

立法會

Legislative Council

LC Paper No. CB(1) 2086/99-00

(These minutes have been seen
by the Administration and
cleared by the Chairman)

Ref : CB1/PL/HG/1

LegCo Panel on Housing

Minutes of special meeting held on Friday, 7 April 2000, at 9:00 am in Conference Room A of the Legislative Council Building

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| Members present | : Hon LEE Wing-tat (Chairman)
Hon Gary CHENG Kai-nam, JP (Deputy Chairman)
Hon HO Sai-chu, SBS, JP
Hon Edward HO Sing-tin, SBS, JP
Hon Albert HO Chun-yan
Hon Fred LI Wah-ming, JP
Hon NG Leung-sing
Hon Mrs Selina CHOW LIANG Shuk-yee, JP
Hon James TO Kun-sun
Hon Andrew WONG Wang-fat, JP |
| Members absent | : Hon David CHU Yu-lin
Hon LEE Cheuk-yan
Hon Ronald ARCELLI, JP
Hon CHAN Yuen-han
Hon CHAN Kam-lam
Hon LEUNG Yiu-chung
Dr Hon YEUNG Sum
Hon SZETO Wah |
| Public officers attending | : Ms Elaine CHUNG
Deputy Secretary for Housing

Ms Lorna WONG
Principal Assistant Secretary for Housing

Mr Gilbert MO
Deputy Law Draftsman |

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

Staff in attendance : Miss Becky YU
Senior Assistant Secretary (1)3

I Briefing on the Sales Descriptions of Uncompleted Residential Properties Bill
(Consultation paper on the Sales Descriptions of Uncompleted Residential Properties Bill tabled at the meeting and circulated thereafter vide LC Paper No. CB(1)1337/99-00)

The Deputy Chairman took up the chairmanship of the meeting in the absence of the Chairman who was held up by traffic.

Provision of paper

2. Mr Edward HO opined that the consultation paper on the Sales Descriptions of Uncompleted Residential Properties Bill (the Bill) should, instead of being tabled at the meeting, be circulated to members earlier to facilitate a meaningful discussion. In response, the Deputy Secretary for Housing (DS for H) explained that the Administration had taken the earliest opportunity to brief members on the Bill upon its gazettal on 7 April 2000. As the Bill had been published as a White Bill for public consultation until 7 July 2000, she reassured members that they should have ample time to seek clarifications or express views on the Bill.

General

3. At the Deputy Chairman's invitation, DS for H briefed members on the Bill, which sought to enhance the accuracy, uniformity and transparency of information provided in sales brochures and advertisements regarding the public sale of local uncompleted residential flats.

(The Chairman arrived and resumed the chairmanship of the meeting at this juncture.)

4. Mr HO Sai-chu was keen to ascertain that the Administration had conducted thorough consultation on the Bill and had balanced the interests of parties concerned to ensure that the sales brochures would include all key information on a local uncompleted residential property that could realistically be required. DS for H replied in the affirmative and reported that the Consumer Council also supported the main provisions of the Bill. She further emphasised that the Bill was a major step forward in enhancing consumer protection through the following provisions -

- (a) By requiring all developers to provide sales brochures regarding any public sale of uncompleted residential properties, and stipulating the inclusion of 35 items of key information in the brochures, consumers would have access to important information which they should take into account when deciding whether to purchase a property.
- (b) The standardisation of the definition of floor area of uncompleted units for sale and the mandatory disclosure of the “saleable area” and the “gross floor area” in the sales brochure would eliminate the present confusion in the methods of calculating floor area and enable a comparison of prices.
- (c) By disclosing in the sales brochure all the essential information, the purchaser would be able to pursue contractual remedies for inaccurate information more easily.
- (d) If a sample property was offered by the developer, it should be accurate in terms of dimension and partition. The developer would also be required to display a notice stating which items of the interior finishes, fittings, fixtures, appliances, utensils or furniture displayed in the sample property would be the same as those in the residential property to be completed and their respective specifications.
- (e) If an advertisement contained the references to the price of a property expressed in terms of price per square foot or square metre of gross floor area, etc an equally prominent reference to the price expressed in terms of price per square foot or square metre of saleable area must also be included to enable consumers to make an informed decision.

