

Delays at Gateway 2 under the Building Safety Act regime are now well known. Some schemes have waited more than 40 weeks to secure approval to commence works, with anecdotal reports suggesting even longer delays in some cases. These delays are not simply procedural challenges, they are actively impeding development timelines, straining budgets and undermining the government's broader housing objectives at a time when boosting delivery is a stated national priority.

In response, the government has announced reforms to the Building Safety Regulator (BSR), including a new fast track process and leadership changes. But perhaps more significantly, a new suite of guidance documents issued by the Construction Leadership Council (CLC) and backed by the BSR now marks a clear shift in how Gateway 2 approvals, particularly staged submissions, are to be handled.

This new guidance formally confirms that Gateway 2 applications can proceed via a staged route using "Approval with Requirements," provided the regulator is satisfied that the building can and will comply with the building regulations. This marks a notable shift from earlier BSR practice, which previously imposed a viability threshold requiring applicants to prove that a full design could not be submitted upfront. That threshold, absent from the legislation itself, had acted as a *de facto* barrier to staged delivery for complex schemes.

Against this evolving backdrop, the House of Lords Industry and Regulators Committee has launched an inquiry into the BSR's role and the wider impact of the regulatory framework on housing delivery and safety. This moment of reflection and reform offers a unique opportunity to reassess the procedural bottlenecks in Gateway 2, as well as align regulatory practice with both statutory intention and project realities.

The Staged Gateway 2 Pathway: What the Law Actually Says

The legislation has always permitted staged applications. Regulation 3 of the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 allows an application to be made either for the entirety of a higher-risk building project, or for a stage of such work. Schedule 3 sets out the required documentation in each case. Nothing in the statute or regulations suggests that staging should be exceptional or discouraged.

Yet, until now, BSR guidance and practice applied a restrictive internal policy that only permitted staged applications where a full design was not deemed viable. That policy was not based on legislation—it was an operational position that emerged without clear public consultation or statutory backing. It effectively narrowed access to a process that Parliament intended to remain open and flexible.

The new CLC/BSR guidance now abandons that position. It introduces a structured application strategy process for managing staged submissions, and confirms that conditional approval, now formally termed "Approval with Requirements," can be used to allow works to progress safely and lawfully where sufficient performance-based information is available. This reflects what many in the industry have long called for: proportionality and trust in the sequencing of design and delivery.

Importantly, this shift does not compromise safety. Construction on any stage cannot commence until that specific stage has received Gateway 2 approval, preserving the core safety control of the regime, while removing the need for a full-design Gateway 2 approval in all cases. While it is true that in some circumstances staging could risk delay if later approvals are withheld, in practice it is more likely to reduce disruption. Earlier, structured approvals supported more predictable sequencing and lessen the likelihood of late-stage design changes needing retrospective engagement with the regulator. Each stage remains subject to regulatory scrutiny and cannot proceed unless the BSR is satisfied that the work will comply with the building regulations. The change is not about lowering standards, it is about removing artificial procedural constraints that were never part of the legislative framework.

Industry Reaction: Rebalancing the Approach

Some in the industry may view the change as a long-overdue correction. The previous approach, effectively requiring applicants to demonstrate that it is not possible to provide a full design at this point in the process before staging was allowed, was not only unsupported by statute but demonstrably damaging, exacerbating delay and undermining the practical sequencing of complex schemes. The updated guidance acknowledges that compliance can be demonstrated in stages, and that performance-based design is acceptable where fully detailed solutions will follow.

For developers and design teams, this provides a more workable route through Gateway 2—one that aligns with planning practice, respects sequencing and restores a degree of procedural certainty.

Scottish Building Warrant System: A Parallel Model

Scotland's building control system has long demonstrated that staged approvals can be both safe and efficient. Under the Building (Scotland) Act 2003, local authorities routinely approve staged building warrants, allowing developers to proceed with initial packages such as substructure or frame, while later stages are submitted as amendments. Guidance Note 7 in the new CLC materials similarly allows stages of a single building to be treated as discrete applications, reinforcing the legal and procedural flexibility already embedded in the English framework.

This confirms what many have argued: that a sequenced, risk-based approach can deliver better programme outcomes without undermining regulatory integrity.

In Conclusion

Gateway 2 delays have multiple causes: resource pressures, quality of applications and initial unfamiliarity with the new regime among them. But the application of a non-statutory viability threshold had created a systemic problem: it prevented the lawful use of staged approvals even where they were safe and appropriate.

The latest guidance represents a welcome policy correction. By confirming that staged applications and conditional approvals are compatible with the legislation, the regulator has taken an important step toward unblocking delivery. The challenge now is to ensure that internal practice aligns with the new position, and that the fast track route and procedural reforms go further in embedding this proportional, flexible approach.

The House of Lords inquiry presents a further opportunity to consolidate these improvements and to ensure that the system is not just safer, but also deliverable.

We are preparing a submission to the House of Lords inquiry.

Please contact Charlotte and Paul if you'd like to share your experiences of the gateway process, raise any concerns, or propose practical improvements.

Contacts

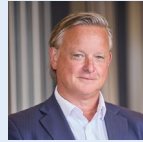


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