

立法會
Legislative Council

LC Paper No. CB(1)380/06-07
(These minutes have been seen
by the Administration)

Ref : CB1/PL/HG/1

Panel on Housing

Minutes of meeting
held on Monday, 6 November 2006, at 4:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon LEE Wing-tat (Chairman)
Hon LI Kwok-ying, MH, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Fred LI Wah-ming, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Hon CHAN Yuen-han, JP
Hon CHAN Kam-lam, SBS, JP
Hon LEUNG Yiu-chung
Dr Hon YEUNG Sum
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Kwok-hing, MH
Dr Hon Joseph LEE Kok-long, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Patrick LAU Sau-shing, SBS, JP

Member absent : Hon Albert CHAN Wai-yip

Public officers attending : Agenda Item IV
Mr Michael M Y SUEN, GBS, JP
Secretary for Housing, Planning and Lands

Mr Thomas C Y CHAN, JP
Permanent Secretary for Housing, Planning and Lands
(Housing)

Miss Mary CHOW Shuk-ching, JP
Deputy Secretary for Housing, Planning and Lands
(Housing)

Mr Carlson CHAN
Assistant Director (Strategic Planning)
Housing Department

Agenda item V

Mr LAU Kai-hung, JP
Deputy Director (Estate Management)
Housing Department

Mrs Janet TSANG
Chief Manager/Management (Support Services)
Housing Department

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)6

Staff in attendance : Ms Annette LAM
Senior Council Secretary (1)3

Ms Sarah YUEN
Senior Council Secretary (1)6

Ms Michelle NIEN
Legislative Assistant (1)9

I Confirmation of minutes

(LC Paper No. CB(1)158/06-07 -- Minutes of meeting on 12 October
2006)

The minutes of the meeting held on 12 October 2006 were confirmed.

II Information papers issued since the meeting held on 3 July 2006

2. Members noted that the following information papers had been issued since the meeting held on 3 July 2006:

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| (a) LC Paper No. CB(1)
213/06-07 | -- Letter from The Conservancy Association on the subject of "Illumination levels of public housing estates" and the Administration's response thereto; |
| (b) LC Paper No. CB(1)
2117/05-06 | -- Booklet on General Housing Policies; |
| (c) LC Paper No. CB(1)
1922/05-06(01) | -- Referral from the Complaints Division of the LegCo Secretariat on concerns raised at the meeting of LegCo Members with the Society for Community Organization on 12 May 2006 about the quota and points system for Waiting List non-elderly one-person applicants implemented in 2005; |
| (d) LC Paper No. CB(1)
1922/05-06(02) | -- Referral from LegCo Members and the Administration's response on concerns raised at the meeting with Kwun Tong District Council (KTDC) members on 2 March 2006 regarding the redevelopment of Lower Ngau Tau Kok Estate; and |
| (e) LC Paper No. CB(1)
1922/05-06(03) | -- Referral from LegCo Members and the Administration's response on concerns raised at the meeting with KTDC members on 2 March 2006 regarding rehousing of occupants of illegal building structures. |

III Items for discussion at the next meeting

- (LC Paper No. CB(1)212/06-07(01) -- List of outstanding items for discussion
LC Paper No. CB(1)212/06-07(02) -- List of follow-up actions)

3. Members agreed to discuss the following items proposed by the Administration at the next regular meeting to be held on Monday, 4 December 2006:

- (a) Report on the review of domestic rent policy for public housing; and
- (b) Arrangements for the disposal of surplus Home Ownership Scheme flats.

4. On item (a), members noted that the Administration would brief members on the findings and recommendations of the Housing Authority (HA)'s review of domestic rent policy for public housing. As regards item (b), the Administration would brief members on the detailed arrangements for selling the surplus Home Ownership Scheme flats, which would be rolled out in early 2007.

5. Members noted Dr YEUNG Sum's letter of 3 November 2006 tabled at the meeting, which suggested that the Panel should discuss the subject of arrangements for selling first-hand residential units (the suggested subject). Dr YEUNG pointed out that there had been public concerns recently about malpractices of some developers and estate agency practitioners in selling first-hand residential properties, including the failure to provide potential buyers with accurate and sufficient information on the properties in a timely manner, arranging presale of properties with estimated completion period of over five years, and alleged practice of some estate agency practitioners to submit cheques of their own in flat ballots in order to boost the popularity of the properties. Dr YEUNG expressed concern about protection of interests of property buyers and the impact on the property market, and suggested that the Panel should discuss measures taken and to be taken to tackle the associated problems.

