

**For discussion
on 9 May 2012**

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT**

SUBCOMMITTEE ON BUILDING SAFETY AND RELATED ISSUES

**Unauthorised Subdivided Domestic Cubicles and
Alteration in Industrial Buildings**

PURPOSE

This paper informs Members of the enforcement action taken by the Government against unauthorised subdivided domestic cubicles and alteration in industrial buildings, as well as outlines the constraints in converting an existing industrial building to residential use.

BACKGROUND

2. In recent years, the building and fire safety problems associated with subdivided flats have become a subject of serious public concern. However, on the other hand, there are also views in the community that such flats serve a useful housing function as they could provide affordable accommodation to low income groups who are not eligible for or are waitlisted for public rental housing but wish to live in the urban area close to their place of work and/or to their children's place of study. Therefore, the Government's policy is not to eradicate all subdivided flats but to ensure their safety.

3. To this end, for subdivided flats in domestic and composite buildings, the Buildings Department (BD) has since April 2011 launched a large scale operation (LSO) aiming at rectifying irregularities of building works associated with subdivided flats. Since April 2012, BD has enhanced this LSO by increasing the annual number of target buildings. In addition, the Development Bureau will introduce an amendment regulation in the current legislative session to include building works commonly

associated with subdivided flats under the Minor Works Control System, so that these works would be required to be carried out by qualified professionals and contractors, thereby ensuring the quality of the works (for details, please refer to our paper numbered CB(1)1116/11-12(07) submitted to the Panel on Development)¹. BD has also stepped up its public education and publicity efforts to remind members of the public about the building safety problems that can result from improper flat subdivision works.

4. The situation of subdivided flats located in industrial buildings is entirely different. Industrial buildings are not designed for domestic use and thus are subject to requirements different from those applicable to domestic and composite buildings on various aspects, such as the provision of natural lighting and ventilation, means of escape and other fire safety measures. Furthermore, the inhabitants of units in an industrial building converted for domestic use could be exposed to high fire risks posed by the other units within the same industrial building which are still being used for industrial activities or storage of dangerous and inflammable goods. Even if all the other units are vacant at the time the inhabitants moved in, they could be put to such hazardous uses that are incompatible with residential use at any time. As such, using an industrial unit for domestic purpose, whether in a subdivided flat or not, will pose a significantly higher level of risk to the occupants. To ensure the safety of the public, in particular those living in subdivided flats in industrial buildings, stringent enforcement action has to be taken by BD.

ENFORCEMENT ACTION TAKEN BY THE BUILDINGS DEPARTMENT

5. In general, on receipt of a report from the public or referral from another government department, staff of BD or consultants appointed by BD will inspect the subject building with a view to ascertaining if there are any contraventions of the Buildings Ordinance (Cap. 123) (BO). BD will also refer cases to the Lands Department (LandsD) and Fire Services Department

¹ The proposed amendments will be effected through the Building (Minor Works) (Amendment) Regulation 2012, which has been made by the Secretary for Development and will be gazetted on 4 May 2012. Subject to scrutiny of the Legislative Council, the amendment regulation will come into effect on 3 October 2012.

(FSD) where there are suspected breaches of lease conditions and contraventions of the Fire Services Ordinance (Cap. 95) respectively. In addition, BD also inspects subdivided domestic cubicles in industrial buildings through its LSOs.

General enforcement procedures

6. As far as the BO is concerned, there are mainly two types of contraventions that need to be addressed in cases involving the use of industrial buildings for domestic purpose. The first is the change in use of a building and the second is unauthorised building works (UBWs). The enforcement actions against a change in use of the building and against UBWs are usually taken in parallel.

7. Regarding change in use of a building, section 25(1) of the BO requires that prior notice shall be given to the Building Authority (BA) of any intended material change in the use of a building by the person concerned. In case a change in use is considered not suitable for reason of the building's construction, an order will be issued under section 25(2) of the BO to require the owner and/or the occupier to discontinue the unsuitable use of the building. Similar to the handling of UBWs cases, BD will accord the highest priority to cases where the material change in use of a building constitutes obvious or imminent danger to life and property, such as the change in use of an industrial building to domestic use.

8. The second type of common contravention of the BO found in industrial buildings used for domestic purpose is the presence of UBWs. Under the BO, all building works, with the exception of exempted works as defined under section 41 of the BO and the designated minor works items under the Minor Works Control System, require the prior approval and consent of the BA before such works may commence. Furthermore, all building works, exempted works and designated minor works must also comply with the building standards stipulated in the subsidiary legislation of the BO. Otherwise, regardless of the scale of such works, they will be regarded as UBWs and subject to enforcement action by BD. Any UBWs identified during BD's inspection will be handled in accordance with the established UBWs enforcement policy and procedures. In particular, for UBWs requiring immediate enforcement (i.e. the actionable UBWs), BD

will take follow-up action under the BO by issuing statutory orders to require the owner to rectify the irregularities to ensure public safety. If the owner fails to comply with the statutory order, BD will consider instigating prosecution against the owner, as well as arranging Government contractors to carry out the required rectification works, the cost of which (including the supervision charge) will be recovered from the owner afterwards.

