

立法會
Legislative Council

LC Paper No. CB(1) 2034/99-00

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by the Administration and
cleared by the Chairman)

Ref: CB1/BC/10/99/2

**Bills Committee on
Buildings (Amendment) Bill 2000**

**Minutes of second meeting held on
Monday, 8 May 2000, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Ronald ARCELLI, JP (Chairman)
Hon CYD HO Sau-lan
Hon Edward HO Sing-tin, SBS, JP
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Howard YOUNG, JP

Members absent : Hon David CHU Yu-lin
Hon HO Sai-chu, SBS, JP
Hon CHAN Kwok-keung
Hon WONG Yung-kan

Public officers attending : **Planning and Lands Bureau**
Mr Geoffrey WOODHEAD
Principal Assistant Secretary (Buildings)

Mr Johnny CHAN
Assistant Secretary (Buildings)

Buildings Department

Mr K M MO
Assistant Director of Buildings (Development)

Mr Alex CHOW
Chief Building Surveyor (Legal)

Department of Justice

Ms Rayne CHAI
Government Counsel

Clerk in attendance : Mrs Mary TANG
Chief Assistant Secretary (1)6

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mrs Eleanor LAM
Senior Assistant Secretary (1)2

I. Confirmation of minutes of previous meeting

The minutes of the meeting held on 17 March 2000 were confirmed.

II. Meeting with the Administration

2. The Chairman informed members that representations were received from the Federation of Hong Kong Hotel Owners, the Hong Kong Institution of Engineers, the Hong Kong Institute of Architects and the Real Estate Developers Association of Hong Kong.

Building concessions for hotel developments

3. The meeting noted the representation by the Federation of Hong Kong Hotel Owners requesting for flexibility in allowing concessions for other facilities which were unique and integral to hotel operations. Principal Assistant Secretary for Planning and Lands (Buildings) (PAS/PL(B)) said that the Administration would consider granting appropriate concessions for facilities which were non-revenue generating and unique in hotel operations. This would exclude offices, but computer rooms for Information and Technology (IT) functions or arts room for making art works could be grouped under the proposed regulation 23A(3)(iv) of the Building (Planning) Regulations.

4. In determining the building concessions for hotel developments, Mr Howard YOUNG asked if the conditions as listed under proposed regulation 23A(3)(a) and (b) were exhaustive. He also enquired how IT support facilities which were applicable to revenue generation such as room reservations, computerized key locks for guest rooms or other room service facilities should be categorized. PAS/PL(B) advised that they should be grouped under proposed regulation 23A(b)(iv). He also said that in line with Government's policy objective to develop Hong Kong into a telecommunication, broadcasting and Internet hub, floor space dedicated for telecommunications and broadcasting equipment would be excluded from the Gross Floor Area (GFA) calculation for buildings. He also said that under the proposed regulation 28A, hotel buildings would be provided with access facilities for telecommunication and broadcasting services in accordance with the design requirements as may be specified by the Building Authority from time to time. The proposed regulation 28A however would not take retrospective effect and would only be applicable to new buildings.

5. In response to Mr Howard YOUNG's further enquiry, PAS/PL(B) confirmed that arts room for making art works would be included in the concession for GFA calculation. Mr Howard YOUNG further pointed out that at present many hotels would use the staff canteen as a training or briefing room for staff, including temporary staff who were employed to cope with the occasional peak demand of services. He asked if concessions would also be granted for such facilities. PAS/PL(B) advised that in principle concessions would be granted for facilities used by the staff provided that there were no abuses.

6. Members noted that the concessions for various support functions were not specifically listed under proposed regulation 23A(3)(b) (i), (ii) and (iii). In addition to IT support functions and those facilities raised by the Federation of Hong Kong Hotel Owners, there could be other facilities which were unique to hotel operation such as the baggage storage area which had not been listed under the regulation. Mr Edward HO opined that if the Building Authority had decided that certain facilities could be exempted for GFA calculation, provided that such facilities were non-revenue generating, a list of such facilities should be made available for reference. Noting that the Practice Notes were not statutory, members suggested that the drafting of the bill should be reviewed to reflect the intended scope of supporting facilities to be exempted from GFA calculations.

