

**For discussion
on 15 March 2012**

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT**

**Enforcement Strategy in Relation to
the Handling of Unauthorised Building Works**

Purpose

At the regular meeting of the Panel on Development on 28 February 2012, some Members raised several concerns relating to the Government's enforcement actions against various forms of unauthorised building works (UBWs) and matters related to the approval of building plans. As requested by another Member in writing, we submitted an information note (Legislative Council (LegCo) Paper CB(1)1201/11-12(01)) on 29 February 2012 on the case involving UBWs at Nos. 5A and 7 York Road. This paper recapitulates the Government's enforcement policy against UBWs and the factors that the Building Authority (BA) will take into account in considering applications for building plan approval under the Buildings Ordinance (Cap. 123) (BO).

Enforcement Policy against UBWs

2. Building safety has been accorded priority attention by the Development Bureau in recent years, as reflected in various legislative proposals, policy initiatives and resource allocation. On 13 January 2011, we briefed the Subcommittee on Building Safety and Related Issues under the Panel on Development on the new package of measures under a multi-pronged approach to enhance building safety in Hong Kong endorsed by the Executive Council and announced by the Chief Executive in his 2010 Policy Address (LegCo Paper CB(1)681/10-11(01)).

3. Enforcement is a crucial component of the above-mentioned multi-pronged approach to enhance building safety (the other three components are legislation; support and assistance to owners; and

publicity and public education). Since 1 April 2011, we have adopted a new enforcement policy against UBWs by extending the coverage of actionable UBWs to include all UBWs on the exterior of buildings, except minor amenity features, such as those on roof-tops and podiums as well as those in yards and back-lanes of buildings, irrespective of their risk to public safety and whether they are newly erected. With this extension, the Buildings Department (BD) is in effect taking enforcement action against most, if not all, actionable UBWs found on the façade and exterior of a building.

4. In May/June 2011, in response to media reports on a spate of UBW incidents that had attracted public concern, we made a comprehensive account of our enforcement work to the Panel on Development (LegCo Paper CB(1)2487/10-11(01)) which was discussed at its meeting on 20 June 2011. As we have pointed out before, under the UBWs enforcement policy adopted since 1 April 2011, the BD will continue to respond to reports on individual UBWs received from members of the public or the media and deal with cases discovered by the regular patrol teams of the consultant commissioned by the Department. It will also conduct various Large Scale Operations (LSOs) and special operations to tackle actionable UBWs in an orderly and systematic manner. Starting from 2011-12, the BD has initiated three new types of LSOs, namely, on comprehensive clearance of UBWs on rooftops, podiums, as well as yards and lanes of target buildings; on inspection of target dilapidated buildings with issue of statutory orders as appropriate to require investigation and/or repair works; and on inspection of target buildings with sub-divided flats for rectification of irregularities of building works associated with the sub-divided flats. For the first two types of LSOs, the number of target buildings per year is 500. As for the LSO on sub-divided flats, the BD will inspect and take enforcement actions against irregularities of building works associated with sub-divided flats in 200 buildings per year starting from April 2012.

5. With the implementation of the new enforcement policy from 1 April 2011, there would inevitably be a sharp increase in the number of complaints/reports on UBWs from members of the public¹. Despite the

¹ As reported in the BD's Controlling Officer's Report in the 2012-13 Estimates, the number of reports on UBWs from members of the public attended to increased from 28,613 in 2010 to 38,725 in 2011.

increase in staffing resources, it is still necessary for BD to formulate a clear mechanism to further prioritise the handling of such complaints / reports to ensure equity and fairness. In this regard, BD has adhered to the same risk-based principle adopted in the formulation of our UBWs enforcement policy (i.e. UBWs with a relatively higher level of risk should be accorded a higher priority). For instance, roof-top structures and flat roof UBWs will generally be accorded a higher priority than those in yards and lanes. Furthermore, complaints / reports involving high priority UBWs at high-rise buildings in densely populated or traffic-busy areas will generally be accorded priority for action. Also, as set out in the information note mentioned in paragraph 1 above, BD would, as a matter of established practice, accord priority to inspect and/or investigate cases widely reported by the media and causing considerable public concern involving senior government officials, LegCo Members and celebrities with the objective of clearing any such public concerns as soon as possible.

