

# Implications of the Building Safety Act During Early Stages of Land Development

## 1.0 Introduction

The Building Safety Act (BSA) emerged as a crucial legislative response to a tragedy that exposed systemic failures within the construction industry. The Grenfell Report highlighted how a decline in external oversight, coupled with an increase in internal responsibility for build quality, compliance with building regulations, and health and safety, led to a perilous imbalance. One of the most significant issues identified was the conflict of interest faced by teams responsible for both enforcing safety standards and managing cost-cutting measures – an issue that had long been ignored.

The impact of the BSA is being felt across the entire construction process, spanning from site acquisition and planning stages to the ongoing maintenance of buildings once they are occupied. It is imperative that the Act is not reduced to a mere “tick-box” exercise, as doing so would undermine its moral, insurance, and reputational significance. Compliance with the BSA must be substantive and aimed at achieving real safety improvements rather than simply fulfilling regulatory obligations.

Developers and landowners are now required to integrate safety considerations from the earliest stages of land development. To facilitate this transition, this paper is part of a comprehensive

series designed to provide guidance on best practices while fostering collaboration among practitioners and experts throughout the development and construction process. The focus will be on compliance, risk management, and understanding financial and legal responsibilities.

These resources aim to help the industry reflect on the implications of the BSA, ensuring that stakeholders work collectively to drive positive change while maintaining commercial viability.

This thematic overview presents an analysis of the anticipated effects of the BSA on the early stages of land development. For detailed insights, please refer to Table 1 below:

Site acquisition stage	Design stage	Construction assembly stage	Use and occupation
<ul style="list-style-type: none"> <li>• Site acquisition</li> <li>• Planning constraints</li> <li>• Site factors</li> <li>• Legal</li> <li>• Marketing</li> <li>• Economic viability</li> <li>• Procurement strategy</li> <li>• The team</li> <li>• The Golden Thread</li> </ul>	<ul style="list-style-type: none"> <li>• Design development – compliance with planning development control; building regulations; CDM and Golden Thread</li> <li>• Construction documentations and site assembly details</li> <li>• Detailed funding</li> <li>• Rate of return and detailed costing</li> <li>• Commitment – client/ developer / financial institutions.</li> <li>• The team – duties of parties</li> <li>• Tendering strategy</li> <li>• Marketing – letting, management and disposal</li> </ul>	<ul style="list-style-type: none"> <li>• Compliance with HSE – CDM and Building Regulations</li> <li>• The team – Golden Thread</li> <li>• Risk assessments</li> <li>• Site assembly</li> <li>• Site management collaborative 5Ms: Manpower – direct and indirect labour and supply chain; Materials, Monetary and financial control; Management – quality auditing and monitoring systems; Machinery and plant</li> </ul>	<ul style="list-style-type: none"> <li>• Warranties and quality assurance</li> <li>• After care services</li> <li>• Golden Thread</li> </ul>

**Table 1: Key stages of construction project**

This briefing details the site acquisition stages and provoke thoughtful discussion and contribute to ongoing conversations within the industry.



## 2.0 Key Provisions of the Building Safety Act

The Building Safety Act (BSA) introduces several measures aimed at ensuring that all stakeholders prioritise safety at every stage of the construction process. Key provisions relevant to land development include:

### 2.1 Dutyholders' Accountability

Under the BSA, all stakeholders involved in construction projects – developers, architects, contractors, and others – are designated as dutyholders. This designation means that each party is held accountable for the safety and integrity of their projects throughout the entire lifecycle, from the initial planning and design stages through to construction and post-construction activities.

Dutyholders are legally mandated to ensure that safety standards are rigorously upheld at every phase of the project. This includes not only compliance with building regulations but also adherence to best practices in health and safety, quality control, and risk management. Failure to meet these obligations can lead to serious consequences, including substantial financial penalties, legal action, and reputational damage.

The BSA emphasises a culture of responsibility, requiring all dutyholders to actively engage in maintaining safety protocols and to collaborate effectively to protect the wellbeing of occupants and the public. This comprehensive accountability framework is designed to foster a safer construction environment and prevent the systemic failures that have plagued the industry in the past.

