

Building Regulations – Gateways 2 & 3

Delays to Commencement of Construction Projects creating threats to Construction Industry due to Design sign-off Delays



Fire Industry Association Liaison Briefing Note FIA/BR/G2,3/2023/001

Executive Summary

New requirements for sign-off of building designs are causing a delay in commencement of construction of tall residential buildings.

Some of these delays are inevitable due to higher expectations for regulatory approval, and FIA would entirely support those higher standards. However, the new requirements also include some unnecessarily difficult procedures and as construction cannot start before approval is obtained, this is causing huge delays to projects starting on site.

These delays are having a significant effect on the construction and associated industries which is counter to the government's plans for construction new residential homes.

This document provides the FIA's briefing on the issue with recommendations for urgent improvements.

Background

The Building Safety Act 2022 (BSA) imposes new '*Gateways 2 and 3*' prior to construction of new HBRs (High Risk Buildings) and change/adaptation work to existing HRBs.

The Hackett Report (post Grenfell) - recommended major changes to standards in construction, particularly in relation to buildings that are classified as 'higher risk buildings' (HRBs). The HRB definition mainly applies to residential buildings that are over 18 metres tall but also applies to certain other building types. In addition, if a mixed-use development includes any amount of residential, the entirety of the development is subject to the new regime.

FIA have been encouraging higher standards of construction quality for many decades. The FIA would strongly support recent significant changes to the standards of design, construction and Building Control approval processes. Many areas had become far too lax - allowing disreputable organisations to undermine the industry with resultant risks to building and life safety.

The BSR also introduced changes calling for increased competency requirements for designers and contractors. **The FIA strongly endorse higher standards, provision of training, and appropriate qualifications for those engaged in fire engineering design and fire safety installations.**

Gateway 2

Gateway 2 occurs at the *Building Regulations* application stage. It requires building designs to be submitted and approved before commencement of any construction. That is a change from previous approaches where construction could start whilst the design was continuing. The FIA broadly support this change.

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The Gateway 2 application needs to include much more documentation than was previously required, including statements on competency of designers and contractors as well as details as to how quality control checks will be carried out on site. FIA would strongly support those aspects of the regulations.

However, there are aspects of the processes under the new Gateway 2 that are so stringent, according to our members, that it is extremely difficult to gain approval, meaning significant delays to the construction of any new HRBs in England.

In addition, whilst the BSR has published some guidance on Gateway 2 submissions, as well as having published an FAQ web page, those do not address some of the key issues.

Works on existing buildings are also affected, as they too must go through the Gateway 2 process, meaning delays to remedial projects as well as new-builds.

Key Issues

- 1) BSR do not clearly state what level of detail is expected for design submissions. It is likely to require full, construction stage design for virtually the entire building, which is a huge commitment at an early stage of a construction project. However, the absence of clarity on this is causing huge variations within the industry, with some design teams making submissions based on just the concrete frame design, and others submitting early-stage designs, resulting in wasted resource for designers submitting applications, and for the BSR when reviewing them.
- 2) The BSR refuses pre-submission technical consultation with design teams. This seems to have been implemented to avoid the previous bad practice of design teams asking Building Control personnel for input on design of buildings. Whilst the FIA agree that this habitual bad practice must stop, a complete refusal to engage prior to submission - particularly for highly complex designs will mean that designs will be rejected due to differences of opinion between the design team and the Registered Building Inspectors (RBI). In addition, if a design is rejected due to disagreements on aspects of the design that affect layouts (e.g. number of lift shafts or locations of stairs) this may result in huge redesign costs.
- 3) Once designs have been submitted, the RBI would typically produce a list of comments that need to be addressed (e.g. clarifications on certain issues, or challenges on aspects where the RBI does not consider the design to be sufficient). That is a normal process, and typically the design team would discuss those with the RBI in order to help resolve the issues. However, the BSR is refusing any direct contact between the design team and the RBI which makes that process much more difficult, time consuming and inefficient.

Developing a design acceptable for a Gateway 2 submission is a huge task, requiring significant financial outlay. The result of the changes described means, as a minimum, very extensive delays, and at worst, the inability to gain approval for complex designs.

With building legally unable to commence until Gateway 2 approval is secured, the result is a drastic reduction of new HRB construction projects starting on site.

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FIA is aware of certain projects where the developer is reducing the size of the building in order to avoid having to go through the Gateway 2 process. That results in less homes being available on completion of the project.

Supporting Data

	Existing		New	
Total Applications	606		62	
Determined within statutory period	12	2%	4	6%
Extensions	271	45%	22	35%
Refused applications	260	43%	10	16%
REMAINING	63	10%	26	42%

Data secured following a Freedom of Information request from Jenny Riddell-Carpenter MP

The above data shows that only 6% of applications for new builds were ‘determined’ (i.e. approved) within the statutory 12-week period. The remaining 94% were either refused, the approval process extended or are still being considered.

Change control during construction

During construction, if there is a need for any changes to the design on issues that are categorised as a Major Change, those have to be submitted and approved by the BSR prior to being carried out on site. Failure to obtain BSR approval before carrying out a Major Change is potentially a criminal offence.

The definition of Major Changes is very extensive and includes any changes to any fire precautions (active or passive). Issues often occur during construction which require changes, so to avoid major delays on site, this will require the BSR to respond rapidly to any Major Change applications.

As there are very few new-build projects that have gained Gateway 2 approval (and hence permission to start on site) it is not clear at present whether the Change Control process during construction will actually cause issues, although this would be worthwhile monitoring.

Gateway 3

Gateway 3 sign-off occurs on completion of the works. It requires an application to the BSR with all relevant documentation. BSR has 2 months to consider the application, if satisfied, the building is approved. Occupation by the owner or operator cannot occur until Gateway 3 is cleared.

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This means that on completion all buildings will sit empty for up to 2 months, but any delays e.g. disputes or discrepancies in documentation will mean more completed buildings being unused for longer.

Gateway 3 will mainly apply to projects which went through Gateway 2, so there will be no new-build projects going through Gateway 3 for some time, but FIA anticipate that this could create further delays in future.

Recommendations

The Fire Industry Association recommend urgent review of Gateway 2 and 3 processes and consideration as to how these might be simplified.

FIA would emphasise that high standards of competence and quality control should be maintained.

The focus for the review should be on the processes, particularly in areas where the additional complexity does not improve building quality. At present the focus is on Gateway 2, but in future Gateway 3 should also be considered.

One option would be to allow applications to be submitted in steps, with initial submission to include the GA (general arrangement) plans, and 'high level' documents such as the fire strategy. Once initial approval has been secured, building designers would then have the confidence to develop and submit more detailed plans. Construction should only be allowed to start once the design has been approved, which may take multiple step submissions. Whilst there would be a need to develop this process in more detail, if implemented it would allow a more efficient review process, without compromising the independence of the BSR.

In addition, further guidance on issues such as the extent of design information that is required would be very beneficial. This would reduce the wasted time and effort incurred by design teams and the BSR in submitting and reviewing designs which are at an inappropriate design stage.

Conclusion

This is an urgent issue; it is holding back commencement of construction of HRBs. This situation is counter to the accepted need for new housing stock and will significantly impact parts of the country where residential construction is predominantly HRB (rather than lower rise) such as cities.

The FIA strongly urge the BSR to urgently review their processes, procedures and guidance and make adjustment in line with the above recommendations. FIA would be very happy to support that if requested.