6. Past experience indicates that high priority UBWs are more often found in building clusters. These buildings will usually be chosen as target buildings for LSOs and special operations against such UBWs. Carrying out such LSOs is more effective than handling individual complaints / reports, as more high priority UBWs could be cleared in one go. Thus, it is expected that the BD will be issuing most of its statutory removal orders under the LSOs and special operations.

7. To ensure that BD staff will implement the enhanced enforcement policy in a fair and equitable manner, clear technical and operational guidelines in relation to enforcement particularly in terms of issuing statutory orders have been drawn up by the Department. To enhance transparency and clarity of Government's policy and to strengthen the release of information to the public for monitoring of our work, BD has made available a summary of these guidelines on its website (see **Annex A**).

8. It should be noted that BD has all along been taking enforcement action against UBWs in accordance with the prevailing enforcement policy which generally takes into account the risk level of the UBWs. The identity of owners and value of the properties in which the UBWs are

situated is not a consideration in BD's enforcement action.

Approval Procedures of Building Plan under the BO

9. Under section 14 of the BO, all building works, with the exception of exempted works and the designated minor works, require the prior approval and consent of the BA before such works may commence. The process for the approval procedures and submission requirements are mainly set out in the Building (Administration) Regulation (Cap. 123 sub. leg A) and several Practice Notes issued by the BD.

10. Upon receiving a building plans² submission, the BD will consider the technical details of the plan in the light of the requirements of the BO and its subsidiary legislation. Factors that the BD will consider include the development parameters, the structural design of the building as well as other planning, design and construction requirements in such aspects as the means of escape, fire resisting construction and provision of natural lighting and ventilation. In addition, assuming the coordinating role in processing the plans, BD will refer the plans to various Government departments³ to seek their views under their respective jurisdictions. Some of the more complex cases requiring further deliberation may also be referred to the Building Committee⁴ of the BD for further discussion. Generally speaking, the BD will be able to form a preliminary opinion on whether the plan should be approved or not by the forty-fifth day after the submission of the plan, when the building professionals concerned will be verbally informed of the same. On or before the sixtieth day after the submission of plan, a written response will be provided as to whether the plan can be approved, or, where it cannot be approved, the reasons for rejecting the plan.

² To facilitate the building plan approval process, the BD may respond to pre-submission enquiries from the building professionals (i.e. authorized persons, registered structural engineers or registered geotechnical engineers) concerned, as well as hold pre-submission conferences with them to allow them to seek BA's views on some of the major design and technical issues.

³ Examples include the Fire Services Department, Planning Department, Lands Department, Drainage Services Department, Civil Engineering and Development Department, Highways Department, Transport Department, Environmental Protection Department, etc.

⁴ The Building Committee is chaired by Assistant Director / New Buildings 1 of the BD. Apart from the professional staff in the BD, representatives from other departments may also be invited to the meeting. To enhance the transparency of BD's work, summaries of decisions made by the committee have also been uploaded on the BD website.

11. Under the current building plan approval process, whether a proposed development may be illegally altered after its completion is not one of the factors that the BD can consider under the BO. The grounds on which the BA may reject a building plan are stipulated in section 16 of the BO (extract at **Annex B**), under which the possibility that the proposed development would be illegally altered is not among them. For example, in the case of design of the foundation of a building, while BD would require the building professionals to prove that the design could meet the minimum structural requirement, it cannot reject a building plan based on whether the proposed design would possibly provide room for illegal alteration, including building of unauthorised basement, in the future.

**Development Bureau
Buildings Department
March 2012**

**The Buildings Department's Internal Guidelines on
Prioritisation of "Actionable" Unauthorised Building Works
A Summary**

Purpose

This document sets out the general guidelines for determining the enforcement priority of actionable unauthorised building works (UBWs) under the new enforcement policy that has come into effect since 1 April 2011.

Issue

2. The UBWs enforcement policy has been revised with effect from 1 April 2011 whereby the scope of "actionable" UBWs will be extended to include all unauthorised structures on rooftops, flat roofs as well as those in yards and lanes of buildings (the New Commitments), irrespective of their level of risk to public safety or whether they are newly constructed.

3. The Buildings Department (the Department) is committed to actively respond to complaints and issue statutory orders requiring owners to conduct rectification works immediately if there are confirmed actionable UBWs after inspection.¹ Furthermore, based on past statistics and the Department's available resources, a performance indicator of issuing 20 000 removal orders against "actionable" UBWs has been set for 2011. While it is not possible for us to generate an accurate estimate of the number of "actionable" UBWs to be reported to us, a total of 30 000 UBW reports from members of the public are expected for the same period (compared with about 28 600 reports received in the full year of 2010).

