

# Building Safety Levy

## Consultation response

February 2024

### Summary

We have read with interest the government's response, published on 23 January 2024, to the consultation on the Building Safety Levy that took place in late 2022/early 2023.

We are pleased it intends to exclude from the levy the development of affordable housing, non-social homes built by not-for-profit registered providers and their subsidiaries, and other types of accommodation for people in need, such as supported housing, children's homes, care homes and nursing homes.

However, it appears the government has failed to address some other very important issues that were raised in our response to the previous consultation. These are therefore reiterated below in our response to the second consultation, which was also published on 23 January 2024.

## Our response

We write in response to the request for views on the design and implementation of the Building Safety Levy, as set out in the consultation document published on 23 January 2024 by the Department for Levelling Up, Housing and Communities (DLUHC).

The National Housing Federation is the representative trade body for housing associations in England. We are the voice of England's housing associations. Our members provide homes for around six million people and are driven by a social purpose: providing good quality housing that people can afford. We support housing associations to deliver that social purpose, with ambitious work that leads to positive change. Our members are non-for-profit, registered providers of social housing, whose activities are overseen by the Regulator of Social Housing (RSH, an executive non-departmental public body, sponsored by the DLUHC).

According to the 2022 global accounts of private registered providers, as published by the RSH, registered providers of social housing invested £12.3bn in new housing supply during the year ended 31 March 2022, which included the development of 49,000 social homes. In addition, they invested a record £6.5bn in their existing stock of affordable homes. Clearly, therefore, registered providers of social housing are critical to the delivery of affordable homes in the UK.

This supply of affordable housing is vital as there are currently 8.5 million people in England with some form of unmet housing need. Indeed, housing associations' developments constitute between a quarter and a third of all new homes developed in England every year.

The ability of registered providers to maintain investment at these levels is already being impacted by requirements to meet challenging energy performance and carbon reduction targets in relation to existing housing stock, rising costs of materials, staff and finance, and by the requirement to apply below-inflation increases to rent.

It is therefore essential that the Building Safety Levy does not exacerbate financial pressures on registered providers and inhibit the supply of affordable housing at a time when the increase in housing supply, particularly that of affordable housing, is a government priority.

Housing associations are committed to ensuring all homes are safe. Since the tragic fire at Grenfell Tower, housing associations have worked hard to assess safety risks and take urgent action to remediate buildings where needed.

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

The National Housing Federation is, however, concerned that the levy could still, without appropriate safeguards, particularly in relation to our members' joint venture entities, have a negative impact on the supply of affordable homes. In the above context, our response to the technical consultation document is limited to selected questions raised in the consultation document. In preparing our response, we have consulted extensively with our members and with our tax advisers, RSM. We are also grateful for the opportunity to discuss our concerns with the DLUHC.

### **Question 3: Do you have any comments on the process for the collection of the levy?**

#### **Recalculation of levy in the event of change in development or availability of exemptions**

We note that government is considering requiring updated levy information in the event that there is a change in the development or in the availability of an exemption prior to completion. It is our view that there should be a mechanism for recalculating the levy in such circumstances, and that this should be flexible enough to accommodate a recalculation of the levy in the event that a building is used for exempt purposes either before or immediately after completion.

As explained in our response to the previous consultation, it is not uncommon for registered providers of social housing to acquire completed or partially completed buildings from commercial housebuilders other than under the terms of planning obligations. For example, a commercial housebuilder might have intended to develop homes with a view to selling them on the open market, but due to changes in the economic environment might subsequently decide to sell or lease some or all of the homes to a registered provider of social housing, which would then use them as affordable homes.

If the Building Safety Levy is paid by the developer on those homes, the developer will inevitably seek to pass that cost on to the social housing provider through an increase in the purchase price.

To ensure that the Building Safety Levy is not incurred indirectly by registered providers of social housing, there must be a mechanism whereby the levy can be refunded to a developer if a building is subsequently transferred to a registered provider of social housing and used to provide affordable homes.

### **Homes developed by partnerships involving registered providers of social housing**

As explained in our response to the previous consultation, many housing associations develop homes of various tenures, including homes for sale or rent on the open market, through joint ventures with, for example, commercial housebuilders or local authorities.

A proportion of the profits from the joint venture are returned to the participating housing association, providing funds for the development of affordable homes and thereby helping to 'bridge the gap' between the amount that needs to be spent on affordable housing and the funding available from government grants and debt. The government's response to the previous consultation recognises, quite correctly, that the development of non-social homes by a not-for-profit registered provider's subsidiary company is a component of the registered provider's operating model to provide more affordable homes and to reinvest profits for the benefit of social/affordable residents.

Exactly the same can be said for the development of non-social homes by joint ventures in which a not-for-profit registered provider has an interest. By way of illustration, two of our larger members have, between them, an interest in 29 joint ventures that deliver on average 172 new affordable homes each year. This figure does not include the additional affordable homes that will be financed by our members' share of profits from the joint ventures when homes are developed and sold on the open market.

Such joint ventures are usually established as limited liability partnerships, with a wholly-owned subsidiary of the registered provider being a member of the limited liability partnership. If the Building Safety Levy is payable by the limited liability partnership in relation to the development of non-social homes, this will reduce the

profits available for distribution to the participating registered provider, which in turn will reduce the funds that can be reinvested in affordable homes and their residents.

We therefore urge government to consider applying a reduced rate of levy to limited liability partnerships in which a not-for-profit registered provider of social housing has a direct or indirect interest, proportionate to the registered provider's share of the limited liability partnership's profits.

For example, if a not-for-profit registered provider - or a wholly-owned subsidiary company - is entitled to 25% of a limited liability partnership's profits, all non-social homes developed by the limited liability partnership should benefit from a 25% reduction in the levy.

We accept that this will introduce additional complexity into the calculation and collection process, but without it the critical shortage of affordable homes and the funding and cost pressures currently being faced within the social housing sector will only be exacerbated.

### **Transitional arrangements**

We note that the government intends that developments which have begun the building control process before the 'launch date' will not be subject to the levy, but developments that submit an application for building control approval or an initial notice on or after the 'launch date' will be subject to the charge. There is no indication of when the 'launch date' will be. We recommend that the government announces the 'launch date' at least six months in advance, to give developers sufficient time to manage the resulting cost and cashflow implications.