Large scale operation against subdivided domestic cubicles

9. Subdivided domestic cubicles in industrial buildings are subject to the abovementioned enforcement action by BD. In light of their high potential risks to occupants as explained in paragraph 4 above, BD has stepped up enforcement action against such cubicles in industrial buildings starting from 2012 by extending the scope of target buildings of the LSO against subdivided flats to cover 30 industrial buildings annually. Members may wish to note that in a widely publicised case involving 60 subdivided domestic cubicles in an industrial building in Larch Street, Tai Kok Tsui, BD successfully applied in March 2012 for a closure order from the District Court to close down those floors containing the subdivided cubicles and arranged clearance of those UBWs by its contractor.

Assistance for occupants affected by BD's enforcement action

10. It is Government's policy to ensure that no one will be rendered homeless due to its enforcement action and measures have been put in place to help those who are living in subdivided domestic cubicles in industrial buildings and are affected by BD's enforcement action in seeking proper accommodation. BD has also established social service teams to provide the necessary social and emotional support to affected occupants.

11. In October 2011, the Steering Committee on the Community Care Fund (CCF) endorsed a programme to provide one-off relocation allowance to occupants living in subdivided domestic cubicles in industrial buildings who have to move out as a result of BD's enforcement action. The assistance programme was launched by BD in December 2011 when members of BD's social service team conducted a three-day long on-site registration for occupants living in subdivided domestic cubicles in the industrial building in Larch Street as mentioned in paragraph 9 above to facilitate their application for financial assistance under the CCF's programme. The social service team also assisted those who were not eligible for the CCF's assistance programme to apply for subsidies and grants offered by charitable organisations.

12. Apart from financial assistance, the social service team also helps affected occupants to seek alternative accommodation, such as hostels managed by voluntary organisations and domestic flats in private buildings. In the Larch Street case which involved around 60 subdivided domestic cubicles, the social workers from BD, who visited the affected occupants for more than 20 times over a period of around three months, helped around 60 households to find alternative accommodation and move out of the subject premises before BD took further enforcement action.

Inter-departmental referrals

13. BD also refers cases involving domestic use in industrial buildings to LandsD and/or FSD as appropriate. Generally speaking, cases suspected to involve breach of lease conditions will be referred to LandsD. If a breach of the lease conditions is confirmed by LandsD, the Department, acting in its lessor's capacity, will, after seeking legal advice, take appropriate lease enforcement action as deemed appropriate, such as issuing a warning letter to the lessee (commonly known as the lot owner) requesting rectification of the irregularities and/or registering the warning letter at the Land Registry, commonly known as "imposing an encumbrance".

14. Cases involving contravention of the Fire Services Ordinance are referred to FSD. Examples include floating obstructions to means of escape and lack of proper maintenance of fire service installations and equipment. If such irregularities are identified, FSD will normally issue a Fire Hazard Abatement Notice requiring the owner to rectify them. FSD may also take prosecution action against the owner.

CONSTRAINTS IN CONVERTING INDUSTRIAL BUILDINGS TO RESIDENTIAL USE

15. Under the existing development control regime, any conversion of industrial buildings must comply with the conditions in the relevant land leases, the Town Planning Ordinance (Cap. 131) and statutory plans, as well as the BO and its subsidiary legislation. From a town planning perspective (which takes account of the health, safety and general welfare aspects in land use), only buildings located on sites with zoning permitting residential use can be used for residential purpose. Therefore, only industrial buildings located on such sites can be considered for redevelopment or conversion to residential use. In the case of conversion, land use zoning

aside, the converted industrial building must also comply with the building standards and requirements of the statutory building control regime stipulated in the BO and its subsidiary legislation. Generally speaking, such building standards and requirements, such as plot ratio and site coverage, are more stringent for residential buildings. Therefore, whether it is technically and financially feasible to convert an industrial building on residential zoning for domestic purpose has to be considered on a case by case basis. By way of illustration, in order to comply with the statutory requirements in terms of plot ratio and site coverage for residential use, parts of the industrial building might have to be demolished, and that may render the conversion option unviable in terms of technical and financial considerations. Therefore, in some if not most cases, redevelopment would be a more viable option than conversion.

16. As far as redevelopment of industrial buildings is concerned, there are, under the package of revitalisation measures for older industrial buildings, some measures² that are designed to facilitate redevelopment of industrial buildings situated in non-industrial zones for other uses, including residential uses where appropriate. However, the lot owner will first have to comply with the relevant statutory town planning requirements and obtain the necessary planning permission, as the case may require. The lot owner should also apply for lease modification (or land exchange as the case may be) if the redevelopment is not permitted under the lease concerned. LandsD, acting in its lessor's capacity, will process such applications according to the applicable procedures.

² The relevant measures include a lower ownership threshold for application for compulsory sale orders for redevelopment under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) for industrial buildings aged 30 or above sitting on non-industrial zones; assessment of premium for lease modification under a "pay for what you build" approach (i.e. assess premium based on the optimal use and proposed actual development density, instead of the maximum development intensity permitted under the relevant statutory town plan or the BO); and allowing the lot owner to opt for payment of premium by annual installments over five years at a fixed interest rate.

In addition to the above measures, the Financial Secretary has also proposed in his 2012-13 Budget to invite the Urban Renewal Authority (URA) to launch redevelopment projects of industrial buildings in the form of a pilot scheme. The URA is now working on the details of the pilot scheme and we should be able to report more at the Panel on Development meeting in June 2012.

ADVICE SOUGHT

17. Members are invited to note the existing enforcement action taken by Government departments in relation to subdivided domestic cubicles in industrial buildings, as well as the constraints in converting an existing industrial building to residential use.

Development Bureau

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