

BSA PRESENTS HIDDEN CHALLENGES FOR MIXED-USE ASSETS

2 years ago



For building owners with mixed-use assets, the new building control regime under the BSA for High-Risk Buildings presents challenges that the current law and process is not nuanced enough to handle; leading to potential penalties and uncertainty, writes [Matthew Osborne, Partner and Fire Advisory Lead](#).

By now, owners of high-risk buildings are well-aware of their [obligations under the Building Safety Act 2022](#). This defines high-risk buildings (HRBs) as buildings with at least two residential units, which are at least 18 metres in height or have at least seven storeys. Certain uses are specifically exempt from the regulations.

However, owners of HRBs may not be aware of the more onerous and time-consuming building control regime they may need to adhere to when refurbishing commercial units that are contained within high-risk buildings, or buildings that may become so following planned works.

Where works require consent from the [Building Safety Regulator](#) (BSR), the BSA requirements can currently mean delays of up to four months, compared to the usual more expeditious timeframe through the usual approved inspector or Local Authority channel.

This includes building work to an existing building which will make it a higher-risk building (for example

adding storeys) or for a building undergoing a change of use.

In particular, the Building Safety Act contains provisions for building control procedures that apply to building work to an existing HRB; building work to a non-HRB (e.g. converting a five-storey residential building to a seven-storey residential building); a material change-of-use (e.g. an office-to-residential conversion) where it becomes an HRB.

Extra hurdles – and some exemptions

Higher-risk buildings are subject to the requirements of the new regime, directly overseen by the BSR. The building control approval application applies to HRBs and requires an approval from the BSR for works to commence ([Gateway 2](#)).

For example, the extra hurdles can come into play for seemingly minor or unrelated works to HRBs, such as refitting a ground-level retail space, or a Cat-A office refurbishment, which may require BSR consent due to shared structure and interlinked staircases.

It's worth bearing in mind that there are exemptions where the unit benefits from no direct access into other parts of a building, containing residential elements (i.e. no shared staircases etc) or where the structure is wholly independent. There are also special arrangements around certain in-process projects that qualify for [transitional provisions](#), which allow projects to stay under the previous building control regime.

Factor in new timescales

In practice, building owners need to factor this potential three to four-month application timescale into project programmes, while also ensuring that they have an expert team to prepare robust information and submissions to avoid any further delays.

When dealing with potential or existing occupiers, the knock-on effect is that building owners also need to consider the implications of approval timescales for any relevant heads-of-terms or agreement-to-lease considerations.

The building cannot be occupied until a completion certificate has been issued, and in order to receive the completion certificate ([Gateway 3](#)), the client must demonstrate that the works have been carried out according to the approved plans.

Additionally, contractors' appetite for this process is likely to diminish, with many now unlikely to accept responsibility for gaining building control approval. Development funding agreements and building contracts may now need to factor this in.

PBSA could bear the brunt

This is particularly important for Purpose Built Student Accommodation (PBSA) developments, which typically aim to achieve Practical Completion towards the end of August, allowing occupation for the academic year. Under the new regime this can no longer happen, and developers will need to plan the construction work to complete much earlier, for example anywhere between April and June.