

7 February 2023



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## The Building Safety Levy: consultation

### Consultation response from The Housing Forum

**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?**

Yes

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At The Housing Forum our membership draws from across the UK housing sector – including manufacturers, developers, housebuilders, architects, housing associations and local authorities. We are concerned that the additional cost of the levy will place a tough burden on the housebuilding sector, some of which make development unviable, threatening overall housebuilding rates which will have a knock-on effect throughout the housing and construction sectors.

Section 106 agreements are often renegotiated due to viability concerns and the Building Safety Levy is likely to increase this, which may mean less funding for Affordable Housing or infrastructure. If developers have paid for sites before being aware of the forthcoming Building Safety Levy they will not have been able to factor this cost into what they offer for the land, so viability may be threatened. The uncertainty in the housing market at present and recent rises in construction costs make this more likely, whilst the strain on social landlords' finances means that they are unlikely to be in a position to help plug this gap without grant funding.

The impact cannot really be known until the rate is set.

There is an additional risk that the complexity of layering many different types of tax onto new development creates a difficult operational environment.

We are particularly concerned about regeneration schemes, which already struggle with lack of government funding and challenging viability.

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

Local authorities would seem the most sensible collection agency.

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

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We would like to see these costs covered by central government. Local authorities (or whoever is the collection agency) will clearly need funding to cover the costs of collection, but the levy itself will raise less funding if some of it is taken for collection costs.

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

We think that quarterly returns would be practical.

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

Yes. Annually.

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

We disagree. A single stage process where the levy is collected only prior to completion would be preferable. Early stage payments are more likely to present viability or cash flow problems for developers, who have not at that point made any income from sales, but will have had to pay for other upfront development and infrastructure costs. A single point of collection would also be administratively simpler and therefore less costly. Collecting all of the levy at a later stage also allows for a single final appraisal of the amount sought, and the impact of any exclusions. It would be of particular benefit to SMEs.

**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.**

No. If the two-step process is retained, then we would favour a smaller upfront payment, to ease the pressures on cash flows.

We would like to see more details on how rebates could be obtained if, for instance, a scheme became exempt due to a change in the tenure of the housing being built.

**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.**

*No proposed answer*

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

Withholding of the building control final certificate.

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**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?**

*No proposed answer*

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

No. This should not be necessary if building control final certification is withheld until it is paid.

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

Avoiding exemptions to small sites based on a number of units and ensuring exemptions are clear and well defined.

**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.**

A per square meter basis would be fairest and avoid distorting the market on incentivising building fewer homes on marginal sites.

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

See answer to Q31.

Flexibility over payment timings, and ensuring that most or all of the payment is not required until the point of issuing building control final certificate would help cash flow of SMEs in particular.

More help is very much needed to support the SME housebuilders, but this levy may not be the best means by which to do that.

**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.**

*No proposed answer*

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

If the Government does decide to vary the rate by area, then local authority boundaries would be the more sensible way to do it. Housing market conditions vary considerably across a region, and less within a local authority.

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**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?**

*No proposed answer*

**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?**

We are concerned about the impact on viability of schemes that are currently well-advanced under the proposed transitional provisions. There are also challenges for large phased developments which are not at the stage of building control for several years, but where the profits from market housing built in early phases are needed to fund affordable housing built later. Additional costs that have not been factored into financial plans would result in challenges to S106 agreements on viability grounds.

Developments with full planning permission should be exempt as long as they commence within 12 months of the date of introduction of the levy. This would reduce the number of late stage viability challenges on S106 agreements. It may also help to reduce the financial impact on the housebuilding sector at a particularly difficult point in time when the housing market is looking less strong.

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

We would support all of the proposed exclusions.

We think that non-profit registered providers of social housing and companies that are wholly owned by non-profit registered providers of social housing should be excluded. This would be consistent with the approach to the Residential Property Developer Tax. Affordable Housing built by commercial developers under S106 obligations should be excluded as well where it is a recognised Affordable Housing product.

