

立法會
Legislative Council

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(These minutes have been seen
by the Administration and cleared
by the Chairman)

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LegCo Panel on Housing

**Subcommittee on Rehousing Arrangements for
Residents Affected by Clearance of
Temporary Housing Areas, Squatter Areas and Cottage Areas**

**Minutes of meeting
held on Wednesday, 16 May 2001, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon CHAN Kam-lam (Chairman)
Hon LEE Cheuk-yan
Hon Fred LI Wah-ming, JP
Hon CHAN Yuen-han
Hon Andrew WONG Wang-fat, JP
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon Frederick FUNG Kin-kee
Hon IP Kwok-him, JP

Member absent : Hon LEUNG Yiu-chung

Public officers attending : **Housing Bureau**
Miss Joey LAM
Principal Assistant Secretary (2)

Finance Bureau

Mr James HERD
Principal Assistant Secretary (Works)

Housing Department

Mr K H LAU
Business Director/Allocation & Marketing

Mr K S LEE
Chief Housing Manager (Operations)

Clerk in attendance : Miss Becky YU
Chief Assistant Secretary (1)1

Staff in attendance : Ms Erin TSANG
Senior Assistant Secretary (1)3

I Confirmation of minutes of previous meetings (LC Paper Nos. CB(1) 344 and 862/00-01)

The minutes of the meetings held on 9 November and 7 December 2000 were confirmed.

II Meeting with the Administration (LC Paper Nos. CB(1) 505, 1122, 1203/00-01(01), (02) and 1223/00-01(01))

Clearance of cottage areas

2. Members remained of the view that the Administration should compensate cottage area (CA) residents for the loss of their self-built structures upon clearance. The Business Director/Allocation & Marketing (BD/A&M) replied that CA residents had no legal title of the land they occupied. They were allowed to erect structures at their own cost on the land with a permit issued by the Housing Authority (HA). There was no provision in the permit conditions or in the Housing Ordinance (Cap. 283) (HO) for compensation for the demolition of structures. In the absence of a legal provision, the Government and HA were not in a position to compensate the residents concerned with public funds. To date, 12 CAs had been cleared without payment of any compensation or special ex gratia allowances (EGAs) for the demolition of structures. He then tabled for members' reference the judgement delivered by the Court of Appeal in September 1999 regarding the appeals lodged by Tiu Keng Leng (TKL) CA residents over compensation, which confirmed that the CA

Action

residents had no valid claim to any form of monetary compensation.

(Post-meeting note: The judgement was circulated to members vide LC Paper No. CB(1) 1280/00-01 on 21 May 2001.)

3. Given the distinct historical background of CA, Mr IP Kwok-him said that Members could not agree to the ruling of the Court of Appeal. He reiterated that as CA structures were built at the own expenses of residents, they should be compensated for the loss of the structures upon clearance. He reminded the Administration that Members were unanimous in their support for the grant of compensation for CA residents affected by clearances and urged for a reconsideration of the current compensation policy. BD/A&M advised that the judgement delivered by the Court of Appeal was made after lengthy consideration which spanned over an extended period of six years. It had taken into account the unique historical background of CAs and concluded that the compensation package offered to TKL residents should not be regarded as a precedent. Besides, the solicitors engaged by the affected CA residents and the Legal Aid Department which the residents had approached for assistance in pursuing for further compensation had found no valid grounds for appeal. Members might also wish to seek confirmation from LegCo's Legal Advisor. Nevertheless, in recognition of the special circumstances of CAs, the Administration had offered relaxed rehousing arrangements to CA residents with a view to improving their living conditions.

4. Mr Andrew WONG queried if the Administration was really aware of the historical background of CAs which were in fact resettlement areas allowed to be built on Government land in the 1950s. As residents were required to build their own structures at that time, it was necessary for the Administration to compensate them for the loss of their self-built structures. The Principal Assistant Secretary for Housing(2) (PAS for H(2)) said that the Administration and its legal advisors had traced the history of CA back from the enactment of the Resettlement Ordinance in 1958. Besides, the objective of clearance of CA was to provide a better living environment for both the clearerees and the community. Given that the rights and privileges of individuals could be deprived by the passage of legislation and/or delivery of judgement as in the case of CA clearerees, Mr WONG opined that a more sympathetic consideration should be given to the clearerees. BD/A&M said that as the judgement made by three judges of the Court of Appeal had put an end to all claims of monetary compensation, CA clearerees should not be given any false hopes for further claims.

