



# **BPF RESPONSE TO MHCLG'S WORKING PAPER ON SPEEDING UP BUILD OUT AND RESPONSE TO MHCLG'S TECHNICAL CONSULTATION ON MEASURES TO IMPROVE BUILD OUT TRANSPARENCY**

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## **PREPARED AND SUBMITTED BY**

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## British Property Federation

1. The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £116bn to the economy in 2020 and supported more than 2.4 million jobs. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers, and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work, and relax.
2. We welcome the opportunity to respond to MHCLG's working paper on build out and the technical consultation on build out transparency measures. As a representative body for the purpose-built rental sectors – Build to Rent, Purpose-Built Student Accommodation (PBSA), and Co-Living – we would emphasise that timely delivery of these schemes is a fundamental part of the business model.
3. Our comments below reflect a number of roundtables the BPF hosted for members on both consultations. For the working paper, we initially provide a number of general comments on the proposed Delayed Homes Penalty which has been very poorly received by the development sector before turning to the questions posed.

## General comments

Our members represent investors, developers, and operators of large-scale, purpose-built rental living across Affordable Housing, Build to Rent, Purpose-Built Student Accommodation, Co-Living or Shared Living, and Senior Living. Since 2011, these sectors have invested over £135 billion into delivering homes, including over £11.2 billion in 2024.

These sectors are attractive to institutional investors and our members want to build more of these homes – in Build to Rent alone, we estimate that the sector can double its current output from 15,000 homes per year to 30,000 homes per year, provided the right conditions are available for this delivery. These conditions have not been present over the past several years across the purpose-built tenures; with market headwinds like increased cost of debt and construction cost inflation, combined with regulatory pressures like building safety delays, the abolition of multiple dwellings relief, and the forthcoming Renters' Rights Bill, impacting the viability of schemes.

Purpose-built rental tenures rely on timely delivery in order to generate income; there is an inherent incentive in the business model to reach practical completion as quickly as possible – this is recognised in the consultation document with an acknowledgment that Build to Rent builds out 30-60% faster than other forms of housing.

For these reasons, we have serious concerns around some of the proposals in this consultation, namely the penalisation of delayed delivery on those models which are not incentivised to withhold delivery and whose delays are primarily caused by factors outside of their control, including regulatory and planning delays.

### BPF views on the Delayed Homes Penalty

4. The BPF is strongly opposed to the proposed Delayed Homes Penalty set out in the working paper. This measure must be considered in the context of the wider macroeconomic environment, where it is already increasingly difficult for developers to deliver new housing. Viability challenges persist across the country, with delays at the Building Safety Regulator (BSR), ongoing construction cost inflation, and the introduction of new property taxes such as the Building Safety Levy – all of which are entirely outside developers' control. Against this backdrop, bringing forward development is already complex, costly, and uncertain. Introducing a Delayed Homes Penalty would simply add to the cumulative burden faced by the development sector, penalise developers for factors entirely outside their control, and is fundamentally at odds with the government's ambition to deliver 1.5 million homes over this Parliament. Rather than accelerating housing delivery, the proposal risks disincentivising investment in residential development - particularly in those regions where securing development finance is already most challenging.
5. BPF members have also highlighted that a more effective approach to accelerating build-out would be to focus on a system of incentives, rather than penalties. We set out these ideas in greater detail in our response to the working paper questions. However, we would also caution against an overly simplistic or rigid emphasis on speed. Building safety remains a key concern for both the development industry and government policymakers. Creating an environment where contractors are under pressure to rush delivery risks compromising design quality and, ultimately, safety.
6. The contradictory nature of this proposed reform must also be considered in the wider context of the Government's planning reform agenda. Since taking office, much of the Government's focus has rightly been on reducing uncertainty and complexity in the planning system, streamlining decision-making, and freeing up capacity within planning departments and planning committees. Introducing a Delayed Homes Penalty appears to run directly counter to those objectives. Rather than simplifying the system, this measure would add another layer of complexity, increase uncertainty, and risk further clogging up an already overstretched system. There is a clear disconnect between this proposal and the broader direction of planning reform - undermining the very goals the Government has committed to achieving.
7. Policymakers must also consider the broader implications for property finance, business confidence, and the overall investment climate in the UK. A significant proportion of the Government's housing delivery target is dependent on the private sector. However, that delivery is only possible if capital continues to flow into the residential property sector. Measures like the Delayed Homes Penalty increase the perceived risk and uncertainty associated with development projects, and will inevitably factor into lender decisions when financing schemes. Far from encouraging faster build-out, this proposal would have the opposite effect - making development harder to finance and deterring investment, thereby reducing the overall number of homes built.

