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Scottish Building Safety Levy: Consultation on Proposals

SPF Consultation Response

Submitted on 18 November 2024

SCOTTISH PROPERTY FEDERATION

The Scottish Property Federation (SPF) is the voice for the real estate industry in Scotland. As a part of the wider British Property Federation, we include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers. Our members build Scotland's workplaces, deliver homes, shops, schools and other facilities and the infrastructure that serves them. Our industry is therefore a core component of the Scottish economy.

CONSULTATION SUMMARY

Scottish Building Safety Levy: Consultation on Proposals

The Scottish Building Safety Levy is proposed to fund the Scottish Government's domestic property Cladding Remediation Programme which aims to rectify unsafe cladding in buildings owned by the public sector or where the original owner is no longer present.

The levy will apply to all new (private) residential development and is anticipated to generate up to £30m annually to address some 1,000 high rise and 5,000 medium rise buildings that are included within the scope of the Government's Cladding Remediation Programme.

While the levy is seeking to largely mirror that of English Building Safety Levy, this consultation is requesting views on how it should be formed in Scotland with key questions relating to:

- Fairness
- Exemptions
- Calculating the levy
- Operational considerations
- Tax Compliance
- Duration

GENERAL COMMENTS

Fairness

We recognise, remediation of unsafe cladding is an urgent priority, however we are concerned this levy places a disproportionate burden on developers, many of whom were not even in operation at the time or if they were then complying with the correct building regulations of the time. Indeed, neither were developers responsible for manufacturing unsafe cladding.

We urge the government to acknowledge that the financial implication of the levy is expected to create viability challenges for developers at a time when the industry is also facing increased construction costs, inflation and other regulatory interventions such as rent controls and higher regulatory requirements such as carbon net zero initiatives. In the context of a national housing emergency, we are particularly concerned that this levy could add further delays to the delivery of housing and indeed fuel affordability issues.

Exemptions

We urge the government to exempt affordable housing, BTR, MMR, smaller developers and those seeking to build on brownfield land. These sectors that have the potential to bring forward largescale housing or housing in rural and challenging areas that is necessary in tackling the housing shortage.

Calculating the levy

We highlight the difficulties in calculating the levy for build-to-rent and PBSA developments which are not built for onward sale.

CONSULTATION RESPONSE

QUESTION 1 Principles of a Scottish Building Safety Levy

Do you think a new tax on housebuilding, paid by developers, is a fair way to generate revenue to fund the Scottish Government's Cladding Remediation Programme?

Yes

No

We understand the urgency to rectify buildings with unsafe cladding however, we do not believe it is fair for developers to shoulder the responsibility alone, particularly as a number of firms were not even in operation at the time, or if they were then complying with the correct building regulations of the time. Penalising developers who operated according to the rules set out by the regulatory authorities – rules which were later found to be unsafe, places an unfair burden on developers for failures essentially outside their control. The levy does not recognise others involved in the building process, particularly manufacturers.

The financial implication of the levy is expected to create significant viability challenges for developers where increased costs associated with the levy risk developments being stalled or costs passed on to the eventual buyer.

In the context of a national housing shortage, we are concerned a tax on housebuilding not only risks the affordability of homes but also jeopardises the viability of building them. This approach also risks undermining the policy objectives set out in National Planning Framework 4 (NPF4), particularly Policy 16 (Quality Homes), which aims to support the delivery of affordable, accessible, and high-quality housing to meet local needs and national targets. A new tax on housebuilding risks increasing costs for

new developments, which are likely to be passed on to homebuyers, further exacerbating housing affordability issues.

QUESTION 2 Scope of the Levy

Do you agree that homes delivered through the Scottish Government's Affordable Housing Supply Programme should be removed from the Scottish Building Safety Levy?