### 2.2 The Gateway Approval System

The BSA introduces a mandatory **Gateway approval process** designed to ensure that safety is embedded into building projects at critical stages. The process involves three stages:

- **Gateway One:** Conducted during the planning stage, this stage ensures that the proposed development meets fundamental safety criteria before planning permission is granted.
- **Gateway Two:** Conducted before construction begins, ensuring detailed safety plans are in place and reviewed by regulatory authorities.
- **Gateway Three:** Conducted before occupation, ensuring that all safety features have been properly implemented and the building is safe for use.

These Gateways ensure that safety is reviewed and enforced at key stages of development.

### 2.3 Golden Thread of Information

The “Golden Thread” is a pivotal provision of the BSA that requires developers to maintain a comprehensive and continuously updated digital record of all safety-related information for a building. This detailed record encompasses critical aspects of the building’s lifecycle, including its original design, construction processes, and any modifications or renovations made over time. By ensuring that every decision and change is meticulously documented, the Golden Thread serves as a vital tool for accountability and transparency.

This requirement is not merely procedural; it is designed to ensure that safety standards are consistently upheld throughout the building’s life. By having a clear, accessible record of safety-related information, stakeholders can better assess the implications of future renovations or repairs, ensuring that these activities align with the original safety specifications. This is particularly important for maintaining compliance with safety regulations and protecting the wellbeing of occupants and the public.

Additionally, the Golden Thread fosters effective communication among all parties involved – developers, contractors, and regulatory authorities – facilitating a collaborative approach to safety management. Ultimately, this provision aims to create a safer built environment by ensuring that safety is a foundational element of every phase of a building’s lifecycle, not just a consideration during initial construction.

### 2.4 Accountable Person

For high-rise buildings and other high-risk projects, the BSA mandates the appointment of an Accountable Person, who is responsible for ensuring ongoing compliance with safety standards once the building is occupied. This individual is tasked with maintaining safety protocols, conducting regular safety assessments, and addressing any safety concerns raised by occupants or regulatory authorities.

### 3.0 Implications for Land Development

The early stages of land development are critical in setting the tone for the entire project's compliance with the Building Safety Act. Decisions made during site planning, design, and financial modelling must now account for new safety, legal, and regulatory requirements.

#### 3.1 Planning and Design Considerations

Applications for Higher Risk Buildings (HRBs) are likely to become even more complex under the BSA. One key challenge is that the starting point for Golden Thread information, the digital record meant to ensure that safety is embedded throughout the design, construction, and occupation phases of a building's lifecycle. While this concept is crucial to enhancing transparency and accountability, it has not yet been fully tested in practice. This lack of practical experience creates uncertainty, particularly regarding how the responsibility for maintaining and managing this information will be allocated.

A key concern is the question of liability. Who will ultimately be held responsible for ensuring that the Golden Thread is accurate and comprehensive? The Architect, Principal Designer, Employer, and Planner all have critical roles in the design and planning phases, but their specific responsibilities under the BSA remain unclear. This uncertainty could lead to delays and disputes during the construction process, especially in terms of liability for safety failings or incomplete information.

However, safety is a priority during the planning and design phases. Developers must now factor in several key considerations to ensure compliance with the BSA.

- **Site suitability:** One of the primary considerations in the development process is the suitability of the site and the proposed building design in relation to the safety requirements established by the BSA. For instance, high-rise or complex structures necessitate meticulous planning to ensure compliance with rigorous fire safety, structural integrity, and evacuation standards mandated by the Act. Failing to adequately address these factors during the initial phases of planning can lead to significant project delays and increased costs, as adjustments may need to be made to rectify any oversights.
- **Building use and occupancy:** The intended use of the building – whether residential, commercial, or mixed-use – plays a critical role in determining the level of scrutiny it will face from regulatory bodies. Developers must carefully assess how the building's function influences its safety requirements. For example, high-risk buildings, such as residential high-rises defined by the BSA, are subject to more stringent regulatory requirements. These considerations should be integrated early into the decision-making process to ensure compliance and mitigate potential challenges later.