4. In other words, the number of "actionable" UBWs reported may potentially exceed the Department's capacity for issuing removal orders. In addition, large scale operations will be conducted and statutory orders will have to be issued accordingly. While the Department will make all necessary arrangements to facilitate the issuance of statutory removal orders against all

¹ Paragraph 12 of the Appendix to the paper on 'Measures to Enhance Building Safety in Hong Kong' submitted to the Subcommittee on Building Safety and Related Issues under the Panel on Development of the LegCo for discussion on 13.1.2011 (CB(1)681/10-11(01))

reported “actionable” UBWs within a reasonable period of time, there is a need for the Department to lay down some internal guidelines on how to prioritise our enforcement work against those UBWs under the newly extended scope.

Criteria for Prioritisation

5. Staff members are reminded that while the majority of removal orders will be issued under the various large scale operations, most of the UBWs enforced against were first reported to the Department through reports submitted by the public or by our patrol teams. Based on past statistics, reports on the New Commitments amount to around 7 000 each year and constitute as many as 30% of all the reports on UBWs received over the past three years. It is therefore anticipated that a majority of the reports received, as well as the UBWs handled in the coming years, will be related to these New Commitments.

6. Although the receipt of a complaint/report can be a triggering point for the Department’s enforcement action, setting up a set of objective criteria for prioritising our work can be highly beneficial, as the Department will then be able to first work on those “actionable” UBWs with the highest level of risk.

7. The problem of UBWs is highly complex and extensive. To facilitate the prioritisation process, staff members are advised to consider the following factors –

- The earliest date the concerned UBWs was known to the Department –
The earlier ones should be accorded priority ahead of others. In general, when considering the dates, staff members should take into account warning notices issued and registered with the Land Registry since 2005; or where no warning notices have been issued, the dates of inspection by the Department since 2005.
- Surrounding area of the building –
The risk imposed by UBWs is heavily influenced by the surrounding area of the building they are in. One of the factors to be considered

is the height of a building. In general, UBWs in high-rise buildings have a higher risk level than those in low-rise single family houses as they can cause more severe injuries to the pedestrians. By the same token, rooftop structures and flat roof structures should be prioritised ahead of yard/lane structures. Another important element lies in the population and traffic density of the area. UBWs in a densely populated urban area pose a higher risk as a larger group of pedestrians can be injured. Accordingly, priority should be given to such UBWs.

Mode of Operation

8. The Department has ceased issuing warning notices to the New Commitments with effect from 1 April 2011, as they will instead be served with removal orders under the new enforcement policy.

9. Under normal circumstances, the New Commitments located in buildings in each district section should be grouped into the following three Groups taking into account the criteria set out in paragraph 7 above:

- Group 1 – all rooftop structures/flat roof structures within the same building;
- Group 2 – all yard/lane structures within the same building; and
- Group 3 – any New Commitments in low-rise single family houses.

10. Should a long list of outstanding reports awaiting issue of orders result, the Department would consider measures to address public expectation for a response to their reports within a reasonable timeframe. As such, all outstanding reports at the end of the first year should be prioritised ahead of fresh reports received in the following year. Reports received within the same year should follow the same prioritisation approach as abovementioned.

Points to Note

11. It is expected that about 10% of the removal orders arising from this new commitment would involve co-owners (in common areas and not registered with warning notices), and for these a longer compliance period should be allowed for this type of orders where appropriate.

12. It is anticipated that the enforcement action against the New Commitments may affect the occupants of the concerned buildings and the businesses operating in G/F shops. A longer compliance period should be allowed for the removal of the New Commitments in such cases as appropriate. Assistance from other departments, such as Housing Department and Home Affairs Department, may be required. Staff members are advised to consult their supervisors on these issues where necessary.

13. While these guidelines have laid down the general framework and decision criteria for the determination of enforcement priorities, staff members should bear in mind that the UBWs problem is extensive and complex in nature. The above guidelines should only be followed under normal circumstances. If other special circumstances are involved and other factors should be considered, staff members are advised to report the situation and consult their supervisors as appropriate.