8. The impact of an eye-catching but punitive headline measure such as a 'Developer Penalty' on investor sentiment should not be underestimated. In many cases, investors - particularly those based overseas - rely on UK-based developer teams to progress projects and would not typically intervene in day-to-day delivery. However, the recent weeks following the announcement of this consultation have seen a marked increase in concerns being raised by investors directly with senior BPF representatives. These investors may not be familiar with every nuance of the UK planning system, but they read reports about a new 'Delayed Homes Penalty' and conclude that the UK is becoming a less attractive, less stable market in which to invest. This is wholly counterproductive to the Government's stated objectives of promoting economic growth and building 1.5 million homes.
9. As representatives of the purpose-built rental sectors discussed above, we note that timely delivery of these schemes is a fundamental part of the business model. These schemes rely on rental income, which cannot be achieved unless a scheme is fully operational and let to tenants. This is particularly the case for PBSA, which operates in line with the academic cycle and risks sitting empty should a scheme fail to be delivered on time. There is no practice of 'land-banking' or otherwise delaying projects for these schemes; on the contrary our members frequently express their dissatisfaction with delays to the development process such as planning and Building Safety, as these cut into returns and affect the attractiveness of future projects. Further penalisation of these schemes for delays outside their control will make the sectors more uncertain and thus less attractive to investment.
10. The working paper's reference to the increased use of completion notices raises similar concerns to those associated with the Delayed Homes Penalty. This proposal too is likely to contribute to greater risk and uncertainty, increased complexity, and a potential negative effect on investor confidence and appetite

#### A. Do you agree with the evidence base and theory we have set out on build out rates?

11. We note a key omission in the initial discussion on the theory of build out. There is no reference to current delays at the Building Safety Regulator. Around 160 development schemes are still awaiting a response at Gateway 2. Many of these are otherwise ready to commence construction but are being held back by regulatory delays rather than by factors typically associated with build out delay.
12. Members also raised concerns about the suggestion in the opening paragraphs that developers deliberately build slowly to maximise profits. This interpretation oversimplifies the issue and fails to reflect important market realities and planning challenges. For example, adverse market conditions can delay development by making it more difficult to secure financing or delivery partners. These market fluctuations should be clearly reflected in any analysis of delivery rates.
13. Planning-related challenges also play a significant role in slowing delivery. These include:
  - a. Resourcing and skills gaps within local authorities
  - b. Delays to the approval of reserved matters and the discharge of conditions
  - c. S106 and planning condition triggers that can effectively place the ability to continue delivery back in the hands of the local authority - for instance:

- Where occupations are restricted until a particular strategy is submitted to and approved by the LPA, resulting in delays while the LPA seeks consultation responses from bodies such as the Environment Agency or Natural England
- Where delivery is held up pending completion of highway works, often involving complex negotiations with the local highway authority (e.g. over a s278 agreement)
- Where market housing is restricted until affordable units are transferred to a registered provider, at a time when demand for S106 units is falling and rigid S106 obligations limit flexibility on tenure or contributions in lieu - often requiring variations to the agreement

**B. How could we go further to support models of housebuilding which build faster, such as small sites, strategically master-planned and mixed tenure?**