Yes

No

We strongly agree with exempting the affordable housing supply programme from SBSL, particularly in light of the ongoing housing emergency and the circa £200 million budget cut announced in the last Scottish Budget which already is contributing to viability challenges for this sector. Considering the government has so far achieved 24% of the 110,000 housing target by 2032 then coupled with the still rising cost of construction and inflation, adding the BSL on top of these costs could make delivering the remaining number of homes unviable. Exempting affordable housing projects aligns with NPF4's policy objectives to deliver quality homes while tackling inequality and promoting inclusive growth. The exemption is also critical in addressing Scotland's ongoing housing emergency, as failure to exempt these projects could lead to delays or cancellations, worsening housing shortages for those most in need.

QUESTION 3 What are your views on the principle of removing smaller developers from charge of the Scottish Building Safety Levy?

Yes, we do agree smaller housebuilders and developers should be exempt from SBSL, as they have usually not contributed to cladding/building safety issues. As mentioned in question two, high inflation, costs of construction and developer contributions already significantly impact the development viability for smaller housebuilders. The additional levy is likely to result in fewer homes being built particularly in rural areas.

QUESTION 4 If you agree that small developers should be removed from charge under the Scottish Building Safety Levy, what are your views on the method of determining who is a smaller developer?

It is worth highlighting that the UK government approach to the English BSL was to exclude certain developments based on how many developments a developer built rather than it being based on their SME status. The reasoning behind this is it would be less complex to administer the levy. However, we do not agree with UK Government's decision to set the threshold at 10 units or fewer, as this could hinder rural housing, where developers tend to be smaller and face additional complexities.

As a result, we propose aligning the levy classification with the criteria used for planning applications, such as developments of fewer than 50 units or under 2 acres. This threshold could be time-bound, based on the number of units delivered annually. Smaller developers often build more than 10 units

but lack the significant purchasing power of major developers. Applying the levy to those that build more than 10 units but fewer than 50 could risk rendering their projects financially nonviable, creating an unfair burden.

QUESTION 5 Are there any other exemptions from the Scottish Building Safety Levy that you think should be considered by the Scottish Government?

We are aware that some affordable housing schemes not currently covered by the Scottish Government's Affordable Housing Programme, may not be exempt from the levy. It is important to incentivise developers seeking to build affordable housing such as MMR as their margins are already tight. We urge the government to address this loophole.

It may also be appropriate to consider exemptions for some build-to-rent schemes particularly in areas of where housing shortages are most severe. Exempting these developments from the levy is potentially important given investment in this tenure has already been significantly disrupted by the uncertainty of rent control regulations. There are also complications evident in this market: as the wider consultation considers its business is not based on unit by unit sales but rather is likely to see a considerable number of units come to market for rent at the same time. This is the same for PBSA which is also subject to specific timing in relation to meeting the academic year. Without such exemptions, the cumulative impact of various levies and stricter legislation may further stifle investment into much needed rented accommodation, ultimately serving as another delay to the growth of the BtR sector in Scotland.

To support Scotland's goals for sustainable development and urban regeneration, the SBSL should incorporate exemptions or reductions for developments on brownfield sites. Brownfield sites are often financially challenging to develop due to higher costs associated with remediation, site preparation and infrastructure upgrades. Exempting these developments from the levy would incentivise investment in accordance with NPF4's Policy 9 (Brownfield, Vacant, and Derelict Land), which seeks to prioritise the reuse of land to support sustainable, compact urban growth. If a full exemption is not feasible, a reduced levy rate such as 50% for brownfield sites could ease the financial burden and promote urban regeneration, particularly in areas facing economic decline.

QUESTION 6 Are there any types of development listed in the exemptions above that you think should not be exempted from the Scottish Building Safety Levy?

No.

QUESTION 7 Do you have any comments on exemptions not covered by this consultation that you wish to raise?

As mentioned, special consideration must be given towards developments not built for immediate onward sale such as BtR, PBSA, MMR or older people living. Unlike traditional build for sale, these

developments have different financing models which will depend on long term rental income and occasional whole asset sales. This is in many aspects a new form of living sector investment in residential development.

QUESTION 8 Calculating the Levy

Do you agree that the rate of the Scottish Building Safety Levy should be calculated as a proportion of the market value of the property?

