

**For Discussion
on 28 June 2012**

**LEGISLATIVE COUNCIL
PANAL ON DEVELOPMENT**

**Enforcement Strategy in relation to Recent
Unauthorised Building Works Cases with Major Public Concerns**

PURPOSE

This paper informs Members of the enforcement policy adopted by the Buildings Department (BD) in handling unauthorised building works (UBWs) and provides information on the UBWs in Houses 4 and 5 of No.4 Peel Rise, which have aroused much concern recently.

BACKGROUND

Current enforcement policy on UBWs

2. The issue of building safety is high on the Government's agenda, and the handling of UBWs is one of the major focuses of the work of the Development Bureau and BD in recent years. On the issue of UBWs, the Government has always put the safety of buildings in the first place, and will take a pragmatic stance to handle the issue through prioritisation and categorisation. To this end, we have formulated and implemented a clear enforcement policy against UBWs; and BD, which has all along been following the principle of acting in accordance with the law and being impartial to all, handles UBW cases pursuant to the Buildings Ordinance (Cap. 123) (BO) and the prevailing enforcement policy.

3. Under the BO, all building works, with the exception of exempted works¹ as defined under section 41 of the BO and the designated minor works items that may be carried out under the simplified requirements of the Minor Works Control System (MWCS), require the prior approval and consent of the Building Authority (BA)

¹ As far as building works in private buildings are concerned, section 41(3) of the BO provides that building works carried out in a building are exempted works, i.e. exempted from the requirement of obtaining prior approval from the BA, if they do not involve the structure of the building or are designated minor works. Typical examples of such works include common household renovation works, such as painting and internal plastering or wall-paper works. While it is not necessary to apply for the BA's prior approval, such works still have to comply with other applicable building standards specified in the BO or its subsidiary legislation; otherwise the works can still be subject to enforcement action by the BD.

before such works may commence. Otherwise, regardless of the scale of such works, they will be regarded as UBWs and subject to enforcement action by BD.

4. The ten-year enforcement programme against UBWs launched in 2001 by BD ended in March 2011. This ten-year enforcement programme focused on UBWs that were then most prevalent in Hong Kong, posing imminent dangers or high potential risk to public safety (such as steel cages, large canopies and large supporting frames for air conditioners on external walls of buildings, illegal rooftop structures on single-staircase buildings and UBWs on canopies and cantilevered slab balconies). New UBWs and those found under construction, i.e. works-in-progress cases were also subject to enforcement. For UBWs not under BD's priority enforcement category or not included in its "large scale operations", upon receipt of reports, BD would either issue warning notices and register the same in the Land Registry, or issue advisory letters to advise the building owners to take action to rectify the situation voluntarily.

5. While the ten-year programme had achieved its desired effects, there were strong views in the community that UBWs which fell outside those specified categories should also be made subject to enforcement to reduce potential risks and to uphold the law. Accordingly, BD has formulated and adopted since 1 April 2011 a new enforcement policy against UBWs. As we have reported to this Panel before, under the new enforcement policy, BD has extended the coverage of actionable UBWs to include all UBWs (except minor amenity features) on the exterior of the approved building, such as those on roof-tops and podiums, as well as those in yards and back-lanes of buildings. With this extension, BD is in effect taking enforcement action against most actionable UBWs found on the façade and exterior of a building. BD will actively respond to reports and issue advisory letters, advising the building owners to take action to rectify the situation as soon as possible if there are confirmed actionable UBWs after inspection. If the owner is not able to commence the rectification works within the specified period, BD will issue statutory orders requiring the owners to immediately carry out works to rectify the situation. BD will register the orders in the Land Registry (commonly known as "imposing an encumbrance"), as well as instigate prosecution actions more readily to sanction owners who do not duly observe the statutory orders so as to ensure building safety.

6. Regarding the UBWs which have not been accorded higher priority for clearance (the "non-actionable" UBWs), BD will, depending on the situation, serve advisory letters or warning notices requesting the

owners to remove the UBWs voluntarily. If the owner fails to remove the UBWs specified in the warning notice by the date specified therein, BD will register the warning notice in the Land Registry (i.e. "imposing an encumbrance").

Established practice for handling UBW cases involving senior Government officials and celebrities which have aroused public concern

7. The Government's long standing position in handling the problem of UBWs is to act in accordance with the law and to be impartial to all. However, BD would, as a matter of established practice, accord priority to follow up on and carry out site inspection for cases reported by members of the public or by the media involving senior government officials and celebrities with the objective of clearing any public concerns as soon as possible. After on-site inspection, BD will take appropriate enforcement action in accordance with the BO and the prevailing enforcement policy on UBWs in an impartial manner. Irrespective of the identity of the owner, BD will not make any special arrangements in relation to the taking of enforcement action for such cases.

HANDLING OF UBWS IN HOUSES 4 AND 5 OF NO. 4 PEEL RISE

The properties

8. According to BD's information and file records, the occupation permit for Houses 4 and 5 of No. 4 Peel Rise was issued on 30 April 1992. It stipulates that, inter alia, House 4 is a three-storey and House 5 a two-storey family residence for domestic use. Both Houses have open parking area for non-domestic use. Since the issue of occupation permit, BD has received one submission for alteration and addition works in respect of Houses 4 and 5 in 2000, comprising addition of a glass canopy near the front entrances of Houses 4 and 5, conversion of the four open car parking spaces situated between Houses 4 and 5 into landscaped area and alteration to external staircases at the gardens of Houses 4 and 5. The submission was approved and the works was completed in 2001. According to the Land Registry's record, the current owner acquired the subject properties in June 2000.

