

Mayor of London Response to Building Safety Levy Consultation

February 2023

Summary

This consultation sets out the Mayor of London's comments in relation to the current Building Safety Levy (BSL) consultation. The Mayor is supportive of the principle of raising funding to address building safety remediation. However, he has a range of concerns with the current proposals, including the impact that this could have on the delivery of affordable housing and infrastructure needed to support development. The BSL would also place a significant additional burden on local authorities if they are required to introduce and maintain systems for collecting the Levy.

The Mayor's comments on the consultation questions are set out below and his response to the previous consultation is provided at Appendix 1.

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?

The Mayor of London is supportive of government's efforts to raise funds dedicated to building safety remediation in as equitable manner as possible, and the principal that no affected leaseholder should pay for required works.

The interplay between the different forms of planning obligation is varied and complex, however it is clear that the BSL could have a direct impact on affordable housing, infrastructure contributions and other obligations that are necessary to support the delivery of development. This would particularly be the case if BSL were to be permissible as an additional development cost in viability testing for Development Plans, Community Infrastructure Levy (CIL) charging schedules and individual applications, rather than through developer's profit. In instances where the costs of development outweigh the estimated value of the proposal, if the BSL were to be applied as a fixed charge, it is the quantum of affordable housing, infrastructure and other obligations that would reduce. This would however effectively pass on the costs of historic failings of the construction industry to households in need of affordable housing and limit the provision of infrastructure and other measures that ensure that development is sustainable.

The introduction of extra costs of development into the consideration of area-wide and site-specific FVAs through the introduction of a Building Safety Levy (BSL), will negatively impact the ability of development proposals to cross-subsidise much needed affordable housing.

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As such, the Mayor considers that:

- *It is inequitable that resolution to the building safety crisis be funded at the expense of addressing chronic levels of need for affordable housing*
- *The government should reconsider appropriate routes for raising industry funds, alongside the Residential Property Developers Tax (RPDT) and the developer pledge, as well as contributing funding to ensure there is a comprehensive solution available for those affected by cladding and other building safety issues*
- *If the BSL is adopted, then national planning policy and guidance should be updated to make it clear that the Levy should be paid through developer's profit and that this cannot be included as an additional cost within area-wide and site-specific planning viability assessments. This should also confirm that the profit allowance should not be increased to compensate developers for the cost of BSL*

The same issues would apply to the Infrastructure Levy proposed in the Levelling Up and Regeneration Bill when Charging Authorities assess rates to be included within a charging schedule and these are considered at Examination. For these reasons the same approaches set out above should be applied, with regulations making it clear that BSL cannot be included as an additional cost in viability testing.

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

In addition to the comments set out above, the Mayor is concerned by the additional burden that collecting the BSL would place on local authorities whose resources are already highly constrained. Furthermore, government is also imposing significant complexity and requirements on councils through the imposition of the Infrastructure Levy. The introduction of both new levies would require authorities to maintain a number of different Levy and contributions systems simultaneously, particularly during the transition period for the Infrastructure Levy which would be lengthy and highly disruptive.

As above, this could be overcome by raising additional funds through the RDPT, the developer pledge, and government funding if necessary. If however government proceeds with BSL this should be administered through a central collection agency. If government elects to require local authorities administer the BSL it is vital that this is properly resourced and that wider support is provided to authorities to ensure consistency in approach and assist with legal matters.

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

As with the collection of CIL, a collection of allowance of at least 5 per cent should apply. However, in authorities where receipts are lower a minimum resourcing cost may be necessary to account for fixed costs including the setting up and

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administration of monitoring systems, accounting and transfer of funds, as well as officer time.

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

The frequency with which funds are transferred to Central Government should strike a balance between being overly burdensome on the collecting authority and keeping up with cashflow requirements of the remediation works. The proposed quarterly return of funds seems to be a practical approach.

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

Yes, it will be important to keep the BSL under review and amend rates were necessary. As set out below, these should be evidence based, sense checked, consulted on and subject to scrutiny.

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

The proposed timings of when the liability shall become payable seem sensible in connection with smaller scale development. Payment through additional instalments should be allowed for larger scale or phased developments.

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.