6. The Chairman said that at the Panel meeting on 12 October 2006, he had already proposed to discuss related issues, including the new measures to be implemented by the Real Estate Developers Association of Hong Kong (REDA) to improve the self-regulatory regime of developers for selling uncompleted residential units, and new guidelines that the Estate Agents Authority (EAA) had put in place for practitioners involved in first sales of residential properties. He opined that the suggested subject could be discussed in conjunction with his proposed item, and suggested that the Administration be invited to brief the Panel on the relevant details and to discuss other possible measures for enhancing transparency in the first-hand property market and protection for buyers. In view that two discussion items had already been scheduled for the regular meeting on 4 December 2006, he proposed that a special meeting be scheduled for the discussion of the suggested subject and the item on "Problems encountered in proposed public housing development", which was proposed by Mr CHAN Kam-lam at the Panel meeting on 12 October 2006.

7. Mrs Selina CHOW opined that unless there was urgency to discuss the suggested subject and Mr CHAN Kam-lam's proposed item, she did not see the need for the Panel to hold a special meeting for these two items.

8. In response, the Chairman pointed out that as REDA's new measures would be implemented very soon, it might be too late to discuss them in January

2007. Dr YEUNG Sum also pointed out that in consideration of growing public concerns about the malpractices in the sale of first-hand residential properties lately, and the Consumer Council (CC)'s recent proposals in this regard, there was a need to examine the suggested subject early to enhance protection for property buyers. Mr Fred LI concurred with the Chairman and Dr YEUNG Sum on the need to discuss the suggested subject as soon as practicable, and opined that REDA, EAA and CC should also be invited to join discussion on the item.

9. While sharing the view that the Panel should discuss the suggested subject early, Mr CHAN Kam-lam concurred that special meetings should be scheduled for genuinely urgent matters. In anticipation that the item on "Report on the review of domestic rent policy for public housing" might not take up much discussion time, he proposed that the suggested subject be placed on the agenda of the December meeting as the third discussion item, and that the item on "Problems encountered in proposed public housing development" be discussed in a future meeting.

10. The Chairman, however, highlighted members' concern about the review of domestic rent policy (the Review), and considered it undesirable to schedule three discussion items for the regular meeting in December. Dr YEUNG Sum shared his view, and pointed out that many concerns and questions about the Review had yet to be addressed. As such, he suggested that consideration be given to extending the regular meeting in December to cater for the discussion of three discussion items. After further deliberation, members agreed that the regular meeting on 4 December 2006 be held from 2:30 pm to 6:00 pm to discuss the suggested subject and the two items in paragraph 3 above.

IV Review of Domestic Rent Policy

- (LC Paper No. CB(1)144/06-07(01) -- The Administration's response to issues relating to the Review of Domestic Rent Policy raised at the special meeting on 26 September 2006
- LC Paper No. CB(1)2241/05-06(01) -- Information paper provided by the Administration for the special meeting on 26 September 2006
- LC Paper No. CB(1)2241/05-06(02) -- Updated Background brief on "review of rent policy of public rental housing" prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1045/05-06 -- Consultation Paper on Review of Domestic Rent Policy and its Executive Summary

- LC Paper No. CB(1)1060/05-06(03) -- Information paper provided by the Administration for the meeting on 17 March 2006
- LC Paper No. CB(1)1571/05-06(01) -- Summary of views presented to the Panel prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1571/05-06(02) -- Administration's response to the summary of views presented to the Panel prepared by the Legislative Council Secretariat)

Briefing by the Administration

11. At the Chairman's invitation, the Secretary for Housing, Planning and Lands (SHPL) briefed members on the latest developments of the Review as follows:

- (a) At the request of members, the Administration had already provided the details of the operation of the proposed income-based rent adjustment mechanism for public rental housing (PRH) and information on recommendations of the Ad Hoc Committee on Review of Domestic Rent Policy (CDRP) to address concerns raised at the special meeting on 26 September 2006;
- (b) CDRP had held a meeting on 1 November 2006 to examine its draft report. It aimed to submit the report with its final recommendations to HA for approval before the end of November 2006. Subject to HA's approval of CDRP's report, the Administration would brief the Panel on the matter; and
- (c) In recognition of the need to introduce legislative amendments to the Housing Ordinance (HO) (Cap.283) early to replace the statutory 10% median rent-to-income ratio (MRIR) cap with a clear, objective and flexible rent adjustment mechanism, the Administration was working towards introducing the relevant amendment bill (the amendment bill) to the Legislative Council (LegCo) in the first quarter of 2007.

Discussion

Likely extent of rent reduction

12. Referring to media reports that HA was contemplating, as a result of the Review, the introduction of 11.6% rent reduction and rent waiver of one month, Mr WONG Kwok-hing sought confirmation from SHPL on the matter. In response, SHPL said that the above were amongst the many proposals examined

and considered by CDRP at the meeting on 1 November 2006. As CDRP was still finalizing its recommendations, HA had yet to decide on the way forward.

