

**For discussion
on 18 December 2003**

LegCo Panel on Food Safety and Environmental Hygiene

Unauthorised Building Works Found at Licensed Food Premises

PURPOSE

This paper sets out the Administration's proposal to tackle the problem of unauthorised building works (UBWs) found at licensed food premises.

BACKGROUND

2. UBWs are often found at licensed food premises. Common examples include water cooling towers, exhaust fans, ventilating ducts, commercial signage erected outside the premises, illegal cockloft, etc. These UBWs often cause environmental hygiene problems to the surrounding areas, such as dripping of water and emission of hot air and fume. They are also a potential threat to public safety.

3. Under existing practice, the Food and Environmental Hygiene Department (FEHD) will consult the Buildings Department (BD) on, among other things, the building safety aspect of a food business licence application. If it can be seen from the layout and ventilation plans submitted by a licence applicant or during initial site inspection that there are UBWs attached to or extending from a premises under application, BD will either -

- (a) object to the issue of a licence unless the UBWs are removed; or
- (b) raise no objection to the issuance of licence, but impose building safety requirements and point out that the UBWs may be subject to future enforcement action.

For cases under (a), FEHD will not issue any licence. For cases under (b), provided that the applicants comply with other licensing requirements and no objection is raised by other departments, FEHD will issue a licence. However, FEHD will convey BD's comments about the UBWs to the applicant. The present practice is not stringent enough in checking the proliferation of UBWs.

THE ADMINISTRATION'S PROPOSAL

4. To tackle the problem at source, Team Clean recommends in its report issued in August 2003 that FEHD will not allow the issue or transfer of a licence if it comes to the department's knowledge that there are UBWs attached to or extending from the premises under application.

New Applications

5. In the light of Team Clean's recommendation, we propose that new applications for food business licences be subject to the following regulatory framework -

- (a) As a general principle, FEHD will not approve any new application for licence if UBWs are found at the premises under application.
- (b) To facilitate identification of UBWs, applicants will be required to submit layout and ventilation plans setting out clearly both the interior of the premises and all the structures attached to or extending from the premises.
- (c) If UBWs are shown on the proposed layout and ventilation plans submitted or detected during site inspections, the applicant will need either to remove the UBWs or obtain BD's approval of the building works, as one of the requirements for the issue of licence.
- (d) A licence will only be issued if an applicant can obtain

certification from a recognised professional (such as an authorised person or a structural engineer registered under the Buildings Ordinance (Cap. 123)) that the premises under application are free from UBWs.

- (e) A licence so issued may be cancelled if UBWs are subsequently detected.

Existing Licensed Premises

6. Many existing licensed premises have UBWs attached to or extended from them. We are aware that requiring the immediate removal of the UBWs carries significant implications to the trade. While we do not propose to require the licensees concerned to immediately remove the UBWs, we consider it fair that for transfer of licence in respect of these premises, the application should not be allowed unless the UBWs are removed. By this pragmatic approach, we aim to reduce the size of the problem over time by natural attrition.

CONSULTATION

7. We have consulted the Advisory Council on Food and Environmental Hygiene on the above proposal at its meeting held in October 2003. Members were in support of the proposal.

8. The public and the trade were also consulted. An opinion survey on a number of Team Clean proposals was conducted in early November 2003, in which a total of 1 210 individuals were successfully interviewed. 87.3% of the respondents either supported or strongly supported the proposal to deny issue of a food business licence should the premises concerned contain UBWs affecting the environment. In addition, 81.1% of the respondents agreed that where UBWs are attached to or extended from food premises, transfer of licence should not be allowed.

9. We also forwarded the above proposals and those in relation to regulatory control over provisional licences (to be discussed in a separate

paper) to food trade organisations and all licensees of food premises in end October 2003. As of end November 2003, we have received a total of 14 submissions from trade associations and individual licensees. Of these submissions, ten expressed reservations on the proposal to tighten up control over UBWs. Most of them were worried that, given the wide coverage of UBWs, the proposal to remove them would add to their costs. Some members of the trade were concerned that the involvement of FEHD in the assessment of UBWs would complicate the licence application process. Others were concerned with the potential risk borne by transferees of food premises, who might not be aware of the existence of UBWs prior to the transfer but were subject to subsequent sanction when the UBWs were found during FEHD's regular inspection.

THE ADMINISTRATION'S CONSIDERATION AND RESPONSE

10. The result of the opinion survey clearly indicates that there is strong public support for eliminating UBWs associated with food premises. As regards the concerns of the trade, we would like to make the following response—

- (a) *Cost to the trade* – As mentioned in paragraph 6 above, we are aware that many existing food premises contain UBWs. The licensees of these premises may encounter difficulties if they are to remove the UBWs immediately. Our proposal has already taken into account the practical concerns of the trade, by only requiring the UBWs of such premises be removed upon transfer of licence.
- (b) *Role of FEHD* – It should be noted that, under the existing licensing regime, FEHD and other relevant departments conduct initial screening of plans or site inspection to identify major problems (such as the existence of UBWs) with the premises. The screening and inspection enable the applicant to rectify such problems at an early stage of licence application. The proposed arrangement in dealing with UBWs does not differ significantly from existing practice. Moreover, FEHD will ultimately rely on professional

certification that the premises are free from UBWs. The licensing process will not be complicated as a result of the proposal.

- (c) *Risk to transferee* – We agree that a transferee may not be aware of the existence of UBWs in respect of the premises under transfer application. Hence, we will require a transferor to obtain a recognised professional's certification that the premises are free from UBWs. It will be clearly stated in future application forms for licence transfer that a transfer will be denied if UBWs are found at the premises concerned.

IMPLEMENTATION

11. In view of the large number of applications for new licence and licence transfer that FEHD receives each year (the corresponding figures for 2002 being 2 502 and 2 379 respectively), we will initially target at premises that are commonly found to have UBWs, including restaurants, factory canteens, cold stores, food factories and bakeries. Subject to the availability of resources, we will gradually extend the new arrangement to other types of licensed premises, i.e. fresh provision shops, siu mei and lo mei shops, frozen confection factories and milk factories.

WAY FORWARD

12. Members are invited to comment on the proposal set out in paragraphs 5 and 6 above. Subject to Members' comments, we plan to implement the new measures in April 2004.

Health, Welfare and Food Bureau
Food and Environmental Hygiene Department
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