Market values will differ greatly, even within a local authority area. And there is usually a premium for new build. This could lead to significant differentials in charge simply because of where a property is located rather than construction attributes. Also, if the intended scope of the tax is to encompass all forms of residential development such as PBSA and Build to Rent then this adds the complexity of at what point to charge because the building will be rented rather than sold to individuals/ households, and the actual point of sale of the investment is likely to have been when it was a development site before construction.

QUESTION 9 In cases where a property is not sold on the open market, what alternative valuation could be used to calculate the Scottish Building Safety Levy to ensure proportionality with the market value of the property?

The government may be forced to consider setting a value based on what a property would reach for a like for like building sold on the open market. The government's Assessors apply a similar rationale when setting rateable values for properties owned rather than rented by ratepayers (i.e. they make an assessment based on what an owner-occupied property would be valued at, if it were to be rented).

QUESTION 10 In relation to Question 9, do you have any information on valuations undertaken during the building standards process that would be useful for the Scottish Government to consider?

One consideration could be the QS estimate of construction costs which will factor into the overall value of the investment.

QUESTION 11 What are your views on using one of the following alternative methods of calculation for the Scottish Building Safety Levy:

We believe the better approach would be a flat rate based on the net internal area of the property.

QUESTION 12 Do you think there should be a different rate applied on brownfield developments?

Yes, we support an exemption of the BSL for brownfield residential developments in order to incentivise regeneration on sites which are already financially challenging to bring forward. However, if a full exemption is not possible, applying a reduced levy on brownfield sites will be necessary to ease

some of the increased financial burden on developers. Whilst special consideration toward brownfield sites is welcome, it difficult to fully assess the impact without knowing the exact tax rate or the anticipated level of discount

QUESTION 13 Operational considerations

Do you agree that liability for the Scottish Building Safety Levy should arise in relation to the issuance of acceptance of a completion certificate?

- Yes
 No

Yes, we agree the levy should be made at the issuance of acceptance of a completion certificate as it is the end of the construction process, so it will accommodate all the design changes thereto and reduce cashflow uncertainties for housebuilders / developers.

QUESTION 14 Do you agree that Revenue Scotland should act as the revenue authority for the Scottish Building Safety Levy?

- Yes
 No

We believe Revenue Scotland should act as the collection body to avoid a further burden on local authorities as well as potential inconsistency for taxpayers.

QUESTION 15 Which of the following schedules do you think is the most appropriate for the frequency of returns:

Quarterly

For major residential developers there could be significant peaks and troughs of sales or delivery of new homes. We think a quarterly basis would therefore be a more efficient process than a system based on per unit sale/delivery, or even monthly calculations.

QUESTION 16 Tax compliance

Do you agree that, in relation to a Building Safety Levy, the tax authority should have the investigatory and enforcement powers set out above?

- Yes
 No

The tax authority will require powers of enforcement but it will be important for these powers to be used wisely. Development is risky and there can be unforeseen issues with construction, utilities, contractors falling into administration or even severe market events. A significant tax event such as the

BSL could, therefore, have significant cash flow consequences on a particular site or development depending on its structure and eventual charging mechanism.

QUESTION 17 Do you agree that there should be no active conditionality between the issuance of each completion certificate and payment of the Levy?

Yes

No

We agree absolutely. The completion should be based on the merit of the property complying with the relevant building standards – there could very well be purchasers imminently expected to occupy the home, who will have invested considerable personal resource, time and effort for their new home. The BSL should not be a reason for causing delayed entry and occupation of the home.

QUESTION 18 What are your views on introducing additional sanctions for taxpayers where Revenue Scotland deem there to be persistent or major non-compliance in paying the Levy?

We understand the importance of ensuring compliance to avoid undermining the intention of the levy and acknowledge that sanctions may be necessary in some instances. However, we have several considerations towards the approach. For improved transparency, we ask for further clarification on the definition of 'persistent' and 'major non-compliance' to ensure sanctions are only applied in circumstances of significant breach and to avoid punishing those with a genuine misunderstanding or dispute of the calculation. We also suggest the presence of graduated sanctions that increase with every offense rather than a one-size fits all sanctions approach. This ensures the level of fine is proportionate towards the size of the organisation.