13. Mr WONG Kwok-hing further enquired whether the above proposals represented the majority views of HA, how the proposed 11.6% rent reduction had been worked out, and whether the proposed rent reduction could compensate tenants for over-charged rents in excess of the statutory MRIR cap over the past eight-year deflationary period.

14. On the proposal on rent reduction, SHPL explained that while CDRP had worked out a number of options for adjusting the current PRH rent to a suitable level, no conclusive view had been taken in this regard. The new starting point had to be determined according to the new rent adjustment mechanism to ensure coherence and consistency of the entire rent adjustment framework. As such, it would be highly imprudent for HA to introduce long-term rent reduction and decide on the extent of such reduction without first agreeing on the mechanism. The Assistant Director of Housing (Strategic Planning) (AD of H (SP)) supplemented that the rent adjustment options had already been set out in the Administration's paper for the special meeting on 26 September 2006 (slides no. 9 to 12 of Annex B to LC Paper No. CB(1)2241/05-06(01)). Depending on which option was to be adopted, the rate of rent adjustments would range from an increase of 2.8% to a reduction of 11.6%. Under the option of reducing PRH rent by 11.6% across the board, 1997 was taken as the reference year on the ground that the rents of the biggest proportion of the existing PRH units and those of the newly completed units had been last reviewed in 1997. A rent reduction of 11.6% had been worked out by tracking the changes in the income index since 1997.

15. Mr Frederick FUNG recapitulated his proposal made at the special meeting on 26 September 2006 that, instead of working out the new rental basis by tracking the changes in the income index since 1995, 1996 and 1997, the median wage of 1998 should be used as the reference point in consideration of the then high rent-to-income ratio (RIR) of PRH households and HA had not effected any rent adjustment since 1998. In his view, if this calculation method was adopted, PRH rent should be reduced by around 20%, instead of 11.6%. If the proposed income index was adopted and 1998 was taken as the reference year, the current rent level should be reduced by 15%. He then enquired whether his proposal had been reflected to CDRP for consideration and the latter's views.

16. In response, AD of H (SP) said that the rent of the flats covered by HA's rent increase waiver approved in 1998 was indeed last adjusted in 1995. Had 1995 been taken as the reference year, the rent of these flats might have to be adjusted upward. He further elaborated that 1995, 1996 and 1997 had been selected as the reference years for deriving the new rental basis because HA had waived the rent increases approved in 1998 and 1999 and deferred all rent reviews since 1999. As such, approximately one-third each of PRH units had their rent last reviewed in 1995, 1996 and 1997 respectively.

17. Mr Frederick FUNG pointed out that instead of looking at the rent level in determining the reference year, HA should look at tenants' affordability. According to him, HA's decision to waive rent increases approved in 1998 had been made in recognition of tenants' then inability to afford the approved increases. He urged the Administration to give regard to tenants' interests instead of those of HA. In response, SHPL said that HA's decision to waive the rent increases was made taking into account a number of factors. He stressed that the most important task for HA at the moment was to identify a rent adjustment option acceptable to the community.

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18. In this connection, in order to ascertain the reason behind HA's decision to waive rent increases approved in 1998, the Chairman requested the Administration to provide HA's official announcement on the decision for members' reference. Mr Frederick FUNG agreed, and added that the Administration should also provide the minutes of meetings of HA covering the relevant discussion(s).

The need to amend the Housing Ordinance

19. Miss CHAN Yuen-han questioned the need to amend HO, pointing out that it could already allow for both increase and reduction in PRH rents. In response, SHPL explained that the surge in MRIR in the past years was attributable to a host of interwoven and complicated factors other than changes in rent levels and tenants' incomes. These included reduction in household size, a sharp growth in the number of tenants receiving Comprehensive Social Security Assistance (CSSA), etc. However, the existing statutory 10% MRIR cap effectively meant that, regardless of the above string of extraneous factors, PRH rent could only go down once the cap was exceeded. Given the significant financial implications and the statutory requirement that the policy of HA should be directed to ensuring that the revenue accrued from its estates should be sufficient to meet the recurrent expenditure on the estates, it was necessary to amend HO to remove the statutory MRIR cap to allow for the proper operation of the rent adjustment mechanism. It remained the Administration's intention to introduce the amendment bill to LegCo in early 2007.

20. Miss CHAN Yuen-han pointed out that HA had not introduced rent reduction not due to constraints of HO but because the Administration had found the statutory 10% MRIR requirement unacceptable. She opined that the Administration's proposal to amend HO was a means to evade from complying with the requirement and hence rent reduction. She considered such an approach undesirable and re-iterated her request that the Administration should reduce PRH rent immediately before reviewing the rent adjustment mechanism.

