

## Background

HBF's members have consistently maintained that leaseholders should not be left to fund remediation programmes that have been made necessary as a result of failures of building regulations, building safety defects or failures of building products and materials.

We have always acknowledged that home builders have a role to play in fixing the safety issues and will endeavour to continue working constructively with the government to this end. HBF and our members have committed to work with the government in efforts to find a solution since the first weeks after the Grenfell Tower fire, and we have maintained throughout that affected leaseholders and residents should not have to pay for such works simply because the building regulations at the time were inadequate. We have worked constructively with each of the four Secretaries of State we have engaged with on this subject since June 2017.

In the weeks and months that followed the awful events at Grenfell Tower, HBF members were among the first companies to voluntarily commit to removing Aluminium Composite Material (ACM) cladding from their high-rise buildings and then, when the ACM fund was initiated, to maintain that direct, voluntary funding. HBF and its members proposed a levy on building control back in early 2018 to raise funds to support remediation where the original developer was absent. Latterly we have supported the introduction of a “cladding tax” – the Residential Property Developer Tax (RPDT) – and the Building Safety Levy. We recognise that industry has a responsibility to be part of the solution as a collective as well as individual companies.

Practically, we participated in frequent roundtable meetings and information sharing discussions with government and other stakeholders. We found these to be valuable and it was through such a forum that HBF first proposed an industry levy scheme to raise funds for remediation. Over recent years we encouraged government to reconvene such sessions.

## Overview and steps taken since 10 January announcement

Following an information request from the Department issued to some of the largest home builders on 21 January, around 40 larger and medium-sized home builders have shared information with officials. We expect that this information, when analysed by the Department, will confirm that a relatively small proportion of the cohort of buildings that Government estimates require remediation were built by UK home builders.

At the centre of the Government's 10 January announcement was the need to raise an additional £4 billion to remediate “orphaned buildings”, i.e. where the original developer or the contractor that carried out renovation works is untraceable either because they are based overseas, operated at the time through a Special Purpose Vehicle (SPV) or have gone out business. Unfortunately, the Government have not yet been able to provide the industry with a clear picture of the breadth of the issue with what have been termed “orphaned buildings” (albeit this term is questionable if there is a freeholding building owner present).

Furthermore, we are still unclear about how the Government's estimate of £4bn has been reached. As mentioned, based on the information our members have provided, we expect the proportion of the total sum that relates to buildings built by mainstream home builders to be



relatively small. Indeed, we expect Government will have had it confirmed in its data capture that relatively few home builders have ever built many, or any, buildings of 11-18 metres. We urge the Government to work with us in the coming weeks to develop a detailed cost estimate of the buildings requiring remediation.

As well as having doubts about the validity of the £4bn estimate, we have concerns about the Government's continued targeting of UK home builders when – aside from interventions on sports sponsorship deals – other sectors have made no discernible contribution to the crisis to date. As well as contributing through a new £3bn home builder-specific tax and a forward-looking levy, HBF's members have made commitments to remediate buildings they have been involved with. With a majority of affected buildings having been constructed by other parties, it is difficult not to draw the conclusion that UK home builders are being targeted because, as UK-headquartered businesses, it is a simpler proposition than pursuing overseas developers, influential property sector interests and foreign product manufacturers.

While just a small proportion of affected buildings have been built by HBF members, established home builders have worked hard to identify and put right issues with buildings relevant to them. However, it should also be noted that a large number of the companies deemed to be in scope for the stark demands made in recent government correspondence are home builders operating entirely in the new house market and have rarely, if ever, constructed buildings of 11 metres or taller.

We have been consistent in stating that leaseholders should not be expected to pick up the bill to remediate their buildings. Building regulation failures, construction issues and product failures should not fall to leaseholders to fix. The building design, construction, product manufacture and accreditation, building regulation and building ownership ecosystem is extensive and diverse and all parties have a part to play in finding and funding the solutions to the problems affecting leaseholders.

### **Data gathering**

During the committee's oral evidence session on 31 January HBF's Policy Director, David O'Leary referenced a data gathering exercise that the Home Builders Federation had begun assisting the Department with. HBF's role in this exercise has been to help DLUHC with logistics and contact information but we have not received submissions from builders. These have gone directly to officials at DLUHC.

For the reasons discussed on 31 January, it is vital that after such a long time all parties begin to improve our collective understanding of how many buildings are likely to require remediation, where they are, by whom and when they were constructed. Government estimates to date have relied on theoretical desk-based surveys. On the other hand, individual UK home builders have worked intensively over recent years to improve their own pictures of the building safety requirements that may be present in buildings they have constructed. This exercise will be the first time that this information has been assimilated and viewed as something approaching a whole.

As outlined above, our expectation from discussions with members to date and from the publicly available statements made by larger UK home builders is that a small proportion of the total number of buildings that the Government estimates are in need of remediation have been built by UK home builders. The possible conclusions are, therefore, that the Government estimates of the



number of buildings requiring remediation and the likely amount needed to finance this work is too high or that a very large proportion of buildings that the Department is building into its estimates:

- Have been built by overseas developers;
- Have been built by the wider property development sector which represents a significant part of the London residential market and which will pay nothing through RPDT (Build to Rent, large landowner interests and investment vehicles);
- Have been built by public bodies; or
- Have a remediation requirement owing to renovation on an older building

We very much welcome DLUHC conducting this exercise but maintain this should have been undertaken months ago. In order to take forward constructive discussions with Government, UK home builders should be afforded a better understanding of the extent to which other actors have constructed or renovated buildings that now require remediation. In the most recent correspondence from the Department, we note that Government intends to share with industry the headline results and conclusions from this exercise.

### **3<sup>rd</sup> February update from DLUHC**

Alongside the announcement of 10 January, it is also important for the committee to consider a follow up letter from the department dated 3<sup>rd</sup> February and sent by DLUHC Director General Richard Goodman. We welcome the recognition of Government in the letter that home builders had provided ‘continued rapid engagement’ to assist the Department’s work.

The letter and accompanying “Draft Heads of Terms” asks businesses to sign up to make unspecified financial contributions at the start of each year and which may be varied/increased during a year and for this arrangement to be in place for an indeterminate period of time. We are concerned that the requests in the letter would be unfeasible for responsible company directors to agree to without contravening their own duties and responsibilities and creates a dubious environment in which to attract investment in new homes and UK plc more generally.

### **Importance of engaging more widely with all those involved**

While we have always acknowledged that home builders have a role to play in fixing the safety issues and will endeavour to continue working constructively with the government to this end, we have also consistently questioned why the government has not gone further to engage other stakeholders to ensure they are also playing their part in resolving matters for leaseholders.

While UK home builders are already paying new taxes and levies and have pre-existing commitments to remediation projects, to date no other industries, sectors or sub-sectors have made a contribution.

We would encourage government engagement with:

- Freeholders
  - As ultimate building owners and custodians they are responsible for ensuring the safety of the buildings that they own.
- Building contractors
  - Responsible for a large number of renovation projects which will have resulted in cladding system installation



- Overseas developers where possible
  - There is currently very little insight into how many buildings requiring remediation have been built by overseas developers.
  - Overseas developers are not subject to any the funding contribution the government is asking for, or to taxes or sanctions under the current plans. They are will very unlikely to be subject to the RPDT in most cases
  - These developers maintain no long-term interest in addressing the country’s long-term affordability crisis, have no commitment to our communities and have little by way of UK employment or tax commitments.
- Wider property interests and Build to Rent developers
  - This includes developers operating across commercial and residential sectors that have been responsible for a large number of medium-rise and high-rise new developments, particularly in London
- Product manufacturers
  - Following HBF’s request, we note the Secretary of State’s subsequent letter to product manufacturers. We would expect to see further inclusion of product manufacturers in any proposed Government solution
- Mortgage lenders, insurers and surveyors
  - These groups remain vital to finding the way through the long-term malaise and ensuring that any proposed solution will actually resolve the problems leaseholders are facing. Failure over recent years to properly establish an effective and proportionate method of assessing buildings resulted in the stymieing of the market via the EWS1 approach