5. Members in general agreed that the Bill could enhance consumer protection. They however sought clarifications and expressed concerns about certain aspects of the Bill.

Location plan and disposition plan

How the Bill could guard against misrepresentation

6. Mr Fred LI was keen to ensure that the developer should apprise potential purchasers of his properties all neighbouring developments that might affect its view. In response, the Deputy Law Draftsman (DLD) assured members that a developer would no longer be able to intentionally hold back any important information about his development because according to the Bill, the sales brochure should contain a location plan showing the development and the land use or intended land use, as specified in the relevant town plan, of any land within 0.5 km from the boundary of the lot upon which the development was constructed. Moreover, section 26 of Schedule 1 also provided that sales brochures should identify any area in the development where the developer was entitled to construct or erect any building or structure of substantial dimension in any open area or on the roof, podium etc. of any building in the development, as well as contain information on any such building or structure known to the developer.

7. The Chairman, on the other hand, expressed concern about how the Bill could eliminate misleading information in the sales brochure regarding future facilities which might not materialise. Addressing his concern, DLD stressed that although there were no restrictions on the developer regarding promotion of his properties by highlighting possible facilities, such claims of future facilities could be easily verified and consumers need not rely solely on information provided in the sales brochure when deciding whether to purchase a property.

8. In reply to Mr Albert HO on legal remedies available under the Bill should there be misrepresentation in relation to the location plan or disposition plan, DS for H and DLD confirmed that non-compliance would be liable to penalties under the Bill. In addition, since such essential information as land use as disclosed in the sales brochure would be regarded as representation of fact made by the developer to the purchaser in respect of the contract for sale and purchase of the property, the purchaser should be able to pursue contractual remedies for inaccurate information more easily. Alternatively, the court might also order the developer to compensate the purchaser for his loss according to the Misrepresentation Ordinance (Cap. 284) if it was satisfied that loss had been incurred as a result of misrepresentation.

9. Mr Fred LI opined that it would be both costly and difficult for individual purchasers to take civil actions against large developers for misrepresentation in relation to the location plan or disposition plan, especially as the developers could claim they were not aware of the missing information in question. Mr HO Sai-chu however said if affected purchasers could take collective action against the developer, the legal costs so incurred would not be unaffordable. DLD also stressed that as the Bill had specifically required the developer to show the land use or intended land use of the areas adjacent to his development as specified in the relevant Outline Zoning Plan, the developer could not claim ignorance of such. In response to the Chairman, DLD said since the Bill did not have specific provisions regarding information on future communal facilities such as bus terminals, developers might choose to indicate these facilities to the best of their knowledge. The Chairman expressed concern that developers might try to include future facilities which had yet to materialise in a bid to boost sales of their properties.

Subsequent changes to location plans or disposition plans

10. As subsequent changes to the location plan or disposition plan were quite common, Mr Albert HO enquired about how the Bill could strengthen consumer protection against such changes. In response, DLD emphasised that such changes were inevitable, especially as the development in question was uncompleted and might in the construction process encounter unforeseen technical problems that necessitated changes. As such, the Administration could only require the developer to remind potential purchasers that there could be changes to the plans. He however agreed to further examine how concerns about such changes could be addressed.

11. In this connection, the Deputy Chairman considered it necessary to clearly define what was meant by “the latest town plan” referred to in the Bill to ensure the purchaser would be informed of the latest decisions regarding land use in the areas adjacent to a

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development. In response, representatives of the Administration explained that the term referred to the latest town plan available as at the date of publication of the sales brochure. While agreeing to take into serious consideration the need for a clearer definition of the term, they also assured members that the Bill would require the developer to make available at his office and at each sales office two copies each of the town plans referred to in the sales brochure. The brochure would also state the reference numbers of the relevant town plans. In this way, purchasers would be able to ensure the information in the sales brochure was updated and, if they wanted to find out whether there were any subsequent land use change, they could simply refer to subsequent versions of the relevant outline zoning plans.