Buildings Department
April 2011

Extract of Buildings Ordinance (Cap. 123)

Section 16 Grounds on which approval or consent may be refused

(1) The Building Authority may refuse to give his approval of any plans of building works where-

- (a) the plans are not such as are prescribed by regulations or are not such as he may have required under this section;
- (b) the plans are not endorsed with or accompanied by a certificate from the Director of Fire Services certifying either-
 - (i) that, having regard to the purpose to which the building is intended to be put (which purpose shall be stated in the certificate), no fire service installation or equipment is necessary in connexion with the building that will result from the carrying out of the building works shown on the plans; or
 - (ii) that the plans have been examined and are approved by him as showing all such fire service installations and equipment as in his opinion, having regard to the purpose to which the building is intended to be put (which purpose shall be stated in the certificate), comprise the minimum fire service installations and equipment necessary for such building in accordance with a Code of Practice published from time to time by the Director of Fire Services; (Added 3 of 1964 s. 2)
- (c) he has not received application for their approval in the specified form or any such application does not contain the particulars required therein; (Amended 68 of 1993 s. 8)
- (d) the carrying out of the building works shown thereon would contravene the provisions of this Ordinance or of any other enactment, or would contravene any approved or draft plan prepared under the Town Planning Ordinance (Cap 131);
- (da) the building works are within a comprehensive development area of an approved or draft plan prepared under the Town Planning Ordinance (Cap 131) and the works contravene a master lay-out plan approved by the Town Planning Board under section 4A(2)

of the Town Planning Ordinance (Cap 131); (Added 2 of 1988 s. 8(1))

- (e) he has not received such other documents as are prescribed by regulations;
- (f) such fees as are prescribed by regulations have not been paid;
- (g) the carrying out of the building works shown thereon would result in a building differing in height, design, type or intended use from buildings in the immediate neighbourhood or previously existing on the same site;
- (h) the building works consist of, or any part thereof involves, the construction, formation or laying out of any means of access or other opening, not being a street or access road, to or from any street, and the place at or manner in which such means of access or other opening opens on to the street is, in his opinion, such as to be dangerous or likely to be dangerous or prejudicial to the safety or convenience of traffic using the street, or which may be expected to use the same;
- (i) in his opinion, it is necessary for him to have further particulars of such plans or of the building works shown thereon or, where all the plans prescribed by regulations have not been submitted, to have one or more of the other plans prescribed by regulations, to enable him fully to consider such plans;
- (j) any further particulars or other plans delivered to him, upon his refusal, under paragraph (i), to give his approval to any plans, are not to his satisfaction;
- (k) such plans differ materially from those approved upon the exemption from the provisions of Part I of the Landlord and Tenant (Consolidation) Ordinance (Cap 7) of the premises to which they relate; (Amended 73 of 1970 s. 2; 29 of 1983 s. 47)
- (l) it appears to him that the demolition of a building that requires to be demolished before the building works shown on such plans can be carried out-
 - (i) will cause, or will be likely to cause, a total or partial collapse of any adjoining or other building, or
 - (ii) will render, or will be likely to render, any adjoining or other building so dangerous that it will collapse, or be likely to collapse, either totally or partially,and he is not satisfied that the collapse or the likelihood of the

collapse, or such danger or the likelihood of such danger to the building, can be avoided; (Added 27 of 1964 s. 2)

(m) in the case of plans showing site formation works, piling works, excavation works or foundation works, it appears to him that the carrying out of such works-

(i) will cause, or will be likely to cause, a total or partial collapse of any adjoining or other building, street or natural, formed or man-made land, or

(ii) will render, or will be likely to render, an adjoining or other building, street or natural, formed or man-made land so dangerous that it will collapse, or be likely to collapse, either totally or partially,

and he is not satisfied that the collapse or the likelihood of the collapse, or such danger or the likelihood of such danger to the building, street or land, can be avoided; (Added 27 of 1964 s. 2. Amended 72 of 1980 s. 4)

(n) it appears to him that the proposed user of the building to which the plans relate would contravene the provisions of regulation 49 of the Building (Planning) Regulations (Cap 123 sub. leg. F); (Added 23 of 1969 s. 3)

(o) the plans relate to building works to be carried out upon land in respect of which a notice has been served under section 4 of the Lands Resumption Ordinance (Cap 124) or under the proviso for resumption contained in the Government lease of the land; (Added 73 of 1970 s. 2. Amended 29 of 1998 s. 25)

(p) in the case of building works to be carried out on a site which in his opinion ought to be provided with streets having adequate connexion to a public street, he is not satisfied that such streets are or will be provided; (Added 59 of 1973 s. 2. Amended L.N. 159 of 1990)