7. Mr Edward HO said that in the past, basements in hotel buildings were totally exempted from GFA calculation. Basements were used for various back of the house facilities although in the case of Sheraton Hotel, the basement was used as a shopping arcade. He felt that there was merit to reactivate the old system to have the basement exempted from GFA calculation as this would accord more flexibility. Assistant Director of Building (Development) (AD of B (Dev)) said that in the past, basements were granted exemptions since there were only one to two floors with facilities including workshop, training room or even shopping arcades. With modern technology and the increased number of floors below ground level, the legislation had been revised. In order to allow more flexibility to hotel developers in designing the hotel layout and to have a more definite size of the floor area with the concession, hotel buildings were treated as non-domestic buildings for plot ratio and site coverage calculation purposes, and the areas for back of house facilities to be granted concession were specified in the regulation.

8. Mr Edward HO was not in total agreement with the Administration's change from the basement exemption to the current practice. He said that with the current arrangement, a comprehensive schedule of exemptions should be provided in order to avoid subsequent rejection of the building plan by the Building Authority.

9. Members agreed that in view of the narrowness in the interpretation of "other similar supporting facilities", the Administration should -

Admin

- (a) review the drafting to reflect the intended scope of supporting facilities to be exempted from gross floor area calculations;
- (b) consider the need to formalize such supporting facilities (e.g. in the form of Practice Notes); and

- (c) provide a list of the types of supporting facilities which were exempted from GFA calculation for members' reference.

Enforcement provisions

10. PAS/PL(B) explained that the proposal to increase the penalty level was to create an effective deterrent, taking into account the financial gains from unauthorized change of use. The penalty proposed would apply across the board and would not be restricted to change of use in hotels. Section 25 of the Buildings Ordinance was too narrow in scope as it only referred to material changes in the use of a building. He pointed out that when an extra wall was built to change the use of a particular area, approval from the Building Authority was required since this would involve a material change of use under section 25. However, section 25 would not apply if a hotel concession area was changed to a non concession type of use where building work was minimal. To make it a requirement to seek approval from the Building Authority when subsequent change of use of the concession area was made, it was necessary to introduce the new regulation 23A(8)(a). However, approval was not required for change from one type of concession area to another type of concession area in the hotel.

11. The Chairman said that the point raised by the Federation of Hong Kong Hotel Owners was valid as the owner might not be aware of the change of use in the concession area by the hotel operator. In reply, PAS/PL(B) said that under the new requirement, it would be the responsibility of the owner to set out in the contract with the management company terms that would ensure that changes of use would not be made. The Chairman said that owners did not usually interfere with the management of the hotel, and it would not be realistic to expect them to regularly inspect hotel premises. The owners might attend regular meetings with the hotel operators but they were more concerned about the operation rather than the regulatory audit on the exempted facilities. The Chairman further pointed out that even if management companies were to take on the responsibility on behalf of the owners with terms incorporated in the contracts, it would not catch the existing management agreements. PAS/PL(B) agreed that time was required to make changes to the management agreement but considered that it was appropriate to make the owner responsible. Mr Howard YOUNG advised that the Federation of Hong Kong Hotel Owners (which represented the hotel owners) and the Hong Kong Hotel Associations (which represented the hotel operators) would always try not to interfere with each other. He also said that some of the hotels might operate as a franchise with the international chain of hotels. Unlike the rental of private premises, hotel owners would have limited power or influence over the hotel operators. Members agreed on the reasoning for the proposal to make the owner responsible for any change of use on the concession area but suggested that the word "knowingly" should be included in regulation 23A(8). Members also noted that the regulation did not mention operators of the hotel management and only referred to the proprietor, owner and occupier. PAS/PL(B) said that the intention was to include people who could be brought within the scope of the offence. Although there could be circumstances where the owner would have no reasonable knowledge of the offence, it would seem appropriate to include the owner as one of the people who could be prosecuted. He agreed to consider including "knowingly" in the regulation.

