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Insights

BUILDING SAFETY: GATEWAY TWO LEVY

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The eagerly awaited *consultation on the new building safety levy* (Levy) and its possible impact on housing supply and regeneration was published on 21 July 2021. It runs for 12 weeks, ending on 15 October 2021.

The new Levy, *first announced* by Robert Jenrick MP in February 2021, will be introduced through regulations (yet to be published) made under powers in the *Building Safety Bill 2021-2022* (Bill). It is expected to come into force in 2023 (subject to the passage of the Bill through Parliament) alongside the *"gateway two" stage* of the new building safety regime and will be paid to the Secretary of State (or designated body) to help fund the government's building safety expenditure (such as the removal of unsafe cladding).

This Levy is in addition to the *residential property tax,* which is the subject of a *separate consultation*, and is expected to be introduced in 2022 and which will apply to the largest residential property developers to also support the government's cladding remediation costs.

When will the new Levy apply?

The Levy will apply to "*higher-risk buildings*" (subject to exclusions) that are defined under the new building control regime as buildings with at least two residential units, care homes or hospitals which are at least 18 metres in height or have at least seven storeys. The Levy will also apply to conversions that bring an existing building into scope, such as an office to residential conversion under permitted development rights. However, it is proposed that affordable housing and hospitals are exempt from the new Levy and payment schedules are introduced to support SMEs.

The Levy will be triggered after the planning process, and aligned with the "gateway two" stage under the new building safety regime, when building control approval is sought for building work to commence. However, no details are provided on exactly when the Levy will become due and the payment window. This could have implications for cashflow.

Who will pay the Levy?

The consultation document proposes that the "Client" of a project will be liable for the Levy, with Client defined as any person or organisation for whom a construction project is carried out.

Levy calculation

The Levy will not be brought forward under the *CIL regulations* as had been speculated, but details of the formula are not provided at this stage. However, the following two options are proposed as the basis for calculating the Levy with the government also seeking views on alternatives:

- A charge per square metre of the entire internal floor area, subject to certain exclusions.
- A fee per residential unit in scope of the Levy.

Variable rates for either approach could be introduced to reflect disparities in property value, for example based on geographical location with a schedule of rates published for different areas.

A self-assessment system for the Levy is anticipated, supported by documentation provided by developers, which will then be reviewed by a collection authority, before building control approval is granted by the *Building Safety Regulator* (BSR). Although it is not clear whether a liability notice would be served and at what point the charge would crystallise.

However, the consultation proposes that the principal sanction for non-payment is for the BSR to withhold building control approval, which will prevent building work commencing. Depending on when the payment is due this may be at gateway two approval or as per a payment schedule. This means that if the Levy is not paid, the developer will not be able to commence construction or progress to completion.

Financial penalties are proposed for calculation errors, failure to assume liability and fraud.

Comment

This is an important consultation in which developers with interests and proposed schemes that come within scope should participate, as the new Levy will have a significant impact on development costs. At this stage, it is not possible to estimate what the additional cost will be, but the government's decision on the eventual Levy rate will be informed by the evidence received. In setting the rate, it will seek to balance revenue raised with potential impacts on housing supply and will consider the potential cumulative impacts of other prospective costs to the sector (which include the *proposed new infrastructure levy* and the *residential property tax*).

Developers are urged to give due consideration to all the issues raised in the consultation and, in particular, consider the Levy rate (as a percentage of property value) that would impact viability of housing supply as these views will form an important part of the government's decision making. This consultation is an important opportunity for developers to help shape the new Levy that will be imposed and it will be essential for the government to strike the right balance to ensure that viability and housing supply are not undermined.

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Clare Eccles

London

clare.eccles@bclplaw.com
+44 (0) 20 3400 4267

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