14. The BPF strongly supports a mixed tenure approach to housing delivery. MHCLG's own data indicates that build out rates on mixed tenure sites are 30 to 60 percent faster. This is because three distinct tenure types - affordable housing, build for sale, and build to rent - can come forward simultaneously without directly competing with one another. This helps to accelerate delivery.
15. We also emphasise the vital role of build to rent in meeting housing needs. This tenure provides homes for key workers and those in the intermediate housing market, which includes households who do not qualify for affordable housing but cannot afford to buy. This segment is significant and deserves greater recognition in public policy. Build to rent is also not just for those who cannot afford to buy; it is often a lifestyle choice. Residents seek the flexibility that renting offers without being tied to a mortgage or the responsibilities of property maintenance.
16. We urge express recognition that BTR development is operated and financed on a different model to other housing types. It has different viability considerations and is therefore often unable to support the same level of affordable housing as market sale-led schemes. While this is acknowledged in national guidance - which sets a 20% affordable housing starting point for BTR - it could be more clearly reflected in local policies, particularly in London, where expectations of 35-50% affordable housing are often applied inconsistently to BTR schemes.
17. Council tax and business rates are currently payable on empty units a short period after the construction of a new development is completed (around 3 months). This adds significant cost and uncertainty for large scale developments - because it is not certain how long it will take until a scheme is fully occupied. However, generally, the larger the development, the longer it will take to get fully occupied - for very large regeneration schemes, it can take well over a year and even closer to two years in some cases, to lease all the homes and units once a development is complete. This almost immediate tax charge on a new building discourages quick build out rates, especially where they are speculative (i.e. without a let or sale pre agreed). Removing council tax and business rates on empty units would reduce those uncertain upfront costs on a development, which would support viability of higher density developments - and remove barriers to faster build out rates.

**C. For mixed tenure, what would you consider to be an appropriate threshold level?**

18. There were mixed views among members on the value of setting a fixed threshold for mixed tenure. Many noted that any such threshold would inevitably be somewhat arbitrary and could affect local authorities in different ways. Nonetheless, the BPF is strongly supportive of mixed tenure approaches on larger development sites as a general principle.
19. Members also highlighted the changing devolution landscape. While many local authorities currently have only a limited number of sites above 500 units, this could change significantly as larger combined authority structures emerge. Any approach to thresholds should be flexible enough to reflect these developments.

**D. Do you have any views on how the proposed CPO measures would work best in practice?**

20. Members expressed concerns that the proposed conditional confirmation of a CPO could introduce additional uncertainty, much like the delayed homes penalty. These types of measures create risks for developers and may act as a disincentive to bringing land forward for development.

**E. How should MHCLG guide local authorities and developers towards reasonable build out schedules (noting that ultimately this will be negotiated locally)?**

**F. What are the right set of exemptions for external factors that impact build out rates? Should this include economic downturns which reduce sales rates, or does that mean that payments would be too weak to induce the shift toward the partnerships business models we want to see?**

**G. For the Delayed Homes Penalty, do you agree with the intention to use it to incentivise the shift towards higher build out models of housebuilding?**

**H. How should the Penalty be calculated? What are the strengths and weaknesses of using a percentage of house price, or reference to local council tax rates? What information would local authorities require?**

21. Our general comments on the Delayed Homes Penalty are set out at the start of our consultation response. Further specific points are summarised below:

- As noted above, the working paper appears to assume that slower build out rates are solely the result of developers seeking to maximise profits. However, this presents an incomplete picture. In reality, a wide range of external factors, many outside a developer's control, can impact the speed of delivery. These include delays in discharging planning conditions, responses from statutory consultees, and the delivery of enabling infrastructure.
- Members expressed concern about the potential requirement to agree a build out schedule at the outline planning permission stage. This could create significant challenges, particularly where parcels of a site are sold on from the master developer to smaller developers. Such developers

may face difficulty securing finance if they are expected to commit to a build out schedule agreed earlier in the process, as this introduces additional risk.

- The proposal for an enforceable build out schedule currently lacks detail on how it would work in practice. There is a risk it could act as a disincentive to starting on site, as developers may become more cautious about commencement due to future penalty implications. The contents of the build out schedule are also likely to become a major point of negotiation during the planning process, with developers understandably requesting caveats to account for factors beyond their control that may delay progress.
- A further concern relates to the complexity of enforcing the penalty in multi phase schemes involving multiple developers. It is unclear how accountability for the build out schedule would be allocated or enforced in such cases. This risks creating a burdensome system that will be difficult to implement, particularly for already overstretched local planning authorities.
- As outlined in our general comments, we encourage government to also consider the broader structural and regulatory issues affecting build out rates. These include challenges at the Building Safety Regulator, issues around water and nutrient neutrality, and the current shortage of bids from registered providers for the affordable housing element of schemes, which is holding up delivery of this tenure.