21. In reply, SHPL said that if the MRIR was to be brought down to a level not exceeding 10%, rent reduction of more than 30% would need to be introduced and that would not be reasonable and acceptable to the community. Moreover, by taking various measures such as rent waiver and enhancement to the Rent Assistance Scheme, HA had already made every effort to help relieve the financial burden of tenants notwithstanding the various constraints it faced, particularly the

then on-going judicial review of HA's decisions to defer rent reviews. The proposal for introducing a new rent level in parallel with a new rent adjustment mechanism was a practical and prudent approach to deal with the problems associated with the MRIR cap.

22. Mr LEUNG Kwok-hung echoed the view that there was no need to amend HO. As evidenced by increases in PRH rents in the past when the incomes of the general public increased, he pointed out that the ordinance could already provide for both upward and downward adjustments in rent. In response, SHPL clarified that when he said rents could only be reduced under HO, he was referring to the current circumstances where the MRIR had already exceeded 10%, so that unless the statutory MRIR provisions were suitably amended, HA would continue to be stuck in the current unsatisfactory and unsustainable situation where rents could only go down but not go up in the foreseeable future.

Parallel introduction of the new rent level and the new rent adjustment mechanism

23. Mr LEUNG Yiu-chung pointed out that the proposed parallel introduction of a new rent level and a new rent adjustment mechanism was undesirable and would damage the relationship between the legislature and the executive authorities. He further queried whether the "bundling" approach was proposed due to concern about lack of support for the new rent adjustment mechanism, so that the Administration was concerned that LegCo would not pass the amendment bill after implementation of rent reduction. He emphasized that reduction in PRH rent had been long overdue given the current high MRIR figures. He also cast doubt on whether views of HA members were really so diverse that rents could not be reduced until some consensus was reached.

24. In response, SHPL re-iterated that the new rent level should be determined according to the future rent adjustment mechanism in order to ensure coherence and consistency of the entire rent adjustment framework. He also said that HA members had diverse views over the issue of rent reduction. Nonetheless, he was hopeful that a consensus could be reached within HA.

25. Mr LEUNG Yiu-chung was unconvinced that there was no majority view on the rent adjustment option within HA so that rent reduction had to be put on hold pending the introduction of a new rent adjustment mechanism. He still considered the "bundling" arrangement a means to secure support for the amendment bill. The Chairman shared the views. In response, SHPL said that CDRP had worked out the different rent adjustment options carefully and there were sound justifications for each option. HA would take a view on the option to be adopted at its coming meeting. There would be ample opportunities for LegCo Members to examine the amendment bill during the bills committee stage.

26. Mr LEUNG Kwok-hung considered the proposals of excluding CSSA recipients and tenants paying additional rents from the calculation of MRIR and introducing exclusive rent unreasonable. He pointed out that even if these proposals were implemented, the MRIR would still exceed the statutory 10% cap,

thereby highlighting the need for HA to reduce PRH rents without further delay. In his view, by insisting to adopt the "bundling" approach despite grave public concerns, the Administration was in effect blackmailing LegCo Members to pass the amendment bill in exchange for an early rent reduction. He urged Members to note the views of PRH tenants and to oppose the amendment bill.

Other views and concerns

27. Mr LEUNG Kwok-hung questioned the effectiveness of CDRP in representing the interests of PRH tenants, pointing out that none of its members were PRH tenants but, as he observed, all were pro-Government. While disagreeing with Mr LEUNG's views, SHPL pointed out that one of CDRP members, Ms LUI Lai-bing, was a PRH tenant when she was appointed.

28. The Chairman pointed out that the MRIR benchmark of 18.5% for newly completed PRH estates of an allocation standard of 7 square metres Internal Floor Area (IFA) per person was well above the overall statutory 10% MRIR cap. As a result, the rent charged for some new units was over \$3,000, which was close to the rent level for comparable accommodation in the private market. He expressed concern about the high rent level for new PRH estates and enquired about how rent for new PRH units would be set under the proposed rent adjustment mechanism. In reply, SHPL highlighted HA's efforts in enhancing the quality of PRH, in particular improvement in flat size and hence increase in IFA per person. He emphasized that whether the rent charged for a PRH unit was reasonable should be examined with regard to a number of factors, such as location, supporting amenities and size. He however assured members that tenants having affordability problem could choose flats of cheaper rents, and the Rent Assistance Scheme was in place to help tenants in genuine needs.

29. The Chairman recalled that even in 1998 and 1999, MRIR of new PRH units was already as high as 14% to 15%. He was concerned that the present figure might reach 17% to 18% given the above higher MRIR ceiling for new units. In response, AD of H (SP) advised that currently only three-bedroom PRH units in urban estates would charge rent over \$3,000. However, in recognition of the decrease in number of large households, HA had stopped construction of large PRH units. At present, new PRH estates mostly consisted of one-bedroom or smaller units. The rent for such units, even if in urban estates, was mostly below \$2,000. For new units in the New Territories, the rent would be even lower. While the MRIR for new PRH units would vary between 13% and 17% depending on the location of the estates, the figure had never exceeded the cap of 18.5%. The current rent level for new PRH units was considered within tenants' affordability. As regards fixing of rent for new PRH units in the future, AD of H (SP) said that the new rent adjustment mechanism would be applied in adjusting the best rents for newly completed PRH estates.

V Marking Scheme for Estate Management Enforcement in Public Housing Estates

- (LC Paper No. CB(1)212/06-07(03) -- Information paper provided by the Administration
- LC Paper No. CB(1)212/06-07(04) -- Background brief on “Marking Scheme for Estate Management Enforcement in Public Housing Estates” prepared by the Legislative Council Secretariat)

Presentation by the Administration

30. At the invitation of the Chairman, the Deputy Director of Housing (Estate Management) (DD(EM)) gave a power-point presentation on the progress in implementing the Marking Scheme for Estate Management in Public Housing Estates (the Marking Scheme) and new improvement measures. He took members through the salient points, as follows:

- (a) The Marking Scheme was first introduced in August 2003 (the Scheme was known as "Marking Scheme for Tenancy Enforcement in Public Housing Estates" when first introduced in 2003) to strengthen enforcement against hygiene-related offences in PRH. Currently, the misdeeds covered by the Marking Scheme were categorized into four groups in accordance with the seriousness of their consequences and potential nuisance to the living environment, with Category A, B, C and D misdeeds carrying 3, 5, 7 and 15 penalty points respectively. Accumulation of 16 points or more within two years would lead to termination of tenancy. Points accumulated under the Marking Scheme would be purged upon expiry of a two-year validity period.
- (b) From August 2003 to 31 August 2006, 5 048 allotments of penalty points involving 4 889 households had been made. Of them, 148 households had accumulated 10 penalty points or more. So far, 8 households had accrued 16 or more points. Misdeed of “Littering” and “Spitting in public areas” continued to be the most frequently committed offences with 3 878 and 906 cases respectively. Misdeeds for which a large number of verbal warnings had been given were “Utilizing laundry pole-holders for drying floor mop”(1 727 cases), “Obstructing corridors or stairs with sundry items”(1 744 cases), “Drying clothes in public areas”(464 cases), and “putting dripping flower pots or dripping laundry at balconies”(396 cases).
- (c) The Marking Scheme would be revised to include the following three new misdeeds -

- (i) *Smoking or carrying a lighted cigarette in enclosed common areas including public lifts, lift lobbies, corridors and staircases, etc in a domestic building*

“Smoking or carrying a lighted cigarette in public lift” was made a misdeed carrying 5 penalty points in 2005. The restriction on smoking was extended to cover enclosed common areas including lift lobbies, corridors and staircases in a domestic building in line with the Administration’s initiative to extend the statutory smoking ban through enactment of the Smoking (Public Health) (Amendment) Bill 2005 to be implemented on 1 January 2007. The misdeed would likewise carry 5 points.

- (ii) *Causing noise nuisance*

In view of the increasing concern over the large number of complaints on excessive noise causing nuisance, “Causing noise nuisance” was included under the Marking Scheme as a misdeed carrying 5 points. “A reasonable man approach” would be adopted in ascertaining whether the noise was acceptable. Estate management staff, upon receiving a complaint, would go in pairs to the scene to ascertain whether the noise was unacceptable.

- (iii) *Damaging or stealing Housing Authority’s property*

Having regard to the increasing incidents of vandalism or thefts of estate facilities, compromising residents’ safety, adversely affecting the estate environment and requiring immediate and costly repairs, “Damaging or stealing the Housing Authority’s property” was made a misdeed under the Marking Scheme to be allotted 7 penalty points without warning. In addition, thefts would be reported to the Police for appropriate action.

- (d) Penalty points for “Accumulating a large quantity of refuse or waste inside leased premises, creating offensive smell and hygienic nuisance” would be increased from 5 to 7 points to commensurate with the seriousness of the misdeed in producing continuous hygiene-related nuisances, endangering home safety and increasing fire risk.
- (e) Throwing objects from height which undermined environmental hygiene and threatened personal safety would be categorized into two different misdeeds according to the seriousness of the possible consequences. “Throwing objects from height that jeopardize environmental hygiene” would carry 7 penalty points, and

“Throwing objects from height that may cause danger or personal injury” would carry 15 penalty points. For households that threw sharp or heavy objects such as furniture, choppers, knives and scissors etc. from height that might cause injury or death or the misdeed had led to casualties, the tenancy would be terminated.