- **Architectural and safety compliance:**

The BSA emphasises the importance of incorporating fire safety measures and ensuring structural integrity from the outset of the development process. This mandates early collaboration among developers, architects, and safety engineers during the planning phase. While this proactive approach may increase upfront costs, it ultimately ensures that the design adheres to the Gateway process and helps avoid costly redesigns or retrofitting later in the project timeline. Engaging all relevant parties from the beginning fosters a culture of safety and accountability.

- **Materials and safety considerations:**

The choice of materials and associated safety considerations will require more comprehensive examination during both the Pre-Planning and Planning stages. If this heightened scrutiny becomes standard practice, it could significantly impact Design and Build contract routes, potentially reshaping partnerships and relationships throughout the project chain. Limitations on design due to safety or material specifications must be clearly communicated in tender documents to prevent misunderstandings that could lead to increased costs. By addressing these limitations early in the planning process, developers can ensure smoother project execution and maintain alignment among all stakeholders involved.

### 3.2 Risk Management and Liability

The BSA introduces new challenges and risks for developers, particularly regarding liability. As the concept of the Golden Thread becomes increasingly integrated into the regulatory framework, it is essential to establish clear guidelines that define the roles and responsibilities of all stakeholders involved in a construction project.

With multiple parties – developers, architects, contractors, and safety engineers – contributing to various aspects of a project, the allocation of liability needs careful consideration. Clearly delineating responsibilities will help prevent legal conflicts and ensure that the building's safety record is meticulously managed throughout its entire lifecycle, from the initial design phase to post-occupancy evaluations.

As these new requirements are rolled out, effective collaboration and transparent communication among all involved parties will be crucial. Stakeholders must work together to understand and comply with the updated regulations, ensuring that safety measures are consistently applied and documented. This collaborative approach not only enhances the overall safety of the building but also fosters a culture of accountability that is essential for long-term compliance.

Moreover, establishing clear lines of communication will facilitate the timely identification of potential issues, enabling teams to address challenges proactively rather than reactively. By embracing these practices, developers can navigate the complexities of the BSA more effectively, ultimately leading to safer buildings and greater confidence among occupants and regulatory authorities alike.

Decisions made during the early stages of land acquisition and development must account for the following:

- **Increased due diligence:** Developers must conduct extensive due diligence, including safety assessments and risk evaluations, before purchasing land or starting a development. This due diligence will help identify potential safety concerns that could delay the project or increase costs. Early identification of issues allows developers to incorporate solutions into the design phase, mitigating risk.
- **Liability for safety failures:** Dutyholders under the BSA will be held legally responsible for any safety failures. Developers need to ensure they appoint competent professionals to meet compliance standards and mitigate their liability. They will need to justify the selection process of “competent” persons. This includes legal, design, and construction experts who are familiar with the new regulations.
- **Financial implications:** Building safety regulations may increase upfront costs. Developers must budget for additional expenses related to safety technologies, hiring compliance experts, and undergoing the Gateway approval process. Any delays in the approval process could also increase holding costs for land, impacting the project's overall financial feasibility.

### 3.3 Financial and Market Considerations

The financial implications of complying with the BSA during the early stages of land development are significant and must be considered carefully:

- **Increased project costs:** Meeting the safety standards set out by the BSA will likely result in increased costs, including higher expenditures for materials, labour, and advanced safety technologies. Developers must incorporate these additional costs into their financial models from the outset to ensure the project remains financially viable.
- **Market demand:** The BSA could shift market preferences, with potential buyers and investors favouring projects that demonstrate compliance with the latest safety regulations. Developers must consider how their early-stage decisions, such as safety features and building use, will impact the marketability of the development. Projects that fail to meet safety standards may struggle to attract buyers or secure financing.
- **Financing and investment:** The requirement for extensive documentation and compliance with the Gateway process could complicate project financing. Lenders and investors are likely to scrutinise projects more closely, focusing on whether the developer can meet the safety standards within budget and on time. Developers may need to adjust their financing strategies to account for these new requirements.