(q) in the case of building works to be carried out in area number 1 of the scheduled areas the building is one which in his opinion must be capable of resisting landslip debris and he is not satisfied that the plans provide adequately for that capability. (Added 41 of 1982 s. 4. Amended 52 of 1990 s. 3)

(1A) Without prejudice to any other power of the Building Authority under this section, the Building Authority shall refuse to give his approval

to any plans of building works where the building works proposed include the construction of a hand-dug caisson unless he is satisfied that any of the following circumstances exists-

- (a) the depth of the hand-dug caisson does not exceed 3 metres and the diameter of the inscribed circle of the hand-dug caisson is not less than 1.5 metres;
- (b) for the site concerned-
 - (i) the use of a hand-dug caisson is the only practical construction method; or
 - (ii) there is no other safe engineering alternative. (Added 6 of 1995 s. 3)

(2) The Building Authority may refuse to give his approval of any plans of street works where-

- (a) the plans are not such as are prescribed by regulations;
- (b) he has not received application for their approval in the specified form or any such application does not contain the particulars required therein; (Amended 68 of 1993 s. 8)
- (c) the carrying out of the street works shown thereon would contravene the provisions of this Ordinance or of any other enactment;
- (d) in the case of an access road, the place at or manner in which the access road opens on to a street is, in his opinion, such as to be dangerous or likely to be dangerous or prejudicial to the safety or convenience of traffic using the street or access road, or which may be expected to use the same;
- (e) such fees as are prescribed by regulations have not been paid;
- (f) in the opinion of the Building Authority, it is necessary for him to have further particulars of such plans to enable him fully to consider such plans;
- (g) any further particulars delivered to him, upon his refusal under paragraph (f) to give his approval to any plans, are not to his satisfaction.

(3) The Building Authority may refuse to give his consent to the commencement of any building works or street works where-

- (a) he has not received and given his approval to all the plans thereof prescribed by regulations;

- (b) he has not received such other documents as may be prescribed by regulations;
- (ba) any condition or requirement imposed by him under section 17(1) in respect of the building works or street works has not been complied with to his satisfaction; (Added 52 of 1990 s. 3)
- (bb) he is not satisfied that the authorized person, registered structural engineer, registered geotechnical engineer, registered general building contractor or registered specialist contractor has adequately provided precautionary and other protective measures for demolition works; (Added 54 of 1996 s. 16. Amended 15 of 2004 s. 18)
- (bc) the authorized person has not lodged a supervision plan for the works; (Added 54 of 1996 s. 16)
- (c) such fees as are prescribed by regulations have not been paid; or
- (d) a period exceeding 2 years has elapsed since the approval of any of the prescribed plans in respect of the building works or street works. (Amended 23 of 1969 s. 3)

(3A) In subsection (3)(d), the reference to plans does not include such plans as are for the time being approved in connexion with an order under Part I of the Landlord and Tenant (Consolidation) Ordinance (Cap 7) excluding the premises from the further application of that Part. (Replaced 73 of 1970 s. 2. Amended 29 of 1983 s. 47)

(4) The Building Authority may refuse to give his consent to the commencement of any building works where it appears to him that the carrying out of the building works-

- (a) will cause, or will be likely to cause, a total or partial collapse of any adjoining or other building, street or natural, formed or man-made land, or
- (b) will render, or will be likely to render, any adjoining or other building, street or natural, formed or man-made land so dangerous that it will collapse, or be likely to collapse, either totally or partially,

and he is not satisfied that the collapse or the likelihood of the collapse, or such danger or the likelihood of such danger to the building, street or land, can be avoided. (Added 27 of 1964 s. 2. Amended 31 of 1964 s. 2; 72 of 1980 s.4)

(5) Without prejudice to subsection (4), the Building Authority may refuse to give his consent to the commencement of demolition works until he is satisfied that adequate precautions have been taken-

- (a) to prevent a collapse, whether total or partial, or the likelihood of such a collapse, of any adjoining or other building, street or natural, formed or man-made land; or
- (b) to prevent any adjoining or other building, street or natural, formed or man-made land becoming so dangerous, or the likelihood of any such building, street or land becoming so dangerous, that it will collapse or be likely to collapse, either totally or partially. (Added 27 of 1964 s. 2. Amended 72 of 1980 s. 4)

(Added 44 of 1959 s. 4)