

SPOTLIGHT ON THE BUILDING SAFETY ACT



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INDUSTRY GUESTS:

Jennie Gillies, Barrister, 4 Pump Court (keynote speaker)

Neil McFarlane, Strategic Development Director, GRAHAM

Chris Holwell, Partner & Head of Construction & Engineering, Freeths

John Walsh, Founder & Managing Director, Senate Consulting

Holly Watson, Associate Director of Safety Management, Frankham

Alex Blackmore, Senior Development Manager, Telford Living

Dinah Bornat, Director, ZCD Architects

Liz Hamson, Editor-in-Chief, BE News (chair)

In 2022, when the Building Safety Act was granted Royal Assent, it promised greater accountability and transparency for the UK construction industry. But three years on, it remains just that, a promise rather than a reality.

Both BSA and the Building Safety Regulator have come under heavy criticism for delaying gateway 2 Act approvals for high-risk buildings. So why is BSA proving so hard to follow in practice, and what else should the industry be doing to step up and comply with the process?

These were two of the issues explored by a panel session looking at the impact of the BSA and what needs to change if it is to succeed in its mission of delivering a safer building.

Sponsored by GRAHAM, Freeths and Senate Consulting, the discussion was hosted by SEC Newgate at its London office.



Keynote speaker Jennie Gillies, an experienced barrister and arbitrator, who sits on the technology and construction BSA Working Party, said building safety was a subject that “continues to define our industry and challenge our legal framework, with the monumental, complex and frustrating journey of building safety remediation in the wake of the Grenfell Tower tragedy.”

The legislative response to building safety, she said, has been “nothing short of transformative” with a complete overhaul of how high-rise buildings should be designed, built, and managed, with the cornerstone being the BSA.

However, Gillies, said there was a mismatch and critical divergence between the obligations which have been voluntarily assumed by developers under the self-remediation terms of the Responsible Actors Scheme (RAS), established in July 2023, and the mandatory legally enforceable duties placed upon landlords and accountable persons under the BSA itself.

“It’s that divergence where the battle lines are being drawn,” said Gillies, “as the two standards are operating in parallel and party approaches to those standards are not often aligned.”

The BSA, said Gillies, has created a broad safety net for leaseholders and a high responsibility for landlords, whereas the



RAS reflects a narrower, higher threshold contractual duty for developers.

A challenge for industry is to find a mechanism to reconcile those two regimes. “Without that, we’re going to continue with this battle that is now drawing up, and it will be years hence before this misalignment is resolved,” said Gillies.

She added: “It is not just a legal headache, it’s a profound barrier to achieving the cultural and physical safety changes demanded by Dame Judith Hackitt” and the result “is buildings in limbo, leaseholders in uncertainty, landlords in an untenable position of legal exposure and developers unable to predict the extent of the costs which they might be expected to meet in due course.”

Gillies handed over to BE News editor-

in-chief, Liz Hamson, who chaired the panel debate.

QUESTION: Is the BSA working? If not, why not?

BLACKMORE: Few can put forward a robust argument to say the BSA is not leading to safer buildings. However, I get uneasy with the word ‘safe’. I like to call it compliant buildings. The purpose of the act is demonstrating what you are designing is compliant with the functional requirements of the building regulations.

In theory, it should be a simple linear process. Is it working in practice today? No, not 100% effectively and there’s work that must be done. But it would be hard to put a

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conversation together to say it's not leading to safer, more compliant buildings.

MCFARLANE: In terms of a new build, a responsible developer has no problem with BSA. The problem is simply the time, which is completely unsustainable given the call for 1.5 million homes by 2029.

I have a scheme where there are applications currently in Gateway 2 and no sign of it being approved. BSA will ultimately deliver safer buildings, but in its current form it is unsustainable and not tolerable.

BORNAT: At the heart of the BSA are the concepts of compliance and competence, and architects hold the greatest responsibility here. There is also a responsibility to the communities we are designing for and that must not get lost.

We have a broken system with design and build, and I don't think we will improve outcomes just with layers of bureaucracy. Instead, we need to focus on skills, training and introduce protection of function.

The BSA and Part B, are one part of how we make buildings safe. I would like to see an outcomes approach, which puts people and the next generation at the heart of what we do. We need communities to understand and be on board, and trust what is an incredibly complex and important process.

QUESTION: What impact is the BSA having

on the ground? What's changed?

MCFARLANE: For us it's delays. Our organisation has around 13 applications for Gateway 2. About three of those are approved, with the average approval period anywhere between 30 and 45 weeks.

These are all new build and they're all significant projects. For me, the achievable target should be a phased process of approvals like planning.

HOLWELL: We're seeing things having stopped. Nobody builds homes because they want to house people. People build homes to make money. Buying the land requires money; there's interest running; a long period before passing Gateway 2 is money gone. You start building and you're drawing down even more money, it gets hugely expensive. Then there's another period paying interest on a finished building before you get through Gateway 3.

So, the BSA is going to make homes more expensive. We must accept that. But we want to make sure as much of the money as possible coming from that extra cost is spent on proper safety measures, not on interest, where currently a huge amount is being spent because of delays.

WATSON: Yes, there are delays with the regulator, but there are also issues with what is being submitted to the regulator. I help ➤

clients go through Gateway 2 on a daily basis, and frankly, there are a lot of people who have got their head in the sand, who don't want to engage, who are choosing to do the bare minimum, and then it's going to get thrown back.

QUESTION: Streamlining the process is clearly critical, but also do we need redefinitions, further clarity on what is meant by risk?

WALSH: As an example, we've got a higher risk building, and the client wants to change one window, that could include a window frame, if it's rotten and needs to be replaced. Our glass is construction operations, so you must go through the gateway process, but it's just maintenance!

You could have a double-glazed unit, that the seals are all broken, and they just need to replace that, but again, they must go through the gateway process. On a risk management basis there must be some latitude given.

I've just completed a fire remediation project on several blocks, and one of the most helpful things we had was a site inspector, who was the old clerk of works. He was coming in at key stages before work was covered up. Then he reviewed the entire works, produced his report, and it gave just an extra layer of confidence to the entire process.

WATSON: It's about control. How do you ➤



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know the window being put in has the right fire stopping, the right fire breaks, without the Gateway? This is the reason for the Gateway, because the construction industry had the chance to do it right and we've got it wrong.

We need clarity because half of my client meetings, if not more, are around, 'do I need a Gateway?' It's a case of does it affect building risk? To me, the replacement of a window does, because whether it's one person at risk in the flat above, or whether all the windows are wrong, does that one person not deserve some control and safety in their building? Of course they do.

HOLWELL: I accept what Holly's saying. It needs regulation. But does it really need the full gateway process or should there not be a practical system for minor work where there is somebody sensible, someone like a local authority building inspector, who can come along and say 'you're replacing a window, we do not need six inches of paperwork to assess this.'

QUESTION: What is the one change you'd like to see that would reduce the complexity of the Building Safety Act and facilitate the delivery of safer buildings in the numbers required?

HOLWELL: Clarification of what we need to submit and what we need to do.

BLACKMORE: PPA style agreements for the regulators so they have foresight of what is coming in the door, when it is coming in the door, when the submission will be made, and then you have further clarity and time and cost.

BORNAT: This isn't an easy one, but get rid of design and build.

WATSON: Clarification of building works versus repairs.

WALSH: Elemental approvals for the development process. □



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