5. Mr Frederick FUNG recalled that the Administration was initially prepared to offer a more generous package to CA residents, if not for the judgment by the Court of Appeal. He hoped that the Administration could take into account members' views and revert to its original intention of offering monetary compensation to CA residents for the loss of their self-built structures upon clearance. PAS for H(2) reiterated that the compensation package for TKL residents was different from other CA clearerees because the Government had earlier promised that the former could reside in TKL

Action

indefinitely. Besides, TKL residents were free to dispose of their CA structures. She stressed that the compensation package for TKL residents was unique and would not be applicable to other CA residents. In recognition of the special nature of CAs, nonetheless, CA residents were offered rehousing arrangements comparable to those affected by the Comprehensive Redevelopment Programme. Apart from rehousing to public housing rental (PRH) flats, they were also given the option to join subsidized home ownership schemes with first priority. If they could not afford new flats, they would be given a choice of a refurbished PRH flat with lower rent.

6. Miss CHAN Yuen-han emphasized that CA clearers were not demanding for the same compensation as that for TKL residents but an EGA calculated at the rate of \$700 per square feet. She hoped that the Administration could reconsider their request and grant compensation in a just, fair and reasonable manner taking into account the unique historical background of CAs. BD/A&M cautioned that the proposed EGA for some 300 to 400 CA clearers would incur a huge financial commitment to be borne by tax payers. Besides, there were simply no justifications for doing so. Miss CHAN however recalled that the Lands Department had previously exercised discretion in granting ex gratia compensation to owners affected by land resumption. The Principal Assistant Secretary for the Treasury (Works) (PAS for Tsy (W)) replied that the Administration had a duty to ensure that public money was well spent. If there was a legal basis for compensation, it would be very difficult for the Administration to deviate from the legal basis without very good reasons. The Administration considered the current arrangements fair and reasonable but took note of the views expressed by members.

7. Noting that tenants of low-rented flatted factory would be offered higher compensation upon redevelopment on the ground that they would no longer be able to benefit from the low rental, Mr Frederick FUNG asked if similar arrangement could also apply to CA clearers who were not required to pay rent. BD/A&M said that as PRH rents were only one-third of the market rent, clearers moving into PRH would be able to have much improved living conditions at minimal costs. Besides, the removal allowance for clearers would be sufficient to cover removal costs and other expenses incurred. As to whether the Administration would consider increasing the removal allowance for CA clearers as a compensation for the loss of their self-built structures, BD/A&M advised that there were no justifications nor valid grounds for increasing the removal allowance which was set in line with that provided to tenants affected by redevelopment. Moreover, the proposed increase would not be fair to previous clearers who had not received any compensation for the loss of their self-built structures upon clearance.

8. Mr Frederick FUNG did not agree that CA clearers should be treated in the same way as tenants affected by redevelopment since the former had to build the structures at their own expenses and were allowed to dispose of the structures freely. Mr IP Kwok-him echoed that CA clearers should be treated differently from other clearers given their historical background. He urged the Administration to adopt a

Action

more sympathetic approach or else there would be serious difficulties in implementing future clearance exercises. BD/A&M said that he was confident that future clearances would proceed smoothly as CA clearances were aware that there were no further grounds to pursue for additional monetary compensation for the loss of self-built structures. By way of illustration, residents of the So Kon Po CA were eager to move out of the area which was situated near a slope and vulnerable to landslides. After viewing the reception units at Oi Tung Estate which offered a much better living environment, the residents moved out voluntarily without asking for removal allowance. As for the Lai Chi Kok CA, the reception units at Lai Yiu Estate were well received by the residents concerned. Butterfly Valley residents had also shown interest in the early removal to reception units.

9. Noting from the conclusion on page 16 of the judgement which stated, inter alia, that “the judges, and the administration, would do well to remember that it is for the executive to run the country, not the judges, whose powers, valuable as they are, are limited to powers of review. What, if anything, ought to be done for the residents of Rennie’s Mill was and is a matter for the administration, not the courts” and from paragraph 10 of the Administration’s paper circulated vide LC Paper No. CB(1) 1203/00-01(02) which indicated that the Government and HA were not in a position to compensate the residents concerned with public funds as there was no provision in the permit conditions or in HO for compensation for the demolition of structures, Mr Andrew CHENG opined that in order that the residents could be fairly compensated for the loss of their self-built structures, the Administration would have to consider introducing amendments to HO. If the Administration was not prepared to do so, members would have to decide on the need to introduce a Member’s Bill to that effect. In reply, PAS for H(2) said that the Administration had no intention to amend HO to provide for compensation for the loss of self-built CA structures. It was however committed to providing reasonable rehousing and removal allowance to CA residents upon clearance.

