

立法會
Legislative Council

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by the Administration and
cleared by the Chairman)

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LegCo Panel on Housing

**Subcommittee to study the Sales Descriptions
of Uncompleted Residential Properties White Bill**

**Minutes of the first meeting
held on Friday, 28 April 2000, at 8:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon LEE Wing-tat (Chairman)
Hon HO Sai-chu, SBS, JP
Hon Edward HO Sing-tin, SBS, JP
Hon NG Leung-sing
Hon James TO Kun-sun
Hon CHAN Kam-lam
Hon Gary CHENG Kai-nam, JP
- Members absent** : Hon Albert HO Chun-yan
Hon Fred LI Wah-ming, JP
Hon Ronald ARCULLI, JP
Hon CHAN Yuen-han
Hon Andrew WONG Wang-fat, JP
Dr Hon YEUNG Sum
- 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 : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Ms Sarah YUEN
Senior Assistant Secretary (1)4

I. Election of Chairman

Nominated by Mr Edward HO and seconded by Mr HO Sai-chu, Mr LEE Wing-tat was elected Chairman of the Subcommittee.

II. Meeting with the Administration

(The White Bill issued vide LC Paper No. CB(1)1337/99-00, the relevant LegCo Brief (Ref: HB(CR)3/2/9) and the Members' Brief issued vide LC Paper No. CB(1)1441/99-00)

2. The Deputy Secretary for Housing (DS for H) briefed members on the Administration's response to members' concerns raised at the special Housing Panel meeting on 7 April 2000 circulated to members as Appendix IV to the Members' Brief.

Disclosure of internal floor area in sales brochures

Internal floor area versus saleable area

3. At the Chairman's request, the Principal Assistant Secretary for Housing (PAS for H) elaborated on the professional bodies and developers' concern as regards the disclosure of the internal floor area in sales brochures regarding the public sale of local uncompleted residential flats. Members noted that the professional bodies and developers' general view was that as the walls of a residential unit constructed locally were generally built manually on site instead of pre-fabricated by machines, workmanship would inevitably affect the thickness of walls and hence lead to technical difficulties in providing accurate measurements of the internal floor area. There was thus reservation about stipulating the provision of such in the sales brochure for fear of giving rise to excessive litigation for inaccurate information.

4. The Chairman however pointed out that notwithstanding the above difficulties, to balance the interests of both the developer and the purchaser, there was a need to list

the internal floor area in the sales brochure because the internal floor area was most important, being the area the purchaser could really put to use. This was especially important as the internal floor area of a property could sometimes be significantly reduced by the thickening of walls resulting from poor workmanship or rush of work to meet construction deadlines. In his view, if the internal floor area was not listed in the sales brochure so that the purchaser could not take action even though it turned out to be much smaller than expected, the purchaser would feel aggrieved as then the sale price per square foot of his property would be higher than he originally figured.

5. In response, DS for H emphasised that the Consumer Council, the Law Reform Commission and the Housing Bureau had all examined the floor area issue in detail and conducted wide consultation before they concluded that the sales brochure should disclose the saleable area instead of the internal floor area. She and PAS for H put forward the following points in support of the conclusion –

- (a) Since the Bill aimed to enhance consumer protection, the provisions included should be practicable and enforceable in order to be effective.
- (b) The owner's legal responsibility in relation to his property was likewise based on the saleable area. As such, both the Deed of Mutual Covenant and the contract for sale and purchase of a property made reference to its saleable area instead of the internal floor area.
- (c) Notwithstanding the absence of the internal floor area in the sales brochure, the Bill was already a major step forward in consumer protection by requiring all developers to provide sales brochures regarding any public sale of uncompleted residential properties, and stipulating the inclusion of key information in the brochure.
- (d) The possibility of the internal floor area being significantly reduced by excessively thick walls was remote as thick walls were more costly to build and such cases would affect the reputation of a developer and hence sale of his flats. In fact, the internal floor area of a flat would usually amount to around 90% of its saleable area.
- (e) In recognition that the internal floor area might be affected by variations in the thickness of load bearing walls, 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. As a result, the purchaser should be able to have a clear idea of the internal floor area of his property by making reference to such information.

