Highbury Group on Housing Delivery

Response to H M Treasury consultation on Residential property development tax: policy design.

The Highbury Group comprises an independent group of specialists from the public, private and independent sectors with a membership drawn from housing, planning and related professions; it offers advice and makes representations to Government and other agencies on a variety of subjects, with the aim of maintaining and increasing the output of housing, including high quality affordable housing.

Given the focus of the group, our main concern with the proposal is the impact of the proposed tax on the housing supply and specifically on the supply of housing affordable by households on lower and middle incomes. Our response is therefore limited to the questions in Chapter 1 on Scope and Chapter 8 on Assessment of Impacts.

Chapter 1

We would question the basic objective of the tax, which is to raise significant revenue for the Government to contribute to funding the costs of correcting building defects relating to the failures of cladding and other construction materials in residential buildings. In our view the full liability for the costs of correcting defects should lie with residential developer who sold the properties, whether on a freehold or leasehold basis, as the developer has profited from the original sale, making capital gains which given defective construction and design do not reflect the real value of the property sold. It is then for the developer to seek financial compensation from other parties, whether building contractors, material suppliers or other relevant parties. The proposals in the Building Safety Bill to increase the timescale by which purchasers, whether freehold or leasehold, can seek compensation in the courts from developers or other parties are therefore not an adequate resolution of the question of liability for costs.

It is unreasonable and unfair therefore to seek to raise a levy from residential developers as a sector, irrespective of whether a specific developer has or has not sold and therefore made profit from a residential property which is defective. The proposed tax would not discriminate between developers who have contributed funds to remedying defects and those who have refused to do so. The tax would apply to residential developers who have not undertaken construction of the types of dwellings, predominantly flatted accommodation in medium and high-rise dwellings, in which the defects are most common.

There is no justification given for the £25m profit threshold proposed for determining the application of the tax. Moreover, the treatment of developers such as charitable housing associations who reinvest surpluses is unclear. Should the proposed tax be introduced, non-profit developers should be exempt. There are implications for the providers of retirement housing, which is generally not in the form of flats in medium and higher-rise developments.

There will no doubt be complexities as to collecting the tax, given developers will ensure their tax liability is limited, as is generally the practice in relation to corporation tax liability. Where a developer has a group structure or joint venture arrangement or undertakes a mix of residential and non-residential development, financial accounts can easily be managed to limit liabilities, by

transferring profits to a corporate body where profits will fall below the £25m threshold. It is very likely that the revenue raised will fall well below the government's target.

Chapter 8 Assessment of impact

Where developers are unable to evade liability for the proposed tax, there will be an impact on housing supply, especially in relation to the provision of new homes for lower and middle- income groups. Private residential developers will seek to protect their profit margins as this is vital to ensuring investment in their corporate body and continuing house-building programmes. The impact also needs to have regard to the proposed Gateway 2 levy, which will apply to developers undertaking new high-rise development. Both proposals have an impact on developer costs, which are likely to be passed on to consumers in the form of higher house-prices and higher rents. The assumption that additional costs will be passed on to landowners in the form of lower prices for housing land is not proven. In lower demand areas, where price is more constrained by demand, any additional financial liability on developers will impact on the economics of individual development schemes. Developers will seek to ensure acceptable profit margins, net of any increased tax liability. It follows that in negotiating s106 agreements (assuming that post Planning Bill this will still be allowed) and contributions to affordable housing provision, local authorities are likely to find developers much more resistant to making such contributions. Consequently, this will lead to a reduction in the provision of sub-market homes through private development, or to a reduction in overall housing output as developments become less financially viable for private developers. Direct provision by housing associations will also be affected should surpluses from market development which normally cross-subsidise the provision of sub-market homes, be liable to the new tax. It should also be noted that liability to the proposed infrastructure levy, if greater than the current combination of Community Infrastructure Levy and section 106 contributions, will also have a negative impact.

The consultation paper does not refer to any modelling of the potential impact of the proposed tax in relation to Government targets both for 300,000 new homes a year, and to increase the output of sub-market housing in relation to its affordability targets. In proposing this tax as a one-off, based on annual profit levels, it is assumed that the tax will not have any significant impact on future housing output. However, as acknowledged in the consultation paper, the very fact that the tax is proposed to be time-limited may also lead to both developers and land owners delaying development and land release until the ending of the tax regime.

While there is a strong case for reform of existing and, property and development taxes, as set out in previous statements by the Highbury group, it is irresponsible to introduce a one-off tax without assessing the wider impacts, and a distraction from dealing in an appropriate and systematic manner with the two issues of liability for and funding of corrective action to defective buildings, and ensuring a tax regime which is most appropriate to ensuring a stable residential development programme and a stable residential property market.

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