## **4.0 Procurement Strategy**

### **4.1 Traditional Procurement:**

Under the Building Safety Act (BSA), the Bill of Materials (BoM) will serve as a key document for maintaining the Golden Thread – a comprehensive, digital record that tracks the safety and integrity of a building throughout its lifecycle. The role of the Quantity Surveyor (QS) is likely to expand, as they will work more closely with the Principal Designer and Architects to gain a deeper understanding of how different materials interact and affect overall safety. This increased focus on material safety may require Quantity Surveyors to carefully review their Professional Indemnity Insurance, given that liability under the BSA is both broad and long-lasting.

Any variations to materials during the construction phase must be thoroughly documented. It is advisable to include a detailed justification for these changes in the contract bundle, along with supporting research to demonstrate that safety will not be compromised. This documentation is essential for ensuring compliance with the Golden Thread requirements and reducing potential liability under the BSA.

In cases where there is no Bill of Materials, the Principal Designer will still bear the ultimate responsibility for the materials specified, as their liability under the BSA remains unchanged. Even though financial liability for materials may fall on the Contractor, the Principal Designer's responsibility for ensuring safety compliance persists.

The Employer's responsibility must also be clearly defined, particularly when no BoM is present. While Contractors may bear financial accountability for material substitutions or omissions, responsibility under the BSA has yet to be fully tested in court, leaving some legal uncertainties.

### **4.2 Design and Build Contracting:**

For contractors involved in Design and Build projects, compliance with the BSA will likely introduce new limitations. These contractors, especially those responsible for the design, will need to maintain strict adherence to the Golden Thread throughout the construction process. Any deviations from the initial material specifications must be properly recorded, justified, and reviewed to ensure they do not compromise building safety. As these requirements evolve, contractors will need to be vigilant about maintaining compliance while managing the practical challenges of design flexibility and safety standards (see also Contract).

The extended liability and heightened focus on material safety will require a more collaborative approach between all parties to ensure both regulatory compliance and the long-term safety of the buildings they create.

## **5.0 The Team**

Collaboration will be vital as we move forward in the wake of the BSA. One of the primary motivations behind the introduction of the BSA was the observed lack of transparent collaboration and the failure to adequately address conflicts of interest within the construction industry. By fostering a cooperative environment, stakeholders can not only improve safety outcomes but also enhance the commercial viability of their projects.

However, a significant challenge has already emerged: many firms are increasingly hesitant to assume the roles of Principal Designer and Principal Contractor. The high cost of insurance, combined with the desire to protect their hard-earned reputations in a competitive market, has led to a cautious approach. The liability implications imposed by the BSA are daunting for many professionals in the industry, creating apprehension about taking on these critical responsibilities.

To protect the integrity of the construction sector and ensure that the BSA remains a commitment to genuine safety rather than a mere box-ticking exercise, effective collaboration will be essential. Only by working together can we tackle these challenges head-on and develop comprehensive solutions that prioritise safety while maintaining project quality and efficiency.

Encouraging open dialogue among all stakeholders will help to build trust and facilitate shared responsibility for safety outcomes. This collaborative spirit will not only mitigate risks but also drive innovation and improve overall project delivery. By collectively embracing these principles, we can navigate the complexities of the BSA and uphold the highest standards of safety and integrity in our work.

## **6.0 Summary**

The Building Safety Act has introduced significant changes to the land development process, mandating that developers incorporate safety compliance into every phase of planning and design. This shift means that from the moment dutyholders are appointed to the Gateway approval process, every decision must be informed by the necessity of meeting stringent safety standards. Developers who overlook these regulations not only risk project delays but also face potential financial losses and legal liabilities.

By proactively addressing safety requirements from the earliest stages of land development, developers can facilitate smoother project delivery. Integrating safety into their development strategies allows them to reduce risks, protect their investments, and avoid costly delays. Moreover, buildings designed and constructed with safety and compliance at the forefront will be more marketable, as they signal a commitment to meeting both regulatory standards and market demands.

In the post-BSA landscape, embedding safety and regulatory compliance is not merely a legal obligation; it is a crucial factor for delivering successful projects. Developers who adopt this proactive approach will be better equipped to navigate the complexities of the new regulations, ultimately leading to the creation of safer, more reliable, and commercially viable buildings. This strategic alignment not only enhances the overall quality of construction but also fosters public trust, contributing to a more resilient and responsible industry.