6. Mr HO Sai-chu shared the Administration's views and supplemented the following points –

- (a) The Bill in its present form could already facilitate the purchaser to pursue contractual remedies for inaccurate information and seek compensation for losses as a result of non-compliance with the Bill's requirements regarding disclosure of key information.
- (b) The gross floor area of a residential property should be the proportionate share of the total domestic gross floor area of the development calculated in accordance with regulation 23(3)(a) of the Building (Planning) Regulations as approved by the Building Authority (BA). This was equal to the saleable area of the flat together with a proportionate share of all common areas approved by BA. As such, the adoption of the saleable area could obviate argument and hence litigation over the floor area of a property.

Proposed safeguards against undue reduction in the internal floor area

7. The Chairman proposed that to ensure the internal floor area of a property would not be unduly reduced, the Administration should consider introducing a reasonable allowance for difference in the internal floor area, so that the developer would have to list the internal floor area of an uncompleted property in the sales brochure and, if the difference between the listed internal floor area and the actual internal floor area exceeded a certain percentage, say, 5%, the purchaser could seek compensation from the developer. Mr James TO supported the proposal, pointing out that the contract of sale and purchase in relation to an uncompleted flat in fact stood for two undertakings made by the developer, namely, the contract to build and the contract to deliver the relevant property. As such, the contract itself had already carried with it a guarantee for reasonable workmanship and, if the walls built were too thick and had unduly reduced the internal floor area of a property, the developer concerned should be held accountable for compensating the purchaser by adjusting the price of the property downwards or even effect a refund. He believed the above proposal would have the effect of reminding the developer to be more careful in ensuring good workmanship of his flats and hence decrease the possibility of the internal floor area being unduly reduced by thick walls.

8. Mr HO Sai-chu, on the other hand, opined that to be fair to both the developer and the purchaser, if the above proposal was adopted, the purchaser should also be required to pay a higher price for his property should its actual internal floor area turn out to be larger than listed. He assured members that under the present economic climate where developers had to actively promote the sale of their flats, they were already taking care to ensure good workmanship and maximise the internal floor area of their flats.

9. Commenting on the proposal, DS for H cautioned that the introduction of a legal allowance for the difference in internal floor area might not necessarily be in the best interest of purchasers as such an arrangement would at the same time imply that it would be acceptable for the developer to provide a smaller flat if the difference

between the listed internal floor area and the actual one was within a reasonable range. In this way, developers would not be held accountable if measurements were less than exact. She quoted figures to illustrate her point. The Chairman and Mr James TO were still not convinced. They opined that if the proposed arrangement was adopted, the developer should be more inclined to maximise the internal floor area of a property to build up a good name for himself for the sake of boosting sale of his flats.

Common areas to be included in the calculation of “Gross Floor Area”

Clerk

10. Noting that 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 as approved by BA, the Chairman considered the method of apportionment fair and directed the Secretariat to make available and circulate to members of the Bills Committee a copy of the said regulation.

(Post-meeting note: A copy of the said regulation has been circulated vide LC Paper No. CB(1)1482/99-00.)

Admin.

11. Mr Edward HO however pointed out that notwithstanding the above statutory method of apportionment, the items to be included in calculating the total domestic gross floor area of a development might in reality vary as certain items in some developments could be exempted by BA. As such, there might be a need to refer to the relevant approved plan in ascertaining the items included in calculating the gross floor area of a particular property. In reply, DS for H clarified that BA could exempt items referred to in regulation 23(3)(b). At the Chairman's request, she agreed to ask BA to provide a paper on how it decided what items to exempt in calculating the total domestic gross floor area of a development, and the factors considered in making such exemptions.

12. In this connection, Mr HO Sai-chu stressed that the developer should be required to state clearly in the sales brochure what common areas would be included in the calculation of the gross floor area. In response, DS for H confirmed that the Bill would ensure that both the method of apportionment and the main components of common areas would be detailed in the brochure.

Disclosure of information relating to water pipes or fuse box within the unit

13. The Chairman was concerned about how a potential purchaser could find out before he decided to purchase a property whether its internal floor area would be reduced by any exposed pipe or communal fuse box placed inside the property. In response, DS for H assured members that the floor plan could be accompanied by a legend to enable the potential purchaser to identify any such features shown in the floor plan.

Action

14. In this regard, the Chairman and Mr NG Leung-sing opined that to obviate the possibility of future disputes, it was also important that all such facilities shown in the floor plan would be drawn to scale. Mr Edward HO however pointed out that although the proposal might be technically feasible, there would be difficulties in ensuring the accuracy of the drawings. For example, the circumference of a pipe could be affected by the bracket. DS for H advised that presently the Bill required floor plans to be drawn to scale. She however undertook to consider the proposal.

Admin.

15. In response to Mr Edward HO, DS for H confirmed that the Bill only required sales brochures to contain descriptions of electrical installations and there was no need to show them in the floor plan. Noting this, members were concerned that the Bill might not be able to guard against developers placing the common fuse box in a flat without drawing the attention of the potential purchaser to such an abnormal arrangement. The Administration was urged to examine how to tackle this problem.

Subsequent changes to the disposition plan

16. The Chairman expressed concern about how the Bill could protect consumers against subsequent changes to the planned facilities or land use of a development to be implemented by phases over a number of years. In response, DS for H and the Deputy Law Draftsman (DLD) advised that the Bill would allow sale of a phased development by phases as independent projects, and at each phase the sales brochure should be updated to reflect the latest situation of the development. In this regard, the Chairman and Mr Edward HO highlighted the fact that purchasers of phase one flats of a phased development might have purchased the properties because of certain facilities to be provided in the development in subsequent phases. As such, the developer might highlight in the sales brochure such future facilities to boost the sale of his flats. In reply to members on measures available in the Bill to ensure that such highlighted facilities would materialise, PAS for H explained that it might be difficult to require the developer to guarantee the completion of all planned facilities within a phased development spanning a number of years. As such, the purchaser should focus on the facilities to be provided for the phase where his flat was to be located.

17. While sharing the Chairman's view, Mr Edward HO also pointed out that as such large housing developments as Tai Koo Shing might take more than ten years to complete, there was a need to retain some flexibility to enable the developer to effect changes to a phased development where necessary. He enquired whether the Bill would allow such changes and, if not, whether the developer would need to list all planned facilities or uses in the sales brochure. In reply, DS for H pointed out that the Bill would require the location plan to show the land use or intended land use, as specified in the town plan, of any land within 0.5 km from the boundary of the lot upon which the development was constructed. As to whether the developer would be bound by such disclosed details, DS for H said that the issue would need to be examined in greater detail so as to ensure that the developer would enjoy a certain degree of flexibility while safeguarding the purchaser's right to know the future facilities to be included in a phased development without misrepresentation. Mr HO

Action

ALA requested the Assistant Legal Adviser (ALA) to examine how a balance could be struck in this regard.

18. Noting that the Bill would require the disposition plan to clearly show the completion dates of such planned public facilities as footbridges, Mr CHAN Kam-lam pointed out that there might be compliance difficulties because the developer did not have control over the progress of such facilities. In reply, DS for H and DLD explained that such information would be required under Part I of Schedule 1, according to which the developer would only have to disclose such in the sales brochure and would not bear additional civil liability.

19. In this regard, Mr CHAN Kam-lam opined that the purchaser should be made aware of the limited legal effect of details disclosed pursuant to Part I of Schedule 1. In response, DLD advised that if members found certain information required under Part I very important, subject to a policy decision having been made in this regard, members might propose that the information be provided under Part II instead as information disclosed under the part would constitute a representation of facts made by the developer. Alternatively, members might also seek to add a provision to require all information to be provided under all parts of Schedule 1 to be accurate according to the best knowledge of the developer.

20. In reply to the Chairman on the difference between the information required under the three parts of Schedule 1, DS for H elaborated that information required under Part I mainly covered explanations of requirements and practices, whereas the information set out in Part II would be a representation of fact made by the developer to the purchaser in respect of the contract for sale and purchase of the property, and the information to be provided pursuant to Part III would be implied as a term of contract. As to their legal effect, DLD supplemented that the only difference between Part I and Parts II and III was that the developer would not be directly held responsible for information disclosed under Part I. As such, although the purchaser would not be prevented from taking civil actions against the developer for inaccurate information provided under Part I, there would be greater difficulty in seeking legal remedy as a result of misrepresentation of such information. In the case of information to be provided pursuant to Parts II and III, the purchaser would be able to pursue contractual remedies for inaccurate information so provided much more easily because such representation would be presumed to have induced the purchaser to enter into the relevant sale and purchase contract.

