

Response by email to: HRB.LevyConsultation@communities.gov.uk

15 October 2021

Response to consultation on Building Safety Levy

Executive Summary

We, the Association of Real Estate Funds¹ (AREF) welcome the opportunity to respond to the government's consultation on the Building Safety Levy ("levy").

AREF's members very much support the principle of a stronger regulatory and supervisory environment to ensure higher safety standards for residential buildings. This should improve market confidence in high rise buildings and help attract the necessary funding into the residential sector, if implemented in a constructive way on which we expand on below.

We note that the Building Safety Bill proposes establishing the Health and Safety Executive as the Building Safety Regulator, to underpin the key regulatory reforms in the new building safety regime. They will be responsible for introducing a more stringent regulatory approvals framework in design and construction for new high-rise residential buildings, care homes, and hospitals which are 18 metres or more in height. AREF's support for the levy is on the basis that it is used to ensure provision of a higher level of oversight by building control in the future in a practical and timely manner that works with building schedules. Our members would be happy to liaise with you on operational aspects of this.

However, we note that the government plan to use the levy for the purpose of meeting the government's building safety expenditure, such as providing assistance for the purpose of removing unsafe cladding. In AREF's response to the Residential Property Development Tax (RPDT) we gave our reasons for the Build to Rent (BTR) sector to be excluded from the RPDT. In summary, the BTR sector ensures ongoing safety of the buildings they developed and, where necessary, undertakes remedial safety measures without assistance from government or cost to leaseholders or tenants. Imposition of the RPDT to the BTR sector would not just, therefore, have been misplaced and unfair, but more importantly would have impacted negatively on future capital raising for investment in new homes (i.e. reducing new investment) and so on the future housing supply and in particular of the supply of affordable housing – which no one wants to see.

As stated in this response, we are broadly supportive of measures to improve building safety. Our suggestion is however to optimise this and give clear dividing lines and application of funding (noting also that different bodies are involved in the tax and levy) that:

1. The RPDT is used to provide funding to remedy safety issues that have been identified with existing building. For that reason, we are pleased to see that the BTR sector has been excluded from RPDT.

¹ The Association of Real Estate Funds represents the UK real estate funds industry and has around 60 member funds with a collective net asset value of more than £72 billion under management on behalf of their investors, including £18 billion on behalf of retail investors in the UK. The Association is committed to promoting transparency in performance measurement and fund reporting through the AREF Code of Practice, the AREF/IPD UK Quarterly Property Funds Index and the AREF/IPD Property Fund Vision Handbook.

2. The levy is closely aligned with the new building safety measures. In particular we would like to see, not just new regulatory control, but the money ring-fenced by the government to ensure more training for inspectors on the latest law and regulation, practical training and suitable time and provision of resource so that building inspectors can come on site on a timely and constructive basis to ensure appropriate supervision and delivery.

Our members would be very happy to work with you on the design and implementation of the levy on the above basis.

Our response to the consultation

We have taken a sounding of our members and include this in the more detailed response below. If you would like to discuss our response with us, please contact either myself (prichards@aref.org.uk) or Jacqui Bungay (jbungay@aref.org.uk), Policy Secretariat at AREF. Also, the members of our Residential Fund Working Group, Tax Committee and ESG & Impact Investing Committee are willing to assist government by sharing their wealth of knowledge and expertise.

Yours sincerely

Paul Richards
Managing Director, The Association of Real Estate Funds

Response to Building Safety Levy consultation

Design of the Building Safety Levy

<p>Q1</p>	<p><u>Who will need to pay the levy?</u></p> <p><i>Do you agree that the Client should be responsible for paying, or ensuring payment of, the levy? Please let us know of any alternative proposals you consider to be better, and why, or any other factors we should take into account.</i></p> <p>For residential funds, the developer would probably be the Client. It would pay the levy and then would be refunded by the fund. The fund would want proof the developer had paid the levy.</p>
<p>Q2</p>	<p><u>Exclusions from the levy</u></p> <p>- <u>Affordable Housing</u></p> <p><i>Do you agree that affordable housing should be excluded from levy charges? Please explain.</i></p> <p>Yes, we do agree that affordable housing should be excluded from levy charges. However, the levy could still have an indirect impact on affordable housing, which we believe the government should take into consideration to ensure there is not a reduction in the level of affordable housing.</p> <p>It is important, therefore, that the levy is not set at a rate that would make providing affordable housing as part of an open market scheme unviable or necessarily reduce the amount able to be provided.</p> <p>The levy would be paid on units being let (or indeed if applied to build to sell, sold) on the open market and this would reduce the funds available to provide the same level of affordable housing as at present. Local councils usually set the proportion of affordable housing they expect to be built by open market schemes. Developers can ask for this to be reduced if the level set would make the development unviable e.g. land needs decontaminating or revenue from open market housing is lower than in other areas. The levy may lead to an increase in requests to councils to reduce the level of affordable housing they expect in open market developments.</p>
<p>Call for Evidence (A)</p>	<p><i>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.</i></p> <p>We have no evidence we can provide.</p>
<p>Q3</p>	<p>- <u>Hospitals</u></p> <p><i>Do you agree that hospitals should be excluded from paying the levy?</i></p> <p>Yes, we do agree that hospitals should be excluded from paying the levy.</p>

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<p>Q4</p>	<p>- <u>Other categories of developments</u></p> <p><i>Are there any other categories of development or developer that should be excluded from the levy? Please explain why you think this and your views on market impacts.</i></p> <p>We note that the government plan to use the levy for the purpose of meeting the government's building safety expenditure such as providing assistance for the purpose of removing unsafe cladding. We believe the funds raised by government from the RPDT, and not from the levy, should be used for this purpose.</p> <p>AREF requested that BTR should properly be excluded from RPDT. The reason for this is that the BTR sector ensures ongoing safety of the buildings they develop and where necessary undertakes remedial safety measures, without assistance from government or cost to leaseholders or tenants. It would be unfair on the sector to have to pay for ensuring the safety of buildings built by others.</p> <p>Ideally, given the above, we do not wish to see the new levy applied to retrospective repairs, but to ensure ongoing safety measures are properly implemented.</p>
<p>Q5</p>	<p>- <u>Small and Medium-sized Enterprises</u></p> <p><i>Would the ability to agree payment schedules support SMEs?</i></p> <p>As the levy relates to building safety, we do not believe that SMEs should be excluded from paying it. We agree with the government suggestion of payment schedules for SMEs to assist with funding and cash flow.</p>
<p>Q6</p>	<p><i>Are there other measures that would support SMEs paying the levy?</i></p> <p>We have no comment.</p>
<p>Q7</p>	<p>- <u>Refurbishment</u></p> <p><i>Do you agree that refurbishments should be excluded from the levy? Are there any types of refurbishments that you consider should be captured and should pay the levy?</i></p> <p>Yes, we agree that all refurbishments should be excluded from the levy. If the levy was paid on refurbishments this could act as a disincentive to retro fit buildings and bring them up to modern safety standards.</p>