#### I. Are there wider options you think worth worthy of consideration that could help speed up build out of housing?

22. Throughout our response above, we have outlined the wide range of broader factors that can delay the build out of housing. These are summarised again for clarity:

- Ongoing delays at the Building Safety Regulator. Around 160 development schemes are still awaiting decisions at Gateway 2. In many of these cases, developers are ready to start on site, but progress is being held back by regulatory bottlenecks rather than issues typically associated with build out.
- Market fluctuations and their impact on development delivery. A more negative economic outlook can affect the ability of developers to secure funding or partners, which in turn slows the pace of development.
- Development viability remains one of the key challenges to delivering projects. Alongside market and construction cost pressures, a range of policy and regulatory hurdles continue to impact deliverability and viability. Looking ahead, the planned introduction of the Building Safety Levy in Autumn 2026 will also place further pressure on development viability.
- Wider planning system challenges. These include unresolved issues around water and nutrient neutrality, which are delaying progress on many sites.

- A current shortage of bids from registered providers for the affordable housing element of schemes. This is preventing delivery of this tenure in many areas and causing further delays to overall site progress.

**J. Do you anticipate any environmental impacts from these proposals that the government must consider and the Environmental Principles Policy Statement?**

23. We would emphasise the positive environmental outcomes of a tri-tenure approach. As noted above, a scheme with greater tenure diversity is likely to be built out more quickly, and in some cases, may include elements of modern methods of construction (MMC) undertaken off-site, reducing the number of journeys to site and associated emissions.

**K. Do you anticipate these proposals giving rise to any impacts on people who share a relevant protected characteristic, as defined by the Equality Act 2010, that the government must consider under the Public Sector Equality Duty?**

24. Multi tenure schemes will inevitably provide more homes for a greater range of people.

## **MHCLG's Technical consultation on implementing measures to improve Build Out transparency**

**Q.1. Do you agree that the build out reporting measures should apply to developments which involve the building of new dwellings (including mixed use development)?**

Members emphasised the importance of ensuring that build-out reporting measures allow for flexibility, particularly given the many factors that lie beyond a developer's control. They also highlighted the need for reporting requirements to reflect the phased nature of development, with the ability to revisit and update information over the lifetime of a scheme.

We are supportive of the proposed digitalisation measures set out in the consultation paper.

**Q.3. Do you agree with the proposed threshold of 50 dwellings for the build out measures to apply to?**

We received feedback that setting a threshold is inherently challenging, as 50 or 100 dwellings can represent very different scales of development depending on the local authority. However, from a reporting perspective, 50 dwellings feels broadly appropriate. A relatively low threshold such as this would help



ensure that more build-out data is captured, supporting the creation of a more comprehensive national picture.

**Q.5. Do you agree that this information should be covered in the build out statements?**

Yes/No/Don't Know. If not, please explain why you disagree and set out any other information you think it should cover

There were no specific concerns with the information proposed to be covered in the build out statements.

**Q.7. Do you agree that this information should be covered in commencement notices?**

This proposal is also likely to introduce greater risk and uncertainty into the system, increase complexity, and have a potentially negative impact on investor confidence and appetite.

**Q.8. Do you agree with setting a 2 month period after the reporting period ends to submit the development progress reports?**

We believe there should be a degree of flexibility and tolerance in relation to the submission of the development progress report. For example, if a submission is a day or two late due to unforeseen circumstances, this should not trigger a penalty. A pragmatic approach is essential to avoid unnecessary disruption to the development process.

**Q.15. Do you have any views on how a joint approach to submitting a commencement notice could be facilitated on sites where multiple developers are involved?**

Members have raised concerns that the process of submitting a commencement notice could become overly complex in practice, particularly where multiple developers are involved across different phases of a development. There needs to be a degree of flexibility and pragmatism in how this is implemented.

In some cases, Section 106 agreements include provisions preventing the occupation of market housing until the affordable housing has been occupied. In these circumstances, if progress stalls on one part of the development, delays can ripple across the entire site - ultimately preventing timely occupation and delivery of homes.

**Q.18. Do you have any views on what information other than in build out statements and development progress reports LPAs should have regard to when considering whether the carrying out of the earlier development has been unreasonably slow?**

The BPF does not support the proposal to take a developer's past track record into account when determining a planning application. As with many of the proposals in this consultation and the

accompanying working paper, this approach would introduce additional uncertainty into the development process.

Preventing a company from undertaking development activity in this way could ultimately lead to the decline of that business, job losses, and in some cases, insolvency. It could also distort the land market. For instance, if a developer is effectively barred from bringing forward a scheme on a site they own, it would become widely known that they have little option but to sell. This weakens their negotiating position and increases the risk that they will be unable to secure fair value for the land.