12. Mr Andrew WONG enquired about the possibility of requiring the developer or Government to compensate the purchaser for subsequent changes to land uses in the adjacent areas of a development made after the printing of the sales brochure. In response, DLD remarked that this would involve a major policy issue beyond the scope of the Bill. Mr HO Sai-chu pointed out that it might not be fair to hold developers responsible for land use changes which were inevitable as a result of urban development. In his view, notwithstanding the absence of legal remedies for such changes, the Bill was already a major step forward in consumer protection by enhancing the accuracy, uniformity and transparency of information provided in sales brochures and advertisements regarding the public sale of local uncompleted residential flats.

Floor area

Saleable area versus internal floor area

13. Mr Fred LI opined that instead of listing in the sales brochures of uncompleted residential properties the saleable area, which meant the floor area of a property including the thickness of its enclosing walls, the internal floor area which excluded the thickness of the walls should be listed to give purchasers a better idea of the usable area. The Chairman and Mr James TO shared his view. In particular, the Chairman pointed out that even though the Bill would also require the developer to show the thickness of the load bearing walls in the floor plan, it would be difficult for a layman to work out the internal floor area himself. As such, adoption of the saleable area would only result in a need to engage the service of surveyors if the purchaser wanted to know the internal floor area of his property. Mr James TO opined that to ensure the developer would do his best to provide in the sales brochure accurate measurements of the internal floor area of a property before its completion, the Bill could require the developer to guarantee that the internal floor area of the completed property would be as stated in the sales brochure. If the actual internal floor area turned out to be significantly smaller, the developer should adjust the price of the relevant property downwards as a remedy.

14. While agreeing that the developer should endeavour to provide accurate measurements of the floor area of a property, Mrs Selina CHOW was of the view that the most important thing was to ensure an identical system of floor area measurement. As such, as long as the Administration could assure members that the proposed system of measurement was reliable, reasonable and transparent, she would not oppose to the adoption of the saleable area in expressing the floor area of a unit.

15. In response, DS for H stressed that the decision to require developers to list in the sales brochure the saleable area instead of the internal floor area had been made after careful consideration of all views received during consultation. Members noted that during the consultation, different professional bodies had highlighted the various technical and practical difficulties in measuring the internal floor area of a property accurately before its completion. For example, the types of finishes used and workmanship would all affect the thickness of walls and hence the “internal floor area”. In recognition of such difficulties and the need to ensure the provisions in the Bill would be practicable and enforceable in order to be effective, the adoption of the saleable area in expressing the floor area in the sales brochure was considered more appropriate. DS for H however assured members that since the Bill was under consultation, members’ views in this regard would be welcome.

16. Mr James TO was not convinced by the above arguments put forward by the Admininstration. According to him, the views of professional bodies should be accepted with care as they had vested interests. He was also not convinced that there were difficulties in measuring the internal floor area of a property accurately before its completion and requested details of such difficulties quoted by the professional bodies.

Factors that might affect the internal floor area

- *Thickness of walls*

17. The Chairman opined that the Bill should aim to ensure the walls of a property would not be thicker than required as such would unduly reduce the internal floor area of a property. As a result, the purchaser would have the feeling that he had suffered financial loss because the sale price per square foot of his property would then turn out to be higher than he originally figured. Mr HO Sai-chu however pointed out that no developer would intentionally build thicker walls as this would be more costly. DS for H further advised that as indicated in a research into private sector flats, the difference between the saleable area and the internal floor area ranged from 10 to 15%. DLD also referred members to section 6(5) of Schedule 1 and assured them that in recognition that the thickness of walls might vary with the height of a building, the Bill had already required the floor plan to show the thickness of each load bearing wall of a residential property situated on the top, median and the lowest floors if the building concerned had more than three floors. In this way, a potential purchaser would be able to work out more accurately the internal floor area of a property and hence its sale price per square foot when he made the decision to purchase it.

- *Other abnormalities that would affect the internal floor area*

18. Mr Andrew WONG pointed out that in some buildings, the upper floors might be smaller than the lower floors and there might be a need to draw purchasers’ attention to that. In response, DLD confirmed that according to section 6(1) of Schedule 1, floor plans of all floors in the buildings comprising residential properties in the development should be provided unless the floor plans of two or more different floors differed only as

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regards the thickness of load bearing walls.

Admin 19. Mr Andrew WONG highlighted complaints about the internal floor area being reduced by exposed water pipes or the communal fuse box situated within a property. In response, DS for H undertook to examine how the Bill could address such abnormalities.

Calculation of the gross floor area

20. The Chairman was concerned about how the Bill could guard against developers including common areas such as club facilities in calculating the gross floor area of a property to the disadvantage of the purchaser. DS for H explained that according to the Bill, the gross floor area of a residential property should be an apportioned share of the total domestic gross floor area of the development calculated in accordance with regulation 23(3)(a) of the Building (Planning) Regulations (Cap. 123 sub. leg.) as approved by the Building Authority, and that it should be proportionate to the share of the saleable area of that property in the total saleable area of all residential properties in the development. As such, club facilities, refuse rooms and the management office normally would not be included in calculating the gross floor area.

Actions available against misrepresentation of floor area

21. In reply to Mr Albert Ho on actions the purchaser could take in the event of misrepresentation of the floor area, DS for H and DLD pointed out that the requirements in the Bill with regard to floor plans, thickness of the load-bearing walls of the top, median and lowest floors, together with the need to disclose the "gross floor area" and "saleable area" should provide sufficient information for flat purchasers without creating unnecessary confusion and disputes. Moreover, certain information disclosed in a sales brochure would be implied as a term of contract, purchasers might also seek compensation for losses as a result of the developer's non-compliance. The Chairman concurred with him and supplemented that according to existing practice, should the difference between the actual floor area and the floor area disclosed in the sales brochure exceed 5%, the relevant sale and purchase contract could be rescinded.

Penalties proposed

22. In reply to Mr NG Leung-sing on the rationale behind the penalties proposed in the Bill, DLD assured members that in proposing the penalties, the Administration had already taken care to ensure that their levels would be sufficiently high to discourage non-compliance. The proposed fine of \$100,000 on summary conviction for non-compliance in relation to sales brochures containing information specified in the Bill and advertisements should have sufficient deterrent effect, having regard that the relevant requirements were easy to follow and that there would not be much advantage gained through non-compliance. As to the proposed fine of \$5 million on conviction upon indictment for the same offence, the Administration also considered the level sufficiently high in recognition that the purchaser concerned could also seek compensation through civil actions and the proposed fine was comparable to that for drug trafficking. Moreover, the developer would also suffer loss in goodwill if prosecuted.

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23. Mr NG Leung-sing opined that higher fines against inaccurate advertisements might be necessary in consideration of the higher possibility of misrepresentation in advertisements, the purpose of which was to boost the sale of properties. In response, DLD highlighted the requirement of an advertisement to contain a prescribed notice stating clearly that purchasers should refer to the sales brochure for details. He further pointed out that if the sale price per square foot or square metre calculated on the basis of "gross floor area" or any other basis was stated in an advertisement, the price per square foot or square metre calculated on the basis of "saleable area" should also be shown. Moreover, every appearance of a non-complying advertisement was chargeable and as such a developer could be fined a few times for the same non-complying advertisement in relation to his development.

The way forward

Clerk

24. In view of the significant implications of the Bill, members agreed to form a subcommittee under the Housing Panel to further examine it.

(*Post-meeting note:* The first meeting of the Subcommittee was held on 28 April 2000.)

25. The meeting ended at 10:15 a.m.

Legislative Council Secretariat

29 September 2000