A greater proportion of the payment should be made on completion of the development or relevant phase to support developer cashflow and delivery. We would suggest a split of 40 per cent at commencement and 60 per cent on completion.

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.

N/A

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

We would recommend aligning sanctions with the RDPT or CIL wherever possible to help ensure consistency in approach. This will assist developers and collecting agencies in understanding, complying with and enforcing the BSL.

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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?

Yes. See above.

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

See above.

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

Providing a simple and clear charging, payment and enforcement structure will be important to help limit avoidance.

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.

The BSL should be based on net additional floorspace rather than a unit-based levy as it is likely to lead to less market distortion in terms of unit sizes and the unit mix delivered. Net additional floorspace is also consistent with the calculation of CIL.

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

We would suggest exempting sites that are not capable of providing ten or fewer residential units and developments with an equivalent floorspace. This would avoid incentivising under-development in order to avoid the charge and other requirements including affordable housing which typically apply to schemes with ten or more residential units.

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.

This approach is supported, however it should be noted that there is significant variation in residential and land values both across and within London boroughs.

If BSL rates are set nationally and based on residential values without consideration of the relevant property market, including variations in build costs and land values, they may be inappropriately high for some developments. Basing the Levy on average values could also result in rates being too high for developments with lower than average values. As such proposed rates should be based on lower percentile values. These should be evidence based, sense checked, consulted on and subject to scrutiny prior to adoption.

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

London as a region contains not only some of the highest value residential properties in the world but also areas of acute deprivation; the setting of a blanket rate at a regional level is highly likely to adversely impact the delivery of development unless the rate is very low. This would also impact on affordable housing delivery in areas where this is most needed, directly contradicting the current levelling up agenda.

Setting variable rates for every local authority area would however result in a complex set of charges which could have unintended consequences including boundary distortions. As such, rates should be set based on lower percentile values on a sub-regional basis. As set out above these should be subject to consultation, sense checking and scrutiny prior to adoption.

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?

A differential rate applied to greenfield and brownfield developments would be supported to ensure brownfield land is prioritised for development. The costs of development associated with brownfield land are often significantly greater than those in connection with greenfield land, however the social and environmental benefits to such development outweigh those of greenfield development.

There is a strong likelihood that a standard rate across all land classifications would disincentivise and reduce the amount of brownfield development coming forward. A proportionately lower rate should be applied in areas where infrastructure costs are greater and where there is greater potential to deliver brownfield development.

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?

It would be problematic, impractical and inequitable to impose the levy on proposals where there are live planning applications or existing planning consents in place.

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

The Mayor is supportive of the proposed exclusions however we highlight the response to Question 25. In addition, housing developed by for-profit entities whose profits are solely redirected into affordable housing should be exempt.

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.

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Build to Rent development and co-living development should be included within scope to avoid market distortions. This would also avoid incentivising their delivery over typical market sale schemes, which are the principal delivery method for low cost rent affordable homes through the planning system.

The exemption criteria should apply to purpose-built student accommodation developed and managed by Higher Education Providers and charitable organisations. Further comments on this were provided in the Mayor's response to the previous consultation which is copied below.

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

The Mayor strongly supports the exclusion of affordable housing from the BSL. Please see comments on questions 1 and 32 regarding other measures that should also be taken to help limit the risks of delivering fewer affordable homes as a result of the BSL.

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

Given the public nature of the services being provided, the Mayor would support this exclusion. Other forms of community infrastructure such as transport, education, community, affordable workspace and cultural facilities should also be excluded.

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

Yes.

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

The Mayor would support the exclusion of supported housing from the Levy.

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

The Mayor would support the exclusion of care homes from the Levy, however not 'extra care/ supported housing'. Developments which provide care homes accommodation and meet the following criteria should be excluded:

- *Personal care and accommodation are provided together as a package with no clear separation between the two*
- *The person using the service cannot choose to receive personal care from another provider*

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- *People using the service do not hold occupancy agreements such as tenancy agreements, licensing agreements, licences to occupy premises, or leasehold agreements or a freehold*
- *Likely CQC-regulated activity will be 'accommodation for persons who require nursing or personal care'*

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

The Mayor would support the exclusion of children's homes from the Levy.