QUESTION 19 Are there specific aspects of the housebuilding industry that may require a different approach to compliance than set out above?

Just to note that for large scale build to rent and PBSA the compliance will be for potentially several hundred units at the same moment in time for one development, and coming online for rent with an owner already in situ. This could add significant compliance requirements depending on how or if these forms of residential development are included. The compliance authority should be cognisant of this delivery model, which may be different to traditional housing developments for sale being sold in phases to individual purchasers.

QUESTION 20 Do you agree with our proposals for dispute resolution in relation to the Scottish Building Safety Levy?

Yes

No

Yes, there must be a dispute resolution process to ensure fairness, trust and to reduce reliance on legal and administrative processes. An effective dispute resolution tool may also serve to provide helpful feedback for Revenue Scotland and guide potential refinement of the levy if there are common compliance issues. A dispute resolution mechanism will also provide reassurance to developers that are able to challenge instances where they feel sanctions have been unfairly applied.

QUESTION 21 Duration

What are your views on having a sunset clause or end date for the Scottish Building Safety Levy?

Yes, we believe there should be a sunset clause for this levy to ensure it remains proportionate and relevant.

Unlike the English BSL, there is no consultation question relating to transitional arrangements or grace periods. We urge the Scottish government to consider introducing transitional arrangements for the SBSL to ensure fairness and to maintain project viability for those developments that have already received viability appraisal. One approach is to exempt developments that have already entered the building control process or are implementing planning permission granted before the levy rules are applied to law. This aligns with the approach taken in England. Our concern is that if no such transitional arrangements are in place, then this could stall developments that are already in the system which is unfair and may serve to deter further investment.

QUESTION 22 Do you think there should be a regular review for the Scottish Building Safety Levy?

Yes, we strongly agree there should be a regular review of SBSL every few years to track progress of the Cladding Remediation Programme and also to accommodate any new relevant changes in the development environment.

QUESTION 23 Impacts

Do you have any information which could inform any final Business and Regulatory Impact Assessment (BRIA) relating to the Bill?

We must highlight that this additional levy and charge comes at a time considerable pressure in the house building and supply market. The BSL will not help private sector developers to improve the supply of new homes. We do welcome the government's decision to halt work on the ILS in this vein but we do think the £30m estimate of annual costs for the BSL are a significant additional burden in the context of the housing emergency. Likewise, we are greatly concerned at the actual capacity of the construction sector, and wider technical expertise (fire risk experts etc) to deliver the remediation programme in the anticipated timeframe. The National Audit Office have already raised concern on a

UK wide basis that remediation work may not be complete until 2037. This estimate may well prove to be optimistic.

QUESTION 24 Are you aware of any examples of particular current or future impacts, positive or negative, on young people, (children, pupils, and young adults up to the age of 26) of any aspect of the proposals in this consultation?

Our concern would be the delay will further undermine new supply to the housing market across all private sector tenures. This will add to the pressures on younger people seeking to buy or rent a home.

QUESTION 25 Are you aware of any examples of potential impacts, either positive or negative, that you consider any of the proposals in this consultation may have on the environment?

N/A

QUESTION 26 Are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

N/A

QUESTION 27 Are you aware of any examples of potential impacts, either positive or negative that you consider any of the proposals in this consultation may have on groups or areas at socio-economic disadvantage (such as income, low wealth or area deprivation)?

In support of the above answers, housing is a social need and amidst the ongoing housing emergency if we add another developer tax, this will have an impact on the delivery of homes. So, an exemption on affordable housing, smaller developers and a reduced levy on brownfield development will help deliver the necessary housing and regeneration in our communities.

QUESTION 28 Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas?

The varying land prices and costs of construction must be considered when setting the mechanism of calculation for island and rural communities.

End of questions