### **Government Building Safety Bill amendments**

The amendments to the Building Safety Bill tabled by Lord Greenhalgh on 14 February will, for the first time in these discussions, properly engage freeholders and cladding/insulation manufacturers but while the theory behind these amendments represents a step forward, the practicalities remain uncertain. It would appear that the legal threshold by which a cladding manufacturer may incur remediation costs is significant and could take considerable time for building owners, leaseholders or any other party to prove such a case. Likewise, freeholder affordability tests could allow many building owners to avoid substantial contributions to remediation projects. Of course, many manufacturer and freeholder interests are based overseas and will be more difficult to seek redress from than UK home builders.

We draw attention in the Government amendments to the distinction between the liabilities of UK builders who are expected to fund remediation on buildings regardless of the purely legal position and the liabilities of freeholders or overseas headquartered manufacturers where mechanisms look set to be established that will allow a high legal bar to be set and routes for parties to avoid making contributions.

We await parliamentary scrutiny of the amendments at the House of Lords Committee stage but observe that the freedoms and powers ministers will bestow upon themselves through the amendments published on 14 February will likely draw concern from the wider business community.



### **Proportionality and Government signals; withdrawal of the Consolidated Advice Note**

We welcome the Secretary of State's confirmation in the 10 January announcement that the Government is seeking to re-establish 'common sense' in the assessment of building safety moving forward. To that end, we welcome the withdrawal of the Consolidated Advice Note (CAN). Despite ministers' best intentions, the CAN contributed to a paralysis of a large part of the housing market and trapped many homeowners in properties which were incorrectly labelled as unsafe.

As we have seen from the frustrating consequences of the CAN, the wider industry can work collectively to make the market work better, but without the right signals and action from Government, our best efforts can, sometimes, achieve little concrete progress. The PAS9980 regime should allow for a more realistic approach to these matters but will require buy-in from surveyors, lenders and fire risk assessors. As things stand it is not apparent that key actors will adopt all aspects of the PAS9980 approach. Reaching a satisfactory resolution with these parties to bring about greater proportionality will determine the speed and efficiency of remediation programmes and should be a priority for Government.

### **Focus on fire safety and dealing with 'betterment'**

We understand that a small minority of building owners may be using perceived or genuine building safety issues to obtain funding either from builders or from Government via the Building Safety Fund to upgrade buildings beyond the scope of the modifications and remediation that will make them safe. Given the national importance of this matter and the obvious need of leaseholders, all participants must remain focused entirely on ensuring buildings are safe for residents and are mortgageable.

There is already huge demand for the materials and skills necessary to remediate buildings or provide mitigation measures necessary to ensure residents are safe. Over the coming months and years, this demand is likely to multiply as Government begins to make Building Safety Fund payments and builders' own work programmes ramps up. It would be a failure of this process if opportunistic building owners or managers divert resources away from genuine safety priorities to projects aimed at increasing building values or upgrading buildings.

Members' sight of Building Safety Fund application and awards suggests that a considerable degree of 'betterment' is taking place through that route and that value for money on many awards may be questionable. An apparent lack of cost control and a wandering scope of works exceeding purely building safety issues is a cause for concern. To maximise our collective work towards remediating affected buildings we would urge DLUHC to ensure that remediation plans are proportionate, providing necessary safety improvements at a reasonable cost to taxpayers.

Elsewhere, other sectors have sought to benefit from the challenges that building owners and leaseholders face. Some insurance premiums have risen unnecessarily, for instance. We know that ministers and officials monitor this closely and we welcome their continued efforts to address instances of exploitation.

### **Insurance market**

On 10 January, Government stated its intention to introduce an indemnity scheme for fire risk assessors but we note that the scheme will not be launched for several weeks yet. We hope that



this intervention will unlock the market but until it has been launched and bedded in it is difficult to assess whether the practical benefits will achieve the stated intention.

### **Changes to the Defective Premises Act**

We have some concerns about the proposed changes to the Defective Premises Act, that will allow leaseholds to make claims for up to 30 years retrospectively. We are still working to establish the likely impact. We have strong concerns on the part of our hundreds of SME builder members that this is a considerable long-term liability for which there is no realistic warranty or insurance provision.

As well as expanding liabilities for small home builders, it is vital that Government also recognises the importance of its own Building Regulations system and the consequences when the regime fails as it has done on this occasion. These changes to the Defective Premises Act should not absolve any other actors of their responsibilities.

### **Importance of maintaining investment in the housing sector**

The UK home building industry generates more than £40bn in Gross Value Added and is responsible for the employment of three quarters of a million people via extensive and overwhelmingly domestic supply chains.

The almost exclusive focus by the Government on UK home builders to resolve the current building crisis is extremely worrying in the context of the country's wider housing delivery challenges and also for the attractiveness of the sector for future investment.

The vast increases in housing supply seen since 2013 have been the result of huge increases in investment by UK home builders and their shareholders. This investment has been attracted largely due to:

1. A mature housing market;
2. A demonstrable demand for new homes;
3. A series of governments between 2007 and 2019 that prioritised housing delivery and addressing the long-term housing affordability challenges for younger households.

Recent Government statements about UK home builders and the content of DLUHC's letter of 3 February inevitably cast doubt on the ongoing attitude of Government to private sector housing supply and the role of the market in general. HBF is concerned that this approach may result in reduced investment across other sectors and ultimately cause detriment to UK plc as we seek to navigate the post-Brexit economic outlook.

UK home building is already a highly taxed sector, particularly since the introduction of the Residential Property Developer Tax surcharge on Corporation Tax. As well as the statutory, tax and regulatory burden, which is growing, the industry contributes £7bn per year to infrastructure and local services through Section 106 and Community Infrastructure Levy (CIL) and cross-subsidises more than half of all new Affordable Homes, including two-thirds of new homes for social rent.

In addition, over the coming years the sector's costs of delivery are expected to increase significantly with additional environmental regulations and other changes expected to squeeze viability in some areas. At times new regulations are not proportionate to local land values, and in



some cases, for instance biodiversity net gain requirements, will be felt most acutely in regions such as Yorkshire and Humber. The continued extraction of funds from UK home builders will naturally squeeze other areas of expenditure and affect viability in areas across the UK.

The UK home building sector will need to play a big part in the country's overall drive towards Net Zero. New homes built today typically generate less than a third of the carbon emissions than those produced by older properties. Over the past decade trends in the number of annual demolitions have tracked continuously downwards meaning that renewal of our housing stock is happening more slowly. Established UK home builders have invested heavily in preparing the market and the supply chain to go even further in driving up the thermal efficiency of new homes, reducing carbon output and cutting energy bills for homeowners. The imposition of higher taxes, including the 29% effective Corporation Tax rate for the sector from 2023 will reduce the investment capabilities of firms and affect home builders' efforts to help combat climate change.

### **Conclusion**

The industry is committed to continue working to agree a fair and proportionate arrangement with the government and all the other parties involved to remove the burdens on leaseholders. UK home builders have made considerable commitments to remediate buildings and are already making a significant contribution to the Government's work in this area via the new RPDT which is estimated to raise £3bn, and the forthcoming Building Safety Levy. In 2018, via HBF, home builders put forward a proposal to raise hundreds of millions of pounds per year to help remediate high rise buildings so throughout the discussions with all Secretaries of State in post since 2017, we have demonstrated an eagerness to resolve this issue. For this reason we welcome the renewed interest shown in the subject by Government.

It should be noted that DLUHC has acknowledged our members 'continued rapid engagement' and we continue to work hard to support the Government on this. In response to DLUHC's 3 February letter HBF has stated that we intend to write to the Department by 25 February with a more complete response. There remains considerable amounts of information still to be gathered to improve Government's understanding of the scale and likely total costs involved so in the meantime, we continue to urge the Government to provide the industry and others with the high level results and conclusions of its data collection, which has been supported by our members and conducted at pace.