Levy calculation

<p>Q8</p>	<p><i>Which option do you think provides the most transparent, simple and objective basis for the levy: floor area or per residential unit? Why?</i></p> <p>AREF members have different views on this so we are unable to provide a definitive response.</p> <p>We appreciate that a levy based on floor area would be the simplest to calculate and levels the playing field, however, allowance would need to be made for the Gross Development Value (GDV) (see our response to Q11). We acknowledge that as the levy would be paid at the preconstruction phase the value of the development would be estimated at that stage and may not reflect the actual value achieved.</p> <p>As there are so many variables to consider we are willing to meet with government to discuss the various scenarios.</p>
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<p>Q9</p>	<p><i>Would documentation required for building control approval at Gateway 2 provide accurate evidence of this basis?</i></p> <p>We have not provided a response to this question as we have not been able to provide a definite answer to Q8.</p>
<p>Q10</p>	<p><i>Do you have an alternative proposal as a basis for the levy? If so, please explain why you consider it better.</i></p> <p>Please see our response to Q8.</p>
<p>Q11</p>	<p><i>Do you agree that the levy rate should be varied depending on location, to reflect differing property values? Please indicate any suitable examples of doing so.</i></p> <p>We agree that the levy rate should be varied depending on location, to reflect differing property values. This must be based on local areas and not on a regional basis. For example, in Greater Manchester property values in Bolton are about half the value of central Manchester. Also, property values can vary within parts of towns and cities too.</p>
<p>Call for Evidence (B)</p>	<p><i>To support the government’s eventual decision on the levy funding level and payment mechanisms, we would welcome further information from those potentially subject to the levy covering:</i></p> <ul style="list-style-type: none"> - <i>An overview of typical cashflow over the lifecycle of a higher-rise residential building project</i> <p>We have no evidence to provide.</p> <ul style="list-style-type: none"> - <i>How higher-rise building projects are structured in terms of company structures/ Special Purpose Vehicles/ Joint Ventures.</i> <p>We have no evidence to provide.</p> <ul style="list-style-type: none"> - <i>How many “Clients” (as per definition in Building Safety Bill) are also Small or Medium Size Enterprises under the usual definition SMEs (as businesses with between one and 249employees).</i> <p>We have no evidence to provide.</p>

Potential housing supply impacts

<p>Q12</p>	<p><u>Product or portfolio-level disclosure requirement, timing and location</u></p> <p><i>In seeking to balance revenue generation from the levy and impacts on housing supply, we would welcome views on the levy rate (as a percentage of property value) which would impact viability of housing supply – differentiating between different geographical locations and also property values if possible.</i></p> <p>The levy should be set at a level that meets the need to provide additional resources to oversee building safety on future developments to ensure residential property, going forward, is safe to live in. As we have mentioned above, we do not believe sectors that are undertaking and paying for remedial work to ensure buildings they have built are safe should be paying for remedial work on buildings built by others.</p>
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<p>Q13</p>	<p><i>How might developers seek to mitigate the impacts of a levy – including adjusting development plans, build out strategy, land acquisition strategy and pricing?</i></p> <p>The levy will have an impact on land value, affordability and supply and return.</p> <p>Developers could seek to mitigate the impacts in a number of ways given that the levy may to be a (hopefully small) percentage of GDV.</p> <p>They may look to reduce the building height on site where allowable height will only just exceed the 18m level and thereby lose a storey or two of development to come in below the threshold, reducing the number of homes delivered. This is similar to the scenario with affordable housing where the requirement to deliver affordable kicks in at a certain number. To mitigate this there may be more pressure to delivery greater coverage at a lower level which might lead to pressure on open space provision and any surface parking provision.</p> <p>Developers may also take the opposite view and look to build higher to increase considerably the amount of development on site to deliver greater value and mitigate the impact of the levy whilst still being able to generate a competitive land value.</p> <p>Where a contract allows, developers could seek to deduct the amount of the new levy from the land value as an allowable deduction. This will not be the case in all contracts however but in future would be something developers would need to factor into their appraisals and might impact the viability of residential use against an alternative use of the site. Pricing will largely be driven by what the market will sustain and there will be limited opportunity for a developer to increase either sales value or rents just because an additional development cost has been levied.</p>
<p>Q14</p>	<p><i>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?</i></p> <p>We would suggest there is a safety charter mark or certificate given to buildings that meet the building safety requirements. This would demonstrate the developments had achieved high standards in building safety and would help attract investment. This approach may also assist with the soft marketing of what is effectively a new tax, in linking it expressly to future ESG type initiatives which investors and managers alike are keen to see and may make any impact more palatable if there are tangible ways of proving it.</p> <p>We understand that section 106 contributions may continue to exist. We would wish to ensure that there is no double counting in respect of how the contributions and the levy are used; hence our suggestion of more explicit ring-fencing of the levy to actual building safety measures.</p>
<p>Q15</p>	<p><i>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?</i></p> <p>If it becomes unviable to build in some locations, for example on brownfield sites, this could reduce regeneration and affect the government’s “levelling up” agenda.</p> <p>We note that there are no plans to provide any relief from the levy for residential property being built in Freeport sites. Providing relief from the levy (and indeed consideration could also be given to a targetted SDLT relief) would give some incentive to build new good quality housing for people working in the Freeports, noting that there are no incentives for residential at the moment</p>