- (f) As tenants were generally familiar with the Marking Scheme, the warning mechanism would be further streamlined under which only one written warning would be issued before allotment of penalty points. Enforcement staff would give verbal warning to the tenant committing the misdeed on the spot, to be followed by a written warning. Penalty points would be allotted upon repeat and all subsequent recurrence of the same misdeed.
- (g) The above improvement measures would take effect on 1 January 2007. Public Housing Recurrent Survey 2006 found that 96.6% of the tenants were aware of the Marking Scheme and HA would gear up the publicity efforts through estate newsletter, leaflets, posters, the Housing TV Channel, radio publicity and departmental hotline to ensure that tenants fully understood its operation.

(Post-meeting note: The hard copy of the power-point presentation material was circulated to members vide LC Paper No. CB(1)241/06-07 on 7 November 2006.)

Discussion

The new misdeed on “Smoking or carrying a lighted cigarette in enclosed common areas including public lifts, lift lobbies, corridors and staircases, etc in a domestic building”

31. While expressing support to extending the restriction on smoking to enclosed common areas covering lift lobbies, corridors and staircases in a domestic building, Mr WONG Kwok-hing enquired about how the Administration could effectively enforce the misdeed. DD(EM) informed that since the misdeed “Smoking or carrying a lighted cigarette in public lifts” took effect on 1 January 2006, 14 cases had been allotted with penalty points as at 31 August 2006 and there had been considerable improvement in the cleanliness in lifts. PRH tenants in general supported the extension of the restriction on smoking. As regards enforcement, estate management staff would continue to rely on the existing monitoring systems, including closed circuit televisions (CCTVs), report by tenants on breaches, and patrol in estates to facilitate surveillance and enforcement.

32. Mr Tommy CHEUNG enquired about the definition of “enclosed common areas” and whether ventilated corridors in public housing estates, which were partly enclosed, would be regarded as enclosed areas. He cautioned that ambiguity

over the definition might lead to difficulties in enforcement in the future. DD(EM) clarified that having consulted the Health, Welfare and Food Bureau, it was confirmed that covered places were to be regarded as enclosed areas and hence, ventilated corridors in public housing estates fell within the definition of “enclosed common areas” where smoking would be prohibited. He stressed that this was in line with the legislative intent of the statutory smoking ban applicable to a domestic building to be effective from 1 January 2007. He said that the Administration would be prudent in taking enforcement action and that legal opinion would be sought if necessary to ensure consistency with the government’s overall enforcement policies and principles.

The misdeed of “Accumulating a large quantity of refuse”

33. Mr WONG Kwok-hing welcomed the improvement measure to raise the penalty points for the misdeed of “Accumulating a large quantity of refuse or waste inside leased premises, creating offensive smell and hygienic nuisance”. However, he stressed the need for the Housing Department (HD) to take prompt action to clear the accumulation of refuse to avoid continued hygiene-related nuisances to the neighbours and enquired about new measures to be taken to expedite such operations. In reply, DD(EM) said that since the implementation of the Marking Scheme in August 2003, 50 warnings had been issued in respect of the misdeed, and there had been 32 cases of point allotment with 18 cases still valid. He assured members that HD took the matter seriously and recognized the importance of taking effective enforcement actions against the misdeed. He added that the increase of penalty points for the misdeed from 5 to 7 and further streamlining of the warning mechanism to comprise one written warning only would help reduce the warning period and speed up enforcement action on repeated offenders.

The misdeed of “Throwing objects from height”

34. Noting the serious consequence of the misdeed of "Throwing objects from height", Mr WONG Kwok-hing enquired how HD would strengthen enforcement on the misdeed. Pointing out that the misdeed was a frequently committed offence and was almost a daily occurrence in most housing estates, the Chairman questioned why there were only 63 cases of point allotment for the misdeed during the period from August 2003 to August 2006. He urged that HD should step up enforcement actions and strengthen enforcement measures against the misdeed.

35. While acknowledging the difficulties in monitoring and taking enforcement action against the misdeed, DD(EM) stressed that the Administration recognized the need for stepping up effective surveillance and rigorous enforcement actions in consideration of the great threat to public safety. He advised that HD had taken measures to strengthen monitoring of the misdeed to enable more vigorous and effective enforcement. For instance, digital CCTVs were installed at rooftops in housing estates to monitor the situation and retired police officers were employed for undertaking surveillance actions. As a result of such efforts, since implementation of the Marking Scheme, 63 households had

been allotted penalty points for the misdeed with 32 cases still valid. Two households had been allotted with 15 penalty points. It was believed that the more stringent measure of terminating the tenancy for throwing heavy, sharp or large-sized objects like furniture, choppers, knives and scissors from height that were prone to cause injury and death, as well as for offences leading to casualties; coupled with existing measures of allotting 7 penalty points for the misdeed of "Throwing of objects from heights that would jeopardize environmental hygiene", and allotting 15 penalty points for the misdeed of "Throwing objects from heights that may cause danger or personal injury", would serve to tighten management control over the said misdeed and enhance the deterrent effect.