10. Referring to the two letters dated 13 June and 1 October 2000 addressed to the Chief Executive by the Chairman of the House Committee requesting for a reconsideration of the grant of a special ex gratia compensation to residents affected by CA clearances, Mr LEE Cheuk-yan remarked that the refusal to the unanimous request by Members had already undermined the relationship between the executive and the legislature. He cautioned that the situation would be further aggravated if the Administration adopted a confrontational approach. BD/A&M reiterated that the existing arrangements were made in the best interest of both the affected residents and the community. Given that huge sums of money had been spent in compensating the TKL residents, it would not be fair to offer additional sums of public money to CA clearances for the loss of self-built structures when relaxed rehousing arrangements had been provided to improve their living conditions.

11. Concluding the discussion on clearance of CAs, the Chairman urged the Administration to take account of members’ views and to provide a fair and reasonable

Action

compensation to the clearees.

Action

Clearance of squatter areas

12. Mr Frederick FUNG noted that the Administration had all along used the 1984/85 Squatter Occupancy Survey (SOS) as the baseline for determining the eligibility for rehousing, subject to other eligibility criteria such as the domestic property ownership restriction and CMT. While supporting that there should be restriction on property ownership, he was of the view that the income limit for squatters should be relaxed given the limited number of squatters remaining. Miss CHAN Yuen-han however took a different view. She pointed out that as many properties had become negative assets after the economic downturn, the owners concerned were in fact worse off than those who did not own any properties. Therefore, the Administration might need to review the 24-month domestic property ownership restriction to take account of the current economic situation.

13. BD/A&M advised that those who could afford to purchase properties at the peak of the market would probably have assets which were way beyond the prescribed limits for applicants on the Waiting List (WL). It was therefore not considered necessary to dispense with the domestic property ownership restriction. However, changes had been introduced to relax the restriction on owners who only had a small share of inherited properties. On the proposed relaxation of the income and asset limits for squatters, BD/A&M advised that it might not be possible as the proposal was contrary to the prevailing policy of providing PRH to those who were in genuine need. At present, well-off tenants whose total household income and net asset value both exceeded the prescribed income and asset limits were required to vacate their PRH flats. They could however apply for the Home Purchase Loan Scheme or the Home Ownership Scheme.

14. Given the lapse of more than 16 years since the 1984/85 SOS was conducted, Mr Frederick FUNG remarked that many squatters had become ineligible for rehousing to PRH. As such, the Administration should apply the higher income and asset limits in line with that for well-off tenants paying market rent to squatters. Expressing similar view, the Chairman opined that as the eligibility of squatters for rehousing had been confirmed in the 1984/85 SOS, they should be given PRH units in the first place, after which they should be required to pay market rent if their household income and net asset value exceeded the prescribed limits. While acknowledging members' views, BD/A&M pointed out that squatters were not sitting tenants and therefore should not be subject to the income and asset limits applicable for well-off tenants. Besides, the proposed relaxation would not be fair to other committed categories.

15. Miss CHAN Yuen-han noted that a lot of problems had surfaced since the introduction of the requirement for clearerees to undergo CMT in order to be eligible for PRH as evidenced in the clearance of Ho Ka Yuen Squatter Area (SA). Many of the squatters who had resided in the area since birth and who had been registered under the 1984/85 SOS had failed the Comprehensive Means Test (CMT) and become ineligible for rehousing to PRH. She concurred with other members that the use of the 1984/85

Action

SOS as the baseline for rehousing of squatters should be reviewed. BD/A&M briefed members on the progress of the clearance of Ho Ka Yuen SA. He said that 65 households, representing 17.4% of the residents in the area, could not pass CMT. Meanwhile, 15 households had applied for Home Purchase Loan Scheme/Home Ownership Scheme, 23 were allocated rental units provided by the Housing Society, two were offered IH units, one was granted compassionate rehousing and 24 were awaiting housing allocation. The application of CMT was meant to ensure that the limited housing resources would only be allocated to those in genuine need, thereby reducing the average waiting time for PRH. It would not be desirable to alter the existing arrangement which had been working well. He also emphasized the need to adhere to the 1984/85 SOS which was drawn up after a territory-wide survey in an attempt to deter the growth of squatter population. The removal or changing of the baseline would encourage illegal squatting.

16. Mr Frederick FUNG suggested that instead of providing Interim Housing (IH) in rural districts such as Tuen Mun, the Administration should make available IH in different districts to cater for the needs of squatters. Consideration should also be given to using older PRH estates in extended urban areas such as Shatin and Kwai Chung as IH. In reply, BD/A&M confirmed that there were IH units in the extended urban estates in Shek Lei and Kwai Shing. It was however not advisable to use other PRH units in the extended urban areas as IH since these should be allocated to eligible WL applicants. To expedite the pace of rehousing, squatters who had been registered on WL and who were due for flat allocation within the next 12 months would be offered PRH under the Anticipatory Housing Scheme. This would avoid the need for double moves within a short time. Many of the clearers of the Diamond Hill Squatter Area (SA) had been rehoused to PRH within a relatively short period of time under the Scheme. Recently, the Housing Department (HD) had introduced an upgrading arrangement whereby WL applicants eligible for PRH in the New Territories would be able to upgrade to refurbished units in extended urban area while those eligible for units in the extended urban area would be able to upgrade to units in the urban area and so on. As a result, some of the squatters could be rehoused to PRH direct upon clearance without the need to move to IH.

17. Mr IP Kwok-him remained concerned that rehousing to remote areas would seriously disrupt the daily routine of clearers. It was also at variance with the original intention of improving their living conditions. Noting that the average waiting time for PRH would be reduced to three years by 2005, he considered that more flexible rehousing arrangement could be offered to squatters who had been registered under the 1984/85 SOS to take account of their long waiting time.

18. Mr LEE Cheuk-yan said that members had all along been requesting that clearers registered in the 1984/85 SOS be exempt from CMT, and that they be rehoused to IH within the same district. It was regretted that such requests had not been acceded to. As IH at Po Tin, Tuen Mun had not been well received and were now being offered to WL applicants as well, Mr LEE reiterated the need to provide IH

Action

in extended urban areas. His concern was shared by Miss CHAN Yuen-han. BD/A&M said that there were convenient transport links to Po Tin, which was easily accessible by light rail. He also clarified that IH were also made available to WL applicants living in cubicles who were awaiting their turn for rehousing to PRH.

Basis for calculating EGAs

19. Mr LEE enquired about the basis for calculating EGAs for business undertakings, which was first approved in August 1988. He considered that the Administration should apply different EGA rates for different districts and itemize the compensation package to enhance clarity. BD/A&M explained that annual adjustments to EGAs payable to business operators were made by the Secretary for the Treasury under the delegated authority of the Finance Committee (FC). The summary of EGA rates initially approved by FC and the changes approved under delegated authority over the past five years were set out in the Annex to LC Paper No. CB(1) 1203/00-01(02). He said that EGAs offered to business operators affected by clearance were considered sufficient to cover their removal and initial operating expenses. These had been applied in the clearance of Diamond Hill SA and there were no justifiable grounds for change. PAS for H(2) added that EGAs were linked to the average rentals of shops and flatted factories in the private sector, capitalized over four months for shops and 12 months for workshops. The allowance was meant to cover the necessary expenses associated with the removal and re-establishment of business, but would not provide for severance payments since its intention was to allow for continuation of business. PAS for Tsy(W) said that while the rates were reviewed annually in the light of market rentals and were adjusted where necessary by the Secretary for the Treasury acting under delegated authority, the formula agreed in 1988 was still applicable.

20. Miss CHAN Yuen-han was not convinced of the Administration's response. She pointed out that the present EGA rates were outdated and were not sufficient to cover the removal costs of machinery, let alone the cost for re-establishment of business elsewhere. BD/A&M advised that since the amount of EGAs for workshops was calculated according to their size, workshops used for heavy industries would be entitled to a greater amount of EGAs since they normally occupied more space. A higher amount of EGA would also be offered if part of the business area had been used as a shop.

21. Miss CHAN considered it necessary to have an overall review of the clearance policy and the basis for determining EGAs for business undertakings since quite a number of non-domestic clearerees had been forced out of business as a result of clearance operations. She supported that frontline HD staff should be given greater flexibility to deal with problems arising from clearance. PAS for H(2) said that within the established policy framework, the Administration would try to meet the needs of clearerees as far as practicable and endeavour to exercise flexibility in facilitating clearance operations.

Action

Admin 22. To facilitate members' understanding, the Administration agreed to provide the formula for calculating EGA for eligible operators of business undertakings affected by clearances, which was approved by FC on 27 January 1988. While appreciating the Administration's initiative, Mr Andrew WONG expressed doubt that the papers associated with the determination of EGA for business undertakings affected by clearance would be made available for members' reference since these were classified documents.

(Post-meeting note: The relevant papers were circulated to members vide LC Paper No. CB(1) 2009/00-01 on 14 September 2001.)

23. The Chairman said that the Subcommittee would consider the need for a further meeting on the subject upon receipt of the Administration's papers.

24. There being no other business, the meeting ended at 10:40 am.

Legislative Council Secretariat

21 November 2001