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

The Mayor would support the exclusion of Domestic Abuse facilities from the Levy.

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

The Mayor would support the exclusion of residential care homes from the Levy, however not Extra Care developments. See response to question 25.

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

Given the public nature of the services being provided, the Mayor would support this exclusion.

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

Given the public nature of the services being provided, the Mayor would support this exclusion.

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

Please see response to Question 14.

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?

Yes. The BSL should be designed in a way that incentivises and does not reduce the delivery of affordable housing which could have severe equalities impacts. To address this, a nil or discounted rate should be applied to schemes which provide 35 per cent or more onsite affordable housing. This aligns with the 'threshold approach' to

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affordable housing' set out in the London Plan 2021 which measures affordable housing by habitable rooms.

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APPENDIX 1: PREVIOUS BUILDING SAFETY CONSULTATION RESPONSE

Mayor of London response to Building Safety Levy consultation

15 October 2021

Summary

The Mayor welcomes the opportunity to respond to the consultation on the Building Safety Levy.

The Mayor has been clear that no leaseholder should have to pay the cost of remediating mistakes that have resulted from regulatory failures. He is supportive of the government's efforts to raise funds dedicated to building safety remediation. In particular, he welcomes the recognition that the development industry should contribute to the cost of resolving the building safety crisis.

The Mayor has reviewed the Building Safety Levy proposals, and asks the government to revise these so that:

- Measures are in place to prevent developers from passing down levy contributions to communities, those in need of affordable housing, or housing associations, via S106/viability negotiations.
- Exemptions are extended to cover housing developed by for-profit entities whose profits are solely redirected into affordable housing.
- Exemptions are expanded to cover purpose-built student accommodation developed and managed by Higher Education Providers (HEPs) and charitable organisations.
- The design of the levy and the rate at which it is set minimise the risk of developers adapting scheme designs to evade the levy where this would undermine existing design requirements.

Please consider this submission jointly with the submissions from the G15 group of London's largest housing associations and the National Housing Federation (NHF), which offer valuable insights into the potential implications of the levy on the social housing sector. The GLA, G15 and NHF share the view that any solution to the building safety crisis must protect affordable housing delivery.

Response to consultation questions

1 Impact on local infrastructure and affordable housing supply

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- 1.1 The Mayor is very concerned that without adequate safeguards levy costs will result in reduced local infrastructure and affordable housing provision. The planning process is the main mechanism through which developers can pass on levy costs. Because the levy is a site-specific charge, developers may elect to count levy payments as costs to individual schemes. If these contributions were included in viability assessments it would reduce the viability of delivering affordable housing, for which there is overwhelming need in London and infrastructure that is needed to support development. This would impact negatively on the outcome of the planning process and wider support for development and the Mayor recommends that provisions are built into the design to prevent this.
- 1.2 Further, the Mayor is concerned that the government – correctly – flags that affordable housing supply may be reduced to maintain overall housing supply (paragraph 52 of consultation document). The objective of both the RPDT and the levy is to ensure that the development sector makes a fair contribution to help fund cladding remediation costs. This objective will be undermined unless it is clear, in both the legislation and guidance documents, that levy costs must not be taken into account as a consideration in S106 negotiations or viability assessments. It would be highly inequitable if developers were ultimately allowed to offset levy contributions via adverse impacts on those in need of affordable housing, as well as to communities, through reduced infrastructure and facilities that enable the delivery of sustainable development.
- 1.3 **As such, the levy should be applied and set at a rate that does not have an impact on infrastructure and affordable housing delivery. The Mayor asks the government to ensure that it is the developer (the ‘Client’, as defined in the consultation document) who bears the cost of the levy. Additionally, the Mayor urges the government to ensure that the policy and legislative frameworks, as well as planning guidance, prohibit the application of levy contributions in S106/ viability negotiations, preventing new or past S106 agreements to be amended to accommodate for levy costs. This should also be applied to any future replacement of the S106 process taken forward through the government’s intended planning reforms.**

2 Scope of the levy

Affordable housing

- 2.1 Increasing affordable housing supply is the most effective and long-term strategy to respond to the worsening housing crisis, not only in London but in other major cities and parts of the UK as well. The Mayor therefore welcomes the exclusion of affordable housing from the levy.
- 2.2 However, exemptions from the levy do not recognise that it is increasingly common for non-profit registered providers (RPs) to cross-subsidise development programmes with surpluses generated from homes built

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through for-profit subsidiaries. These subsidiaries develop private properties for market sale or market rent and Gift Aid one hundred per cent of their surpluses to the parent organisation, the charitable RP. The current design of the levy would place these properties within the scope of the charge.