36. Mr LEUNG Kwok-hung opined that terminating the tenancy of repeated offenders of the misdeed of throwing objects from height would not solve the problem or put a stop to such misdeed. He suggested that consideration be given to erect covered walkways inside PRH to enhance safety for tenants, and to compel repeated offenders to receive counselling. The Chairman suggested that consideration might also be given to re-allocate repeated offenders of throwing objects with units in lower floors, such as ground floor or first floor. In this connection, DD(EM) said that there were cases where ex-tenants with tenancies terminated due to the misdeed of "Throwing objects from heights that may cause danger or personal injury" were allocated with interim housing in units on the ground or first floor of buildings.

The new misdeed of "Causing noise nuisance"

37. On the new misdeed of "Causing noise nuisance", Mr Tommy CHEUNG was concerned that the "reasonable man approach" with no reference to any objective criteria, such as the measurement of decibel, would give rise to grey areas and inconsistency in enforcement, and would attract criticism that the assessment was arbitrary and unreasonable. DD(EM) explained that enforcement efforts would focus on noise nuisance occurred between 11 pm to 7 am. Upon receiving complaint about noise nuisance, two estate management staff would go in pairs to the scene to ascertain whether the noise was unacceptable. Verbal warning would be given on the spot if the noise was considered beyond a reasonable man's forbearance. At least one other household in the neighbourhood would be called upon to substantiate the complaint before a written warning was given to the offending tenant.

38. Mr Tommy CHEUNG remained unassured and re-iterated his reservation over the lack of objective criteria to help ensure consistency in enforcement and highlighting that the sensitivity to noise would be different among individuals. Mr Frederick FUNG and Mr Albert HO shared the concern about the lack of objective standard and guidelines for reference by enforcement staff. Mr Albert HO opined that the reliance on the subjective forbearance of four persons, i.e. two estate management staff, the complainant and another household in the neighbourhood, to decide whether the noise level was considered acceptable or excessive might be unfair to the household under complaint and might lead to disputes among parties

concerned. Referring to the common law under which the defendant would be given the benefit of doubt, Mr LEUNG Kwok-hung cast doubt on the fairness of the “reasonable man approach” in the absence of the court in judging the relevant cases. He opined that the approach was impracticable and would create enforcement problems.

39. In reply, DD(EM) informed members that the Administration had explored options for ascertaining noise nuisance complaints, including the feasibility of using decibel to measure the noise level, and neighbourhood noise control measures and standards adopted in other countries and by the Environmental Protection Department. The current approach was in line with those adopted in some overseas countries where decibel was not used as a measuring criterion. He further explained that whether the noise level was considered acceptable depended very much on the background noise level, and cautioned that sole reference to a decibel measurement without regard to the varying level of background noise of different locations in the housing estates would lead to inconsistency in enforcement. As such, households on the low floors of buildings playing mahjong and those facing the road turning on the Hi-fi loud during night time might be considered acceptable while the same acts by households on high floors might constitute noise nuisance. While acknowledging members’ concern that the assessment depended on four persons’ subjective forbearance, DD(EM) stressed that this approach was consistent with the existing practice adopted by the Police in handling noise nuisance complaints and was also a common practice adopted by the management of private housing estates where such a complaint would be established upon two owners’ consent. He held the view that the “reasonable man approach”, whereby a written warning was given to the offending tenant only upon two estate management staff and tenants of two households considering the noise unacceptable, was a reasonable mechanism and would ensure credibility and fairness. He added that to ensure impartiality, an appeal mechanism was available for tenants to lodge appeal against HA’s decision on tenancy termination. The Appeal Panel (Housing) would take into consideration the views of both the tenants and HD to make an impartial decision. With an allotment of 5 points for the misdeed, he assured members that termination of tenancy would only be effected upon repeat of the same misdeed for four times within two years. DD(EM) re-iterated that the Marking Scheme had the support of tenants and the public, and had been proven effective in making improvement in hygiene, cleanliness and safety in PRH estates. Since the implementation of the Marking Scheme, eight households were served with Notice-To-Quit. The decisions on termination of tenancy for these cases were regarded reasonable and appropriate by the public at large.

40. To address concern about inconsistency in enforcement against this misdeed, the Chairman suggested that consideration should be given to deploying more senior HD staff, such as in the rank of Housing Officer or Deputy Housing Manager to accompany the two estate management staff to the scene to ascertain the complaint upon the second time of the same misdeed before a written warning would be served on the offending tenants. Given the training received by senior

staff and higher ability in handling conflict situations, the parties concerned would feel less aggrieved. DD(EM) noted the views.

Other enforcement concerns

41. Noting that the Marking Scheme was only applicable to PRH estates while the estates under the Tenants Purchase Scheme (TPS) might not be subject to its purview, Mr Albert HO expressed concern about inconsistencies in enforcement in the two types of estates and enquired how the Administration could address the concern. DD(EM) advised that as TPS tenants were responsible for the management of their estates under the Deeds of Mutual Covenant, the Marking Scheme would apply to TPS estates where their Owners' Corporations decided to include the misdeeds in the Marking Scheme.