21. The Chairman opined that the Bill should ensure that the developer would also exercise due diligence in ensuring the accuracy of details disclosed under Part I of Schedule 1 because certain information so required such as the completion date was an important consideration in the making of decision to purchase a property, and it would not be easy for aggrieved purchasers to take civil actions against the developer for inaccuracy of such information if its legal effect was limited. In response, DS for H clarified that penalties ranging from \$100,000 to \$ 5 million could be imposed for failure to provide the required information and for inaccurate information provided

under Part I of Schedule 1. For example, a fine of \$5 million on conviction upon indictment had been proposed for failure to provide a sales brochure containing information specified in the Bill. As such, to avoid being fined, the developer would also exercise care to ensure the accuracy of information disclosed under Part I.

22. As to the criteria for deciding what information to be provided under Part I, Part II and Part III, DLD explained to the Chairman that apart from considering the importance of the information to the purchaser in making the purchase decision, equal emphasis had also been placed on the controllability of the items concerned. As such, items over which the developer did not have control would be set out in Part I, whereas information on items that could be controlled or even determined by the developer would be provided under Parts II and III. For example, although the completion date was important to the purchaser, it had been placed under Part I because it would be unfair to hold the developer responsible for the completion date having regard that his control over the schedule of building works could be affected by many uncontrollable factors such as weather, labour and material supply, engineering problems, etc.

Future developments in open areas within and adjacent to the development and future communal facilities shown on a location plan

23. The Chairman enquired why the Bill should require the location plan to show the land use or intended land use, as specified in the town plan, of any land only within 0.5 km from the boundary of the lot upon which the development was constructed. In his view, the area covered should be extended to 1 km. from the boundary of the relevant lot. Mr HO Sai-chu however opined that the proposed scope was sufficiently large to give the purchaser a clear picture of the surroundings of his property, especially in closely packed old urban areas. Mr CHAN Kam-lam shared his view and supplemented that the purchaser should acquire some knowledge of the district in which his property was situated before he made the purchase.

24. Commenting on the Chairman's proposal to extend the proposed 0.5-km scope, PAS for H stressed that the scope, though arbitrary, was the result of thorough consultation. DLD further pointed out that in drafting the Bill, the Administration had adhered to the principle of not seeking to regulate the provision of information which the purchaser could easily verify by themselves. As the potential purchaser could easily explore the surroundings of a development, the proposed scope was considered reasonable.

25. Having regard that the term "town plan" as used in the Bill also covered non-statutory plans, Mr Edward HO was keen to ensure that instead of having to go to different Government departments for the plans, there would be a central body to which the developer could turn to in accessing updated plans and checking the latest land use information, or else it would be unfair to hold the developer responsible for the accuracy of such plans and information. The Chairman shared his views. DS for H noted the above concern and agreed to examine it in detail with relevant

parties. She also reported that the Administration was in fact examining where such non-statutory plans should be obtained, and how to ensure their accuracy and legal status. Consultation would be conducted on the resultant recommendations.

26. In this regard, the Chairman expressed concern about the ambiguity of the term “Government, Institutional and Community (GIC) use” in town plans since both schools and cemeteries were under this category, and the developer might choose not to disclose details of GIC use if the provision of unfavourable facilities such as public toilets or cemeteries had been planned. Mr Edward HO further pointed out that in such cases, there might be difficulty in proving the developer knew of such unfavourable use. In response, PAS for H emphasised that such uncertainty was inevitable because in reality land reserved for GIC use could be rezoned and even the Administration might have difficulty in ascertaining when the land would be developed or whether the use would be changed, not to mention the developer. To tackle the problem, the Chairman proposed that the Bill should require the developer to explain in the sales brochure the scope of GIC so as to caution potential purchasers against possible provision of unfavourable facilities adjacent to a development.

27. Addressing the Chairman’s concern about the use of the open area in a development, DS for H and PAS for H confirmed that section 26 of Part II, Schedule 1 should be able to ensure that the purchaser would be fully aware of any possible use of the open area before he made the decision to purchase a property. This was because the section 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. It would also require the sales brochure to contain information on any such buildings or structures known to the developer.

Date of next meeting

28. Members agreed that the second meeting of the Subcommittee should be held on Tuesday, 16 May 2000 to receive deputations such as professional institutes, land development related associations, the Consumer Council and the Hong Kong Association of Banks.

Clerk

29. The meeting ended at 10:20 am.

Legislative Council Secretariat
2 October 2000