Definition of occupier

12. On the definition of "occupier", Assistant Legal Adviser 1 said that in the Buildings Ordinance, the meaning of "occupier" "in a domestic building" meant a person resident therein, and "in the case of other buildings" meant "a person carrying on an occupation full time in such building". She believed that hotels did not fall under the category of domestic buildings. Members noted the meaning of "domestic" as described in the Buildings Ordinance which stated that domestic when used in a part of a composite building would be the part that was constructed and intended for habitation. Hotel buildings where there were shopping arcades or restaurants would be considered as composite buildings.

13. Members held the view that duration of the stay in the hotel would be immaterial as long as the hotel guests were occupying the hotel full time. Mr Edward HO considered that there was a need to include "occupier" as there were people occupying hotel rooms for a long duration of time. The rooms might be occupied by the guests for various other purposes such as office, or certain parts of the hotel might be leased out to a third party to operate as restaurants. These people would be caught within the scope of occupier and there could be circumstances where they would change the use of the occupied area, which might or might not be within the exempted situation. AD of B(Dev) clarified that according to the Buildings Ordinance, hotel rooms were regarded as domestic while for the purpose of plot ratio calculation hotel buildings would be regarded as non-domestic.

14. Mr Edward HO asked if it was the intention to restrict the use of hotel guests rooms for domestic use, as he was aware that some hotel rooms were turned into offices or even sales and exhibition centres. AD of B (Dev) said that the plot ratio would be the same irrespective of whether the hotel building was used as domestic guest room or guest room with attached office, since the plot ratio for hotel buildings would be the same as that of a commercial building. In addition, hotel buildings would be granted concessions for the back of house facilities. To clarify the situation, the Administration would re-examine the meaning of occupier and whether hotel guests should be regarded as occupiers.

Admin

Access facilities for telecommunications and broadcasting services

15. Regarding the concern raised by the Hong Kong Institution of Engineers on the access facilities for telecommunications and broadcasting services, PAS/PL(B) said that the Government would issue a Practice Note for Authorized Persons and Registered Structural Engineers (PNAP). The PNAP which contained information based on the 1995 Code of Practice issued by the Office of the Telecommunications Authority would provide guidelines and typical designs for reference by the professionals and the industry.

Performance review of geotechnical design

16. Referring to Clause 3 amending section 17(1) of the Buildings Ordinance, Mr Edward HO said that for structural calculation, the registered structural engineer would sign the calculation whereas the Authorized Person (AP) would sign the submission. In site formation work, the AP had to sign all the papers. In view of the increasing complexity of geotechnical design, he asked whether the Building Authority

Action

would consider specifying in the Bill that performance review of geotechnical design in relation to site formation should be carried out by a Registered Professional Engineers in the geotechnical discipline. AD of B (Dev) confirmed that at present the AP was responsible for submitting plans on site formation work. For building projects where there were structural elements, the registered structural engineer would be required to sign the calculation. The Building Authority was considering to introduce a new discipline of registered geotechnical engineer under the Buildings Ordinance and had issued a consultation paper. However, before that was in place the present arrangement should remain. If geotechnical work was involved, the AP would have to engage a geotechnical consultant for the report.

17. Dr Raymond HO said that the Administration was already considering an approved list of registered geotechnical engineer, the suggestion of requiring geotechnical engineers to sign the assessment report should be worth considering. As more than 30 pieces of legislation would be affected, time would be required to amend all the legislation, hence suitable amendments should be made as and when a particular legislation was reviewed. He also pointed out that there were over 300 Registered Professional Engineers in the geotechnical discipline and their registrations were renewed annually with the Engineers Registration Board. Suitable inclusion should therefore be incorporated in the legislation whenever an amendment bill was considered. He recalled that when scrutinizing the Lifts and Escalators (Amendment) Bill, registered engineers of the relevant discipline was included in the amendment at the same time. Any amendment so made would be in accordance with the requirement of the Engineers Registration Ordinance.