42. In response to Mr LI Kwok-ying's enquiry, DD(EM) confirmed that a tenant residing in one estate would not be held liable for misdeed committed in other estates.

Concerns about holding the entire household liable for misdeed committed by individual household members and double penalty on households

43. Mr Federick FUNG re-iterated his concerns raised at previous meetings about unfairness to hold the principal tenant and the entire household liable for misdeed committed by an individual household member and questioned whether this would contravene basic human rights. There was also concern about double penalty on household members whereby penalty points were allotted under the Marking Scheme for acts which were already subject to fines and even criminal liability under various relevant laws. Mr FUNG opined that the policy was unacceptable and urged the Administration to conduct review on the matter.

44. Mr LEUNG Kwok-hung expressed grave reservation over holding the entire household liable for the misdeed of an individual member and maintained the view that the Administration should target at the individual for his misdeed instead of penalizing the entire family. He cautioned that in cases where the offender had mental illness or he or she was not on good terms with other household members, such approach would further worsen family relationship and create more disputes among household members. He considered it unfair to subject tenants to double penalty, and the penalization of the entire household too stringent. He further expressed dissatisfaction that by subjecting public housing tenants to double penalty, tenants were indeed discriminated for receiving subsidized housing.

45. Mr Li Kwok-ying considered that holding the entire household liable for the misdeed of one household member ran counter to HA's policy of providing housing for the needy. He cautioned that penalization of the entire household for misdeeds committed by an individual family member might be subject to judicial review (JR).

46. In reply, DD(EM) said that similar concerns had been raised and discussed at previous meetings since 2003. He re-iterated that the tenancy agreement had clearly stipulated that a principal tenant and the entire household should be held responsible for all acts of or any breaches of tenancy conditions committed by his or her family members. Tenants' attention was drawn to the relevant terms and conditions therein when they entered into tenancy agreement with HA. It was hoped that by collective responsibility, improvement in management, cleanliness and safety in estate could be enhanced through co-operation and mutual support among household members. He said that the Marking Scheme, with 5 000 odd penalty point allotment cases since its implementation, was generally supported by the tenants and had not aroused dispute among family members. Moreover, no JR cases had been initiated so far. DD(EM) assured members that termination of tenancy agreement would only be effected in the event of repeated offences. Moreover, tenants so evicted who had a genuine need for housing would be offered interim housing to ensure that they would not be rendered homeless.

47. In summing up, the Chairman urged the Administration to seriously consider members' views and concerns.

Concern about smoking in parks within public housing estates

48. The Chairman noted that smoking in parks within the public housing estates would not be subject to penalty points under the Marking Scheme. He pointed out that this was inconsistent with the legislative intent of the Smoking (Public Health) (Amendment) Bill passed recently to take effect from 1 January 2007. As parks in public housing estates were not under the management of the Leisure & Cultural Services Department (LCSD), if smoking in parks within the public housing estates was excluded from the Marking Scheme, smokers would smoke in parks within the housing estates in order to avoid prosecution. DD(EM) advised that although smoking in parks in the public housing estates was not included under the Marking Scheme and that no penalty points would be allotted for the act, the smoking ban under the Smoking (Public Health) (Amendment) Bill 2005 recently passed by the Legislative Council would be applicable to public areas in the public housing estates.

49. Mr Frederick FUNG echoed the concern about not including smoking in parks inside the public housing estates as misdeed under the Marking Scheme. He questioned whether designated officers could take enforcement action to prohibit smoking in parks within public housing estates. He pointed out that as District Councils (DCs) would be consulted on proposed designated smoking areas in parks under the management of LCSD, DCs should also be consulted on designated smoking areas in parks under the management of HD.

50. DD(EM) clarified that parks within public housing estates were public places. He confirmed that persons authorized for enforcing the amended law could take prosecution for breaches within the public housing estates. This was similar to the case whereby HD staff could, under delegated authority, take enforcement

actions against hygiene-related offences (e.g. illegal hawking and spitting) in the peripheral area of PRH estates. Persons authorized by the Administration could also take enforcement actions within PRH premises. He assured members that HD would co-ordinate with LCSD to ensure authorized persons under delegated authority could enforce the amended law in parks.

51. The Chairman and Mr Frederick FUNG remained concerned about smoking in parks under the management of HD. DD(EM) assured members that the Administration would closely monitor the situation and review the need of extending the restriction on smoking in parks within public housing estates under the Marking Scheme in the light of implementation of the Scheme taking into consideration public reaction and tenants' opinions.

VI Any other business

52. There being no other business, the meeting ended at 6:35 pm.