Process and timings

<p>Q16</p>	<p><i>Do you anticipate any issues with a self-assessment and payment system alongside the Gateway approvals process, and how might these be addressed?</i></p> <p>Alongside the proposed self-assessment process, we believe there should be appropriate building control oversight to provide comfort to investors in the developments and tenants moving into the properties that they meet high standards of safety. We note that there is a plan for a central Building Safety Regulator, possibly the Health and Safety Executive, to administer the levy and oversee and control the self-assessment process. We believe the levy should be used to improve resources in council planning departments so they have the right skills, training and number of personnel to provide a high standard of building control oversight throughout the development process in a timely manner.</p> <p>We would not wish to see the levy just disappear into a central government pot. We believe it should be ring-fenced and used for ensuring high standards in building safety going forward.</p>
<p>Q17</p>	<p><i>How might a payment schedule system be implemented?</i></p> <p>We don't disagree with the proposal for the first levy payment to be required at Gateway 2 and a levy-adjustment to be required at Gateway 3, subject to a self-assessment.</p>

Incentives and sanctions

<p>Q18</p>	<p><i>Do you anticipate that these, or other issues, may occur in operation of the levy? Please provide examples.</i></p> <p>Ensuring the correct valuation of the development requires further consideration and is itself another potential cost, depending on how implemented.</p> <p>Where there are legitimate variations to planning during construction the developer would need to have a route to adjust the levy payment accordingly.</p>
<p>Q19</p>	<p><i>How might levy design avoid mistakes, gaming and fraud, or else maximise positive incentives?</i></p> <p>It is important for both developers and government that the system is simple and transparent enough to avoid, or at least reduce, the number of instances of mistakenly or deliberately providing information which reduces the amount paid. We would note that the possibility of using property values to calculate the levy due and also, different rates, depending upon location, the levy could become complicated to calculate and could add to the cost for developers.</p> <p>We would envisage that an inspector might attend site upon completion to confirm that the development, upon which the levy has been paid, is that which has actually been developed – subject to any legitimate variations to planning during construction.</p>

Q20	<p><i>In what circumstances do you think penalties or surcharges would be necessary, and how might these be applied? Please provide examples.</i></p> <p>Under the proposals non-payment would prevent a developer from making a start on site in the same way that failure to submit a site start notice would. Should a developer make a start without paying then enforcement action to prevent further works and potentially a fine if the developer has knowingly ignored the rules might be appropriate.</p> <p>We have no complaint over proposed fines where there has been a deliberate attempt to mislead but mistakes and misunderstandings do happen (particularly with a new system) and there needs to be an opportunity to correct the payment without penalty where this has happened.</p>
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Reviews and appeals

Q21	<p><u>Decisions that may be subject to a review/appeal:</u></p> <p><i>Are there any other issues that could give rise to disputes in relation to the levy?</i></p> <p>We would note that it is important there is a timely mechanism for disputes over the quantum of the levy such that approval and the ability to start construction is not unnecessarily delayed.</p>
Q22	<p><u>Review by the Collection Agency & Appeal to the First Tier Tribunal</u></p> <p><i>Do you agree that the approach to resolving disputes outlined in paragraphs 67 to 69 is appropriate? Are there other decisions in the operation of the levy that you consider merit a review and appeal route, and why?</i></p> <p>We agree with the approach to resolving disputes as outlined in the consultation document.</p>