

Gateway 2 and the problem of time

The problem of time will lead to future poor decisions in this area of policy as politics and politicians, understandably, try to make up for lost time, says Ian Fletcher

The building safety issues that emanated from the Grenfell tragedy were not just an isolated incident. Subsequent audits by our members and wider building owners exposed a variety of serious problems with buildings, not just with cladding, but other inappropriate use of materials, or absence of firestopping. I am therefore no building safety reform denialist, and most decent developers would accept that change is needed, and that the new regime for High-Risk Buildings will deliver better building and safety outcomes.

It was only in April 2024, nearly seven years after Grenfell, that the new regime for High-Risk Buildings in development, what is known as Gateway 2, came into effect. A combination of Brexit, then pandemic, and turnover of ministers has meant that progress on a range of building safety issues has been slow. My fear in recent years is that Ministers are understandably keen to get things done, and that sometimes leads to poor decisions.

For example, originally, Dame Judith Hackitt – architect of the new regime - had recommended only applying it to buildings over 30m high. Instead, a political decision was taken that the new regime should start at 18m, thus bringing far more buildings in scope, and putting far more strain on new Building Safety Regulator (BSR) resources.

A critical aspect of the legislation implementing the new regime is the statutory timescales for processing an application. These are 12 weeks for new

buildings and 8 weeks for changes to existing buildings. During consultation on the new regime these were felt to be at the top end of what was tolerable by the development sector, without severely impacting on the development process. During consultation, the BPF also stressed the importance of ensuring that the new regime was well-resourced, bearing in mind the principle that the new regime would not be a tick-box exercise, but require the substantial transfer of documents (and underlying evidence) to the Regulator in a non-standardised format, and a regular dialogue between Building Safety Regulator and applicant.

Delays well beyond the statutory timescales have been well publicised. The table below is from a Freedom of Information (FOI) request. The statistics do not tell the whole story, however, as very few new developments have made it through the process yet, and we hear regularly of the Regulator asking for extensions of time, beyond statutory time periods.

The Regulator is acutely aware of the delays in the system and has been working hard to recover the situation. It has been bolstered by additional resource, and some of the ways it works, for example via multi-disciplinary teams, have been improved. Timescales for processing applications have been shortening. In the interests of transparency, however, I would argue the Regulator should regularly publish its performance figures, rather than these coming through a succession of FOIs.

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Undoubtedly, the delays being seen, and anticipated, is having consequences. No developers want to start a residential project over 18m. It is regarded as too risky, and at a challenging time for most project viability. Projects are being delayed, mothballed, sometimes even sold. As Mark Reynolds, Co-Chair of the Construction Leadership Council, recently said in evidence to the HCLG Select Committee, "It is taking 24 to 28 weeks, and some are taking up to 40 to 48 weeks. People are being laid off. People are losing their jobs over this."

Undoubtedly, the development industry is struggling with ethos of new regime. The BSR cites figures of 70% of applications being refused as either incomplete or wrong. There is a shared responsibility to ensure those engaged in development better understand what good looks like and work is being undertaken under the aegis of the Construction Leadership Council to develop better guidance. The Regulator will also build up a bank of case studies over time, which it will disseminate into the sector. All of this cannot come soon enough.

As said, respectable developers accept the ethos and intentions of the new regime. It is important to divorce policy from implementation, however. The problems being seen in processing applications are not about policy, but implementation. They could be attributed to 'teething.' Undoubtedly timescales are improving and will improve as practices at the Regulator and developers become more embedded. A very personal view, however, is that just as 12 weeks for a planning application is notional on large and more complex projects, so too will the statutory 12 weeks for the BSR to process applications on large and more complex projects.

I fear the problem of time will also lead to other future poor decisions in this area of policy as politics and politicians, understandably, try to make up for lost time. ■

# Applications	Work Type			Grand Total
	Existing HRB	New HRB	No Option Selected	
Outcome				
Approved	199	9	6	214
Pending Approval	544	90	49	683
Invalid	371	15	2	388
Rejected	54	5	6	65
Withdrawn	61	9	7	77
Grand Total	1229	128	70	1427
Average Duration (Weeks)				
Outcome				
Approved	17	14	12	17
Grand Total	17	14	12	17