

## **Written evidence submitted by Dr Mark Azavedo (BSB34)**

### **Summary**

- I will consider the Planning Bill 2021 as well as the Building Safety Bill 2021.
- That is to reach conclusions for a coherent housing policy across legislation and Government Departments, rather than legislation being held within departmental silos.
- I will suggest the Polluter Pays as a coherent approach to be adopted within housing policy, notably relative to the Building Safety Bill where approaches to financing remediation works are, clearly, extremely ad hoc, anything but a systemic approach. I refer particularly to the time delimited Property Developer Tax though the place of the Building Safety Levy may also be questioned as against a more systemic approach, taxation of developers included, to the building development and construction industry.

### **Planning Bill 2021**

I am mentioning the Planning Bill in just a few words now. I will come back to this later, meaning I will conclude by looking at comprehensive, integrated planning across the British housing eco-system.

The Planning Bill might be summarised through the one word “deregulation”. There are other aspects to the bill, but this appears to have captured the public imagination, among others. De-regulation may be exemplified by extension of Permitted Development, already responsible for some of UK’s most dire housing stock (eg <https://www.architecture.com/knowledge-and-resources/knowledge-landing-page/common-failings-in-permitted-development-office-conversions>) and, also, attracting some of UK’s highest remediation costs in both absolute terms and relative to low pre-cladding scandal market values. A personal example is that of a friend with a GBP 208K remediation bill:



Grey GR Limited Partnership  
Re: Apartment 14, Second Floor, Vista Tower  
Vista Tower

Apartment 14, Second Floor, Vista  
Tower  
Southgate  
Stevenage  
SG1 1AR

Date: 4 Aug 2021  
Ref: 574-01-014

### **Statement of Anticipated Service Charge Expenditure**

Service Charge period:	<b>1 Jul 2021 - 30 Jun 2022</b>		
Expenditure heading	Anticipated expenditure	Percentage	Anticipated share due
<b>SCHEDULE B</b>			
Cladding Remediation	14,751,653.00		
Professional Fees	43,000.00		
	14,794,653.00	1.4088%	208,430.03
Total anticipated expenditure	14,794,653.00		
Total on account payable			<b>208,430.03</b>
<b>Charge details</b>			
Half Yearly Service Charge in advance Due on 1st July 2021			<b>104,215.02</b>

### **Building Safety Bill 2021**

The building safety bill as it stands is a fair representation of Dame Judith Hackitt's 2018 Independent Review conclusions and recommendations for new administrative processes in what I shall broadly call "building control".

There have been two complaints that I have heard about Hackitt and the Building Safety Bill, which complaints align, one a likely function of the other:

1. That the processes and personnel structures envisaged are overly bureaucratic. New bureaucratic elements are the Building Safety Regulator, the New Homes Ombudsman, and National Regulator for Construction Products. A weakness is that it isn't clear, albeit staring at impact assessment figures, quite where those sums will reside and by whom, thereby, paid, but the taxpayer and local council and business rates payer could be in line for a large additional burden, albeit that part annual recurring cost will be slated to developers (currently slated at GBP238.7 million of GBP426.8M).

(i) One clarity is around the Building Safety Charge which will fall upon leaseholders at a projection of GBP 16 a month. Nearly GBP 200 a year is a significant cost in the real world. But also confusions are introduced around how would a shared ownership property be billed – at 100% of cost to the unit or a percentage that relates to the ownership percentage? All this is hugely contentious already in terms of service

charges, particularly in the era of remediation bills, remediation that Government is now openly declaring as a capital cost, so thereby clearly not a maintenance item and service charge attributable. Please note that just the GBP 16 a month is being dubbed by many as an underestimate (eg Liam Spender (2021 - Building Safety Bill is a device for which the batteries aren't included. It could be improved, if only officials would listen ...<https://www.leaseholdknowledge.com/building-safety-bill-is-a-device-for-which-the-batteries-arent-included-it-could-be-improved-if-only-officials-would-listen/>)

(ii) That the impact assessment for the Building Safety Charge is likely vastly understated is but one cost issue facing the leaseholder even if, for instance, loan charges for remediation are factored out. Even should the cladding and fire safety issues be sometime resolved, leasehold properties will be devalued in the retail housing markets anyway because of already heightened service charge billings, insurance bills, etc. These will not return to where they were. Notably, service charges will rise through terms of the Fire Safety Act, 2021 concerning the regular inspection of fire doors, assessment of external walls, flat front doors, and compartmentation within common parts of buildings. In any case the vogue for steeply escalating ground rents was always likely, at some point, to affect market values. In simplest terms, should leaseholders in high rise multi-unit developments ever have an asset again (and arguably low-rise multi-unit developments too), it will be a devalued asset. That devaluation will be added to simply by sentiment, suspicion of these buildings among buyers going forward.

Now let us consider the position of rental tenants of leaseholders, something that has amazingly gone unconsidered. Leaseholders are likely to leave the rental market through the reasons given plus taxation changes and cost rises through such issues as EICR, upcoming changes to EPC, etc. Do not think only in purely financial terms on landlord behaviours in that simply coping with the proliferation of bureaucratic demands is and increasingly will be a major headache. Leaseholder landlords will get out of renting to tenants even if property values are, in fact, depressed. Also, it is a matter of risk assessment for the future eg will there be another piece of retrospective legislation that throws the housing landscape into turmoil? As landlord leaseholders leave the rental market prices to rental tenants will rise with reduced supply of rental units. Equally, if landlord leaseholders remain as landlord leaseholders they will attempt to pass all cost increases on to their rental tenants.

2. At 1 above I broadly considered finance. However, there is another major consideration, competence. A take on Hackitt is that her main concern, and certainly a major one, is lack of competence in the construction industry. An issue of Hackitt, though it is one of design not competence, is that issues of finance are never covered, for instance no suggestions on how to fund the new administrative procedures and personnel, how to fund remediation, etc. But there is something more. The industry lacks talent or at least competent talent, a point that Hackitt is at pains to point out.

Even if finance were no issue, availability of talent would remain an issue. A major question is how to find the new personnel and/or how to train up new and old talent, and then address that experience is likely to be a major component in competence. The Building Safety Regulator will need staff, for instance, to continuously assess the performance of building control bodies. That often means highly qualified staff able to supervise (and train?) third parties. There is also a plethora of those third parties required under the Building Safety Bill, for instance accountable persons and building safety managers. Where are such staff, let alone particularly competent hires, available in volume? The Building Safety Bill appears to offer no solution.

## Suggestions

- A quick easy basis for raising tax revenue from developers that has a very clear benefit beyond only the revenue raised would be “use it or lose it” legislation, adapted to embrace banded taxation for holding land rather than developing it (aligned with changes to planning permission duration). This would raise revenue but also act as strong encouragement toward homes building. It wouldn’t represent a systemic approach but would be ongoing unlike the time-limited residential property developer tax, so a superior way forward than the residential property developer tax. Time-limited legislation of its nature is not systemic. It is the embodiment of “panic”, short-termism, most normally around “making the books balance”. As such it will act to de-stabilise the industry, which will be forever wondering if time delimitations will be lengthened or abandoned in favour of making the new tax burden simply ongoing. If adapted use it or lose it were adapted to a taxation purpose, this would best lie in planning legislation.
- I fundamentally disagree the point that remediation works are maintenance. Equally, I disagree that a Tier One Tribunal decision, which doesn’t set legal precedent, has nonetheless become “set in stone”. It’s particularly a very strange form of setting in stone that sees creation of something anew, say compartmentation, something that never existed, as maintenance.

I advocate establishing the Polluter Pays arguments as the cornerstone of approach in funding remediation, a long-run systemic approach that has fit with existing UK practice ( eg The Environmental Damage (Prevention and Remediation) Regulations 2009 (for England) and the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 (for Wales) established the operation of the polluter pays principle and the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 followed) not to mention similarly fitting with legislation in many other countries. It could also have fit with other upcoming UK legislation eg the Planning Bill, 2021.

Above all this legislation must offer certainty and sustainability for all stakeholders. All really does mean all there. To take two stakeholder examples leaseholder's must be assured that nothing like the current situation arises again and that the current situation is resolved at no cost to them, the assurance meaning in practical terms that they can plan on the assumption of "reasonable" stability in housing and the housing industry and market in particular going forward, but also with immediate effect., sufficient stability to enable viable financial decision-making and, likewise, personal decision-making around having families, etc. Worth remembering is that people's housing in UK is so often a major element in their saving, often the only element. That is critical and critically different from many other countries.

Likewise, developers must be offered the ability to produce sustainable business models. In total frankness they have shown little concern with that, but a possibility is that shareholders, going forward will have greater concern for sustainable business models, that management will come under pressure to make major changes to their approach including with less reliance on what I shall politely call networking. Hackitt refered to "gaming the system", a reference to building control but the term may also be applied higher up the food chain, gaming the macro-political environment. Sustainability is a long-term project, the complete antithesis of the residential property developer tax. That only encourages short-termism among developers, or at least is a tacit acceptance of it.

My advocacy of Polluter Pays is specifically to encourage long-term sustainability of the housing landscape for all, developers and leaseholders among stakeholders, but by no means limited to them. Indeed, whole communities may be regarded as stakeholders of specific developments.

I am given to understand (personal communications with Steve Day, Building Safety Crisis.Org) that at the time of writing these are the latest proposals of the Polluter Pays "Bill" being considered as an amendment to the Building Safety Bill:

1. The polluter pays bill would allow freeholders or building owners to apply to a central body for recognition that fire hazards affecting a block of flats were caused by defective construction. That body would consider expert reports and other evidence to determine whether a building complied with building regulations in force at the time of construction. If it did not comply, they could apply for a grant to cover remediation and interim safety costs. Remediation work would not be delayed, as work on buildings paid for by the Building Safety Fund would continue with the Government reclaiming the costs from responsible parties where there were construction defects.

2. In accordance with the “polluter pays” principle, those directly responsible for the construction of defective buildings would be first in line for liability—developers, designers, contractors, and material suppliers. Charges can be cut or waived where businesses would go under. Where the original business no longer exists parent companies would shoulder the liability. If a responsible party cannot be found, remediation and interim safety costs would be covered by two levies: one on the construction industry; and one on ancillary businesses. Responsible parties could appeal to the Housing Secretary whose decision would be final.
3. By making responsible parties buildings pay for their unsafe buildings, the £5.1 billion of existing funding can be reallocated to fixing buildings of all heights that complied with building regulations when they were built but are now seen as unsafe. The Scheme also allows the Government to make emergency grants to cover the costs of interim safety measures, such as waking watches, and soaring insurance premiums that leaseholders now bear. (If a building was subsequently found to be defective these emergency grants would be reclaimed from the responsible parties). The Scheme would help all owners of fire-risk flats – not just those with breaches.

**The notion is a comprehensive systemic approach enabling sustainability and certainty for all, an abandonment of the inadequate, ad hoc approaches we have been seeing in the building safety bill and attendant prior Government actions. In fact Polluter Pays notions, now an accepted part of legislative approaches globally, could form part of a joined-up approach generally in UK Government. I mentioned the planning bill earlier. Why not use the Polluter Pays approach to:**

- (i) Making the infrastructure levy paid relate to mitigations agreed.
- (ii) Reward high quality design and relatively disincentivise poor design. Again differential levy might be the process.

*September 2021*