

立法會 *Legislative Council*

LC Paper No. LS13/07-08

Subcommittee on Heritage Conservation

Nga Tsin Wai Village Project - Compensation-First Approach

Background

Nga Tsin Wai Village in Wong Tai Sin District is one of the 25 development projects announced by the former Land Development Corporation (“LDC”). In 2000, the Land Development Corporation Ordinance (Cap. 15) (“LDCO”) was repealed upon the establishment of the Urban Renewal Authority (“URA”) under the Urban Renewal Authority Ordinance (Cap. 563) (“URAO”).

2. At the meeting of the Subcommittee on Heritage Conservation (“the Subcommittee”) held on 18 July 2007, the Secretary for Development (“SDEV”) informed members that the villagers of Nga Tsin Wai Village had clearly expressed their views that the redevelopment project should proceed as soon as possible so that they could get compensation and resettlement to relieve them from their poor and deteriorating living conditions. SDEV said that there would be a deviation from the established policy if URA provided compensation for the villagers first before agreeing on the redevelopment details of the project with the majority land owner of the village (“the compensation-first approach”). She, however, agreed to adopt the compensation-first approach and hoped members would agree that this approach would not set a precedent for other redevelopment projects including those announced by LDC and inherited by URA¹.

3. Some members of the Subcommittee requested for legal advice on the question about the risk of this unprecedented compensation-first approach as they were concerned that residents affected by other former LDC projects whom were not to be given the same treatment might seek judicial review².

Powers of LDC

4. Under section 36(4) of URAO, a development proposal which has been prepared in accordance with section 5(2)(b) of the repealed LDCO may be continued and completed by URA as if the repealed LDCO had not been repealed and the powers and duties of LDC shall be exercised and performed by URA.

¹ Minutes of the meeting of the Subcommittee on Heritage Conservation held on 18 July 2007, LC Paper No. CB(2)2743/06-07, at para. 10.

² LC Paper No. CB(2)2743/06-07, at para. 11.

5. Section 5(2)(b) of LDCO gives rather general development powers to LDC in that LDC may “prepare development proposals and implement such proposals”. A public body with limited statutory powers is not permitted to exercise authority not conferred upon it. Like all statutory powers, the powers of LDC must be exercised in good faith and for the purpose for which they were granted. It is well established principle in administrative law that authorities exercising a statutory power must exercise that power only for the purpose for which it is conferred and not for collateral purposes. (*Lee Ma-loi v. Commissioner for Inland Revenue* [1992] 1 HKLR 200).

6. Section 4 of LDCO provides the following as purposes of LDC-

“4. The purposes of the Corporation are to-

- (a) improve the standard of housing and the environment in Hong Kong by undertaking, encouraging, promoting and facilitating urban renewal;
- (b) engage in such activities and perform such functions as may be necessary for the undertaking, encouragement, promotion and facilitation of urban renewal; and
- (c) engage in such other activities, and to perform such other functions, as the Chief Executive may, after consultation with the Corporation, permit or assign to it by order published in the Gazette.”

7. The exercise of a statutory power is invalid unless the authority exercising the power has acted honestly and in good faith. The deliberate promotion of a purpose alien to that for which the power was conferred will be regarded by the court as an act of bad faith (*Halsbury's Laws of Hong Kong*, vol. 1(1), 2003 Reissue, para. 10.069). There is no requirement in LDCO which dictates the mode or timing of compensation paid to the parties affected, for example, how and when it is to be paid, so long as the power to compensate the parties affected is exercised in accordance with the purposes under section 4 of LDCO and in good faith.

Legitimate Expectation

8. A person may seek redress in court if he has a legitimate expectation of being treated in a certain way by an authority even though he has no legal right in private law to receive such treatment. The expectation may arise from a representation or promise made by the authority or from consistent past practice. Each case has to be examined individually in the light of policy (*Halsbury's Laws of Hong Kong*, vol. 1(1), 2003 Reissue, para. 10.076).

9. The details of the compensation-first approach have not yet been provided by the Administration. The Administration, however, has made it in very clear terms that-

- (a) the compensation-first approach would be a deviation from the established policy; and
- (b) the compensation-first approach for the Nga Tsin Wai project would not set a precedent for other redevelopment projects including those announced by the former LDC and inherited by URA.

10. Hence, a judicial review based on legitimate expectation will depend on the substance of the expectation, if any, of the parties in other redevelopment projects.

Conclusion

11. In order to decide whether parties affected by other LDC redevelopment projects who are or were not given the same treatment might be successful in an application for judicial review, the court will have to examine the factual background of each and every individual redevelopment project concerned.

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