-older-people-per-year-study-finds-78888>

⁵ [Analysis shows "postcode lottery" in access to GPs in England | The BMJ](#)

Furthermore, with regards to the building of all public sector assets, we recognise that there is a danger that developers could add the cost of the levy and inflate the cost. We recommend that procurement teams should consider this and seek transparency of costings in this regard.

Question 23: Do you agree Conversions, improvements to owner occupied homes and refurbishments should be excluded from payment of the Levy?

32. We strongly agree that conversions, improvements to owner occupied homes and refurbishments should be excluded from payment of the Levy. We agree for two reasons. Firstly, we do not envisage that buildings of these types would require building safety retrofit on the scale of other buildings. Secondly, the very purpose of the levy is to ensure that leaseholders do not have to foot the bill of building safety and we see a synergy in the fairness of leaseholders and homeowners being not liable to pay the levy.

Question 24: Do you agree supported housing should be excluded from payment of the levy?

33. Yes, we agree that supported housing should be excluded from payment of the Levy. Supported housing is often funded from the welfare system and it would be unfair for the Levy to be included for these building types.

Question 25: Do you agree care homes should be excluded from payment of the levy?

34. Yes, we agree that local authority provided care homes should be exempt from the levy. Private providers should be liable for the levy. However, where a local authority can provide evidence that the levy will adversely impact the development of a private sector care home or where there is insufficient alternative, the local authority should be able to appeal the development being subject to the levy. If local authorities are appointed collection agents, then surely, they would be in a strong position to advise on exemptions in this regard and for similar building types as addressed below.

Question 26: Do you agree that children's homes should be excluded from payment of the levy?

35. Yes, we agree that local authority provided children's homes should be exempt from the levy. Private providers should be liable for the levy. However, where a local authority can provide evidence that the levy will adversely impact the development of a private sector children's home or where there is insufficient alternative, the local authority should be able to appeal the development being subject to the levy.

Question 27: Do you agree Domestic Abuse facilities should be excluded from payment of the levy?

36. Yes, we agree that local authority provided Domestic Abuse facilities should be exempt from the levy. Private providers should be liable for the levy. However, where a local authority can provide evidence that the levy will adversely impact the development of a private sector domestic abuse facility or where there is insufficient alternative, the local authority should be able to appeal the development being subject to the levy.

Question 28: Do you agree residential care homes be excluded from payment of the levy?

37. Yes, we agree that local authority provided care homes should be exempt from the levy. Private providers should be liable for the levy. However, where a local authority can provide

evidence that the levy will adversely impact the development of a private sector care home or where there is insufficient alternative, the local authority should be able to appeal the development being subject to the levy.

Question 29: Do you agree Criminal Justice Accommodation be excluded from the levy?

38. No, we do not agree that Criminal Accommodation should be excluded from the levy. Many criminal justice accommodation contracts are lucrative and often development is often completed by larger developers. We see no reason why this type of development should be excluded regardless of how important the building type could be to the public.

Question 30: Do you agree military establishments be excluded from the levy?

39. Military establishments are extremely important to the national economy and the defence of the nation. However, they are generally built by large, specialist developers and can command very lucrative contracts. While respecting the importance of such buildings, we see no reason why they should be exempt from the levy.

Question 31: Would excluding developments under 10 units (or the square metre equivalent) protect small and medium sized enterprises? What might the alternatives be?

40. We would be supportive of excluding developments under 10 units or the square metre equivalent to protect small and medium sized enterprises and developers. We think that capping this at 10 units is about right and strikes the right balance between protecting small and medium enterprise and ensuring a good supply of affordable homes. We note, there was consideration by the UK Government to increase the threshold for the supply of affordable homes for Section 106 agreements from 10 units to 50 units. While we are strong advocates of protecting the interests of smaller developers, we would be concerned on the impact this could have on the supply of affordable homes.

Question 32: Do you consider that we should set a discounted levy rate for the entirety of a development where that development provides a specified proportion or affordable housing?

41. We believe that affordable and social housing functions are best for homeowners and tenants when built within the development of general housing stock and should be undistinguished as far as possible. Given the demand for affordable housing, we believe it would be sound to apply a discount to the levy for developers who provide a specific proportion of affordable housing. The discount should be considered on merit of overall stock of the development. We believe a good precedent for this proposal could be the new affordable housing contributions under the Infrastructure Levy. The Levelling Up Bill sets out that current section 106 contributions will be replaced by the new Infrastructure Levy, which would be paid by all developers to planning authorities. In particular, the thresholds and rates of the new Infrastructure Levy will be set in charging schedules which are set and raised by local planning authorities, rather than nationally, meaning that rates are tailored to local circumstances. These charging schedules must have regard to previous levels of affordable housing funded by developer contributions, in order that affordable housing is at least maintained at or exceeds previous levels. With these principles held by public examination, we believe that this would support the needs of affordable housing depending on local need, would be a transparent and fair process and would be a good model for the Building Safety Levy to follow.