- 2.3 Our partners have stressed that funds from commercial activities undertaken by RP subsidiary companies are essential to fund new affordable housing supply. The NHF has told us these funds are vital in ‘bridging the gap’ between what is needed to meet affordable housing demand, and the funding available from government grants and debt. Charging the levy on properties developed by subsidiaries is expected to lead to reduced affordable housing supply.
- 2.4 **The Mayor therefore asks that the government amends the levy’s exemption criteria to include private housing developed as part of cross-subsidy models that solely support affordable housing supply. Please refer to the consultation responses from the G15 and the NHF for further detail on this point.**

Purpose-built student accommodation

- 2.5 Purpose-built student accommodation is a highly profitable venture and can have similar characteristics to the wider rental sector, especially when it is managed by private sector providers. The sector is currently estimated to be worth around £60 billion.¹ The Mayor therefore welcomes the application of the levy to purpose-built student accommodation, where these schemes are privately developed.
- 2.6 However, where the accommodation is developed and managed by Higher Education Providers (HEPs) as well as providers with a charitable status, the Mayor asks the government to exempt the schemes from levy charges. The reason for this is twofold. First, unlike conventional affordable housing developments, affordable student housing is not exempted from value-added tax, meaning that this accommodation is liable for a higher tax burden. Second, the London Plan’s policy on purpose-built student accommodation acknowledges the need for affordable student housing that is managed by HEPs and charitable organisations.² HEPs tend to have a more direct relationship with students and are more likely to provide suitable lower cost accommodation than private providers.
- 2.7 Applying the levy to this form of development could limit the supply of accommodation developed and managed by HEPs and charitable organisations, which would increase the costs of student accommodation and put greater pressure on existing housing stock as students are more likely to

¹ [UK Student Accommodation Report | United Kingdom | Cushman & Wakefield \(cushmanwakefield.com\)](#)

² See Policy H15 here: [The London Plan 2021.pdf](#)

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seek accommodation in the wider rental market, including family sized housing which can be cheaper by room rented.

- 2.8 The Mayor asks that the government expands exemption criteria to include purpose-built student accommodation developed and managed by HEPs and charitable organisations.**

3 Possible impact on housing design

- 3.1 The Mayor is concerned by the potential for the levy to negatively impact housing design. The consultation documents acknowledge that, in response to the levy, developers may change development characteristics. This could be with the intent of securing an exemption from the levy, typically by reducing the size of the development to below 18 metres; or compensating for the levy by seeking unsuitable levels of density to increase revenue.
- 3.2 The London Plan advocates making the best use of land by optimising the capacity of development sites, rather than simply maximising density. Optimising site capacity requires responding to local needs, and balancing the capacity for growth and increased housing supply with an improved quality of life for Londoners. Developers wishing to avoid the levy or minimise their contributions to it, may choose to design smaller or denser schemes, even though this may not be the optimum design approach for the site. For example, these designs may lead to schemes that are less sustainable and less pleasant, as light and natural ventilation are unable to penetrate the deep footprints. This behaviour could result in more schemes under-optimising the use of development sites and undermining the objectives of the London Plan. Crucially, these schemes would compromise the benefits communities and neighbourhoods could derive from new developments. This risk is especially important in the context of London, where land supply is severely constrained and the opportunity to optimise the use of land can't be wasted.
- 3.3 The Mayor therefore urges the government to design the levy, including the rate at which it is set, in such a way that this will not lead to a decline in the quality of housing and overall housing standards, and which minimises the potential for developers to game the levy through scheme designs that seek to achieve exemption from the levy, reduce levy contributions, or offset this through excess height or density.**