**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.**

We cannot see any real reason for excluding these, as the housing markets for students, older people and everyone else are inter-related, and other types of households also need housing. Developers of specialist housing are no less financially strong than any other developers.

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

Yes

Please give reasons for your answer.

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Affordable Housing should be clearly defined and exempted, whoever develops them. Affordable housing may already be at risk via renegotiations of S106 agreements brought about because of the additional burden of the building safety levy.

Social landlords' finances are extremely strained at present, so we would support the exemptions for social landlords. Putting the levy onto social landlords would simply increase the subsidy required from government to maintain levels of affordable housing (plus administrative costs, which would simply be lost).

**Question 22: Do you agree NHS Hospitals, NHS Medical homes, and NHS GP practices should be excluded from payment of the levy? Please give reasons for your answer.**

Yes. As above, levying a charge on government bodies would just increase the subsidy required from central government to compensate them to achieve the same result.

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

Yes. Improvements to homes are often needed in order to improve their energy efficiency and this should be supported rather than taxed. If the levy was added to this type of activity, the costs would be borne by the homeowners, which was never the stated intention of the levy.

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

Yes. As above, levying a charge on housing that already receives government support would just increase the subsidy required from central government to compensate them to achieve the same result.

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

Yes. As above, levying a charge on housing that already receives government support would just increase the subsidy required from central government to compensate them to achieve the same result.

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

Yes. As above, levying a charge on housing that already receives government support would just increase the subsidy required from central government to compensate them to achieve the same result.

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

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Yes. As above, levying a charge on housing that already receives government support would just increase the subsidy required from central government to compensate them to achieve the same result.

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

Yes. As above, levying a charge on housing that already receives government support would just increase the subsidy required from central government to compensate them to achieve the same result.

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

Yes. As above, levying a charge on housing that already receives government support would just increase the subsidy required from central government to compensate them to achieve the same result.

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

Yes. As above, levying a charge on housing that already receives government support would just increase the subsidy required from central government to compensate them to achieve the same result.

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

Unsure. We have concerns about this aspect of the levy. A lot of SME housebuilders build sites that are somewhat bigger than 10 units, particularly medium sized builders, which are the group who have the most potential to help grow the overall capacity of the housebuilding sector.

There is concern among our members that site or develop-size exemptions could encourage gaming of the system or a distortion of the market as developers try to avoid the levy. This could potentially reduce housing outputs, for instance in marginal sites where building 10 four-bedroom homes would avoid the levy, but 16 mixed size flats and houses would attract it. Similar distortions are sometimes seen around the threshold for S106 Affordable Housing contributions and it is particularly important that the same threshold is not used for both as this would worsen the market distortion around the threshold.

Flexibility over payment timescales and removing the upfront charge would help to support the cash flows of SMEs.

**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?**

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We support this in principle, but the details would need to be worked out.

The proportion of affordable housing that would trigger the discounted Levy would be best determined by local authorities who would be able to set appropriate thresholds which are realistic in their local housing market.

We think that more thought needs to be given to the treatment of Joint Ventures between housing associations and developers and/or local authorities – many of our members work in different types of partnership to deliver housing, including affordable housing. Exemptions and discounts need to work for different setups including where one party subcontracts from the other, and where the not-for-profit entity contracts to develop the affordable housing and a for-profit development vehicle develops the homes for market sale.

Social landlords building homes for market sale or rent use the proceeds from these to cross-subsidise affordable housing. There is therefore an argument for exempting all homes built by social landlords, as reducing their ability to cross-subsidise would simply increase their reliance on government grants.

Exemptions or partial exemptions would be preferable to having the levy charged and then reimbursed – to reduce administrative costs and cash flow difficulties. However, a mechanism for reimbursement is clearly necessary for situations where the tenure of homes changes from what was originally planned.

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