BD's inspection

9. On 20 June 2012, BD received a media enquiry on whether a structure erected in the garden of House 5, No. 4 Peel Rise was a UBW. The media enquiry did not reveal the identity of the owner, and as BD still had to gather the relevant information, the Department was not able

to respond to the enquiry on the same day. On 21 June 2012, there was a press report on the structure as mentioned in the media enquiry. According to the report, Houses 4 and 5 of No. 4 Peel Rise were owned by the Chief Executive-elect (CE-elect) and the CE-elect had already removed the structure. BD took immediate follow-up action in accordance with the established procedures outlined in paragraph 7 above. BD sent its officers to Houses 4 and 5 of No. 4 Peel Rise on 21 June morning to conduct an inspection and make detailed records of the findings of the inspection. It was found that the structure in House 5 as reported had been completely removed. However, based on the photographs in the press report and after checking the relevant approved building plans, BD found that the Department had not received any applications relating to the structure concerned, and was able to confirm that the structure was a UBW.

10. On 22 June 2012, there was a press report on a trellis in the garden of House 4, No.4 Peel Rise. BD sent its officers to Houses 4 and 5, No. 4 Peel Rise again on the same day to conduct an inspection and make detailed records of the findings of the inspection.

11. According to the results of BD's inspection on the exterior of both houses on 21 and 22 June 2012 and its initial assessment on the two inspections, the two houses were still structurally safe in general but a number of UBWs were found in both houses.

The UBWs found in Houses 4 and 5 of No. 4 Peel Rise

12. According to BD's inspection and their initial assessment on the two inspections, apart from the structure in the garden of House 5 as reported in the press report on 21 June 2012 which had been removed by the time of BD's inspection in the morning of 21 June 2012, the UBWs at Houses 4 and 5, 4 Peel Rise include –

House 4:

- (a) a trellis that was erected in the garden and reported by the press on 22 June 2012. The trellis has a width of about 6m and a depth of about 1m;
- (b) a structure erected next to the trellis, with an area of about 2m by 2m and about 2.5m in height;
- (c) a metal gate erected at the access road near the house;

House 5:

- (d) the parking space on the ground floor was enclosed and a roof cover was erected; and

- (e) the location beneath the parking space and at the garden level was altered into a floor space with an area of about 6.4m by 3.5m and a height ranging from about 1.7m to 2m.

13. Under the prevailing enforcement policy and based on BD's preliminary assessment, with the exception of item (c) mentioned above, all the UBWs listed above belong to the "actionable" category.

Follow-up action

Rectification of UBWs

14. In accordance with the established practice, BD issued a letter to the owners concerned on 22 June 2012 advising the owners to rectify the irregularities in the subject properties as soon as possible. The advisory letter sets out the UBWs as listed out in paragraph 12 above, and advises the owners to rectify the irregularities within 30 days. In respect of the actionable UBWs, BD will issue removal order to the owner in sequence if he is not able to appoint registered professionals or contractors to commence the rectification works within the specified period of 30 days (counting from 22 June 2012).

15. For the rectification of the five UBWs identified during BD's inspection and the structure in the garden of House 5 as reported in the media on 21 June 2012², the removal works for all items, except for the floor space underneath the parking space (i.e. paragraph 12(e) above), could be carried out under the MWCS. Under the MWCS, building owners may choose to appoint prescribed building professionals and/or prescribed registered contractors to carry out minor works under the simplified requirements without the need to obtain prior approval of relevant building plans and consent to commence works under section 14(1) of the BO. However, submissions have to be made in accordance with the requirements of the MWCS to BD for record. According to the inspection by BD staff on 26 June 2012 when they discussed with the Authorized Person (AP) appointed by the owner at the subject property on the rectification of the floor space underneath the parking space, apart from the structure in the garden of House 5 that had already been removed before BD's inspection, the contractor engaged by the owner had also removed the items under paragraph 12(a), (b) and (d) mentioned

² With the exception of the floor space underneath the parking space, the owner must remove all the concerned UBWs completely so as to comply with the BO. As regards the floor space, the owner should submit a remedial works proposal on how to make the floor space unavailable for future use (such as by restoring the floor space into the state as shown on the approved plans) for the BD's consideration.

above. So far BD has not received any submission made in respect of the relevant works. For the rectification works of the floor space formed underneath the parking space, the AP appointed by the owner has to submit rectification proposal to BD, and remedial works shall only commence after BD's approval has been obtained. As mentioned above, the AP appointed by the owner is discussing with BD on the remedial work for the UBW concerned. So far, the remedial work for that UBW has not yet commenced.

Lease matters

16. The enforcement work of BD is conducted pursuant to the authority under the BO with the primary concern on ensuring building safety, and aims at having the contravention rectified as soon as possible. As such, the issue of land premium is not relevant to BD' enforcement work. In general, the payment of land premium refers to the payment charged to the lessee by the Government (through the Lands Department) acting in the lessor capacity (landlord) having regard to the provisions of the lease concerned. Payment of land premium normally refers to payment payable by the lessee for variation to terms and conditions of the land lease or for certain permission or waiver, etc. As regards the subject lot, the land lease is a 150-year lease from 1888 and it does not contain any condition on the gross floor area or site coverage.

Follow-up action by BD

17. Apart from the above follow-up actions being taken in light of the preliminary results of the inspections, BD will also continue to process and analyse the information gathered from the inspections to decide on the next course of action.

**Development Bureau
Buildings Department
Lands Department
June 2012**