18. AD of B (Dev) was not agreeable to the proposal. He was of the opinion that before the registration of geotechnical engineer was approved under the Buildings Ordinance, the existing system as provided in the Ordinance should remain. He said that the suggestion that only Registered Professional Engineer (Geotechnical) could carry out a performance review was narrower than the proposals set out in the consultation paper. This would also preclude the engagement of other professionals who were not geotechnical engineers but who would also qualify to do the geotechnical assessment work.

19. The Chairman said that the concern put forward by Mr Edward Ho was on the legal liability of the AP on site formation work where a geotechnical performance review was required. However, as it would affect the submission of plans to the Building Authority, it should be considered outside the scope of the Bills Committee. He appreciated that the requirement of geotechnically qualified persons to carry out performance review of geotechnical design would enhance the overall professional standard. However, he expressed reservation on the piecemeal approach. He was concerned about the implications of the proposed amendment which would affect both the main legislation and the subsidiary regulations. He did not agree that a reform of the entire legislation should be taken forward by the Bills Committee.

20. In relation to Clause 3, Mr Edward HQ sought clarification on items 6 and 7 of section 17(1) of the Building Ordinance. He pointed out that both items 6(b) and 7 referred to approval of plans for site formation works, piling works, and excavation work. He asked what the difference was between items 6 and 7 and whether it was appropriate to delete item 7 under Column A and incorporate the content of item 7 to item 6 in

Action

Column B. AD of B(Dev) explained that item 7 referred to conditions of the adjoining buildings, street or land which might cause danger to the building, while item 6 was on the safety and quality of the building itself. Although site formation work under items 6 and 7 might appear to be overlapping, it was not appropriate to remove item 7 under Column A. The Administration however, would consider member's suggestion.

21. Miss Cyd HO Sau-lan asked if the geotechnical provision was a result of the recent site settlement problem in Tseung Kwan O. She would like to know whether the new provision would hold Government responsible for projects under the Private Sector Participation Schemes. AD of B (Dev) said that the site settlement problem at Tseung Kwan O was not the cause for the new provision. Following the landslides in Kwun Lung Lau in Western District a few years ago, Government had decided that there was a need to step up control on the geotechnical design. The Buildings Ordinance was to regulate private developments and not site reclamation or site formation projects undertaken by the Government. Members noted that that Government projects were not governed by requirements under the Buildings Ordinance. The Chairman further pointed out that at a special meeting of the Housing Panel to discuss the site settlement problem in Tseung Kwan O, members had been advised that Government's liability on the plot of land sold would be governed by the conditions of sale. Government might rely on an exclusion Clause in prosecutions relating to site problems. Miss Cyd HO felt that there was a need to resolve the geotechnical problem in land formation. Since the problems went beyond the scope of the Buildings Ordinance, the Chairman did not consider it appropriate for the Bills Committee to take on the geotechnical issue.

22. Miss Cyd HO noted that Government buildings were exempted under section 41 of the Buildings Ordinance. It was doubtful whether housing projects under the Private Sector Participation Scheme were exempted. Due to the ambiguity in the role of Housing Authority, the residents were having difficulty identifying the party responsible for the site settlement problem at Tseung Kwan O. The proposed geotechnical performance reviews would improve the situation because works would be adequately inspected and monitored in the course of construction. The line of responsibility could be traced back to the Authorized Person or Engineer. The main concern was the safety of the residents.

23. The Chairman said that work in examining the bill should be completed by 9 June 2000. Members agreed that the next meeting would be held on Tuesday, 16 May 2000 at 2:30 pm.

24. There being no other business, the meeting ended at 12:55 pm.

Legislative Council Secretariat

8 September 2000