

Our Ref. HD/PS 9/2/1/209
Your Ref.

Tel No. 2761 5049
Fax No. 2761 7445

10 November 2009

Secretary General,
Legislative Council Secretariat,
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong
(Attn: Ms Becky YU)

Dear Ms YU,

**Follow-up of the Discussion Item at the Meeting of the
Legislative Council Panel on Housing Held on 28 September 2009**

At its meeting on 28 September 2009, the Legislative Council Panel on Housing requested the Government to explain in writing how the Hong Kong Housing Authority (HA) monitored the performance of The Link Real Estate Investment Trust (The Link REIT) and the powers and duties of HA as the Deed of Mutual Covenant (DMC) manager (the Manager) of the public housing projects which comprise divested shopping centres and car parking facilities. At the same meeting, the Panel also urged the Government to provide details on the leasing of car parking spaces to non-residents by The Link REIT by way of waivers. After incorporating the input of the Lands Department, we now respond as follows:

As in the case of other private organizations, The Link REIT has full autonomy in operating its commercial and car parking facilities since its listing. Since HA no longer has any equity interest in The Link REIT or the Link Management Limited (LML) which manages The Link REIT, HA cannot and will not intervene in the day-to-day management, business strategies and mode of operation of The Link REIT and LML.

However, in divesting its facilities to The Link REIT, HA has ensured the use of the divested facilities cannot be changed without authorization, and that the commercial units in shopping centres of public housing estates cannot be sold individually and certain floor areas shall continue to be let to non-profit-making organisations at concessionary rents through stipulations in land leases, DMCs and other covenants.

Since the divestment of the shopping centres and car parks in 176 public housing projects to The Link REIT in late 2005, HA has acted as the DMC manager in 91 of these public housing projects. For the remaining public housing projects, the DMC managers are appointed by the owners' corporations of the respective Home Ownership Scheme courts or Tenants Purchase Scheme estates.

As the Manager of these 91 public housing projects, HA manages the "Common Areas" of these projects, executes the provisions of the DMCs and ensures compliance with the DMCs by the owners in accordance with its powers and duties under the DMCs.

The duties and management work performed by the Manager have been stipulated in the DMCs, for example-

- (1) to prepare budgets for each financial year, which sets out the proposed expenditure for that financial year for the approval of the owners;
- (2) to demand, collect and receive all amounts (including management fees) payable by the owners under the provisions of the DMCs and to recover the same by legal proceedings where necessary;
- (3) to pay the charges and expenses relating to the "Common Areas" and keep proper accounts thereof;
- (4) to repair and keep the "Common Areas" in good condition, but the Manager must obtain prior approval by a resolution of the owners at an owners' meeting before carrying out any improvement works which involve expenditure in excess of 10% of the current annual management budget;
- (5) to take out insurance in respect of the "Common Areas";
- (6) to maintain the "Common Areas" in a clean and sanitary state, and keep the lighting and ventilation in good order;

- (7) to remove any illegal structures in the “Common Areas” and recover from the owners, residents or tenants concerned the costs of such removal;
- (8) to ensure that the “Common Areas” and fire accesses are free of obstruction, and prevent illegal parking;
- (9) to prevent and take action to remedy any breach by owners of the provisions of the land leases, DMCs or sub-DMCs; and
- (10) to take appropriate measures (including legal action) to ensure compliance with the DMCs if the owners breach the provisions of the DMCs.

HA, as the Manager, will closely monitor to ensure that all owners act in compliance with the DMCs. Should any owner breach the provisions of the DMCs, HA shall by virtue of the powers conferred on the Manager by the DMCs take necessary measures and actions to enforce the provisions of the DMCs.

Notwithstanding its power to enforce the provisions of the DMCs, the Manager has no authority to interfere in how The Link REIT manages and operates the properties under its ownership including rent adjustment, trade mix and location etc. unless the provisions of the DMCs are breached.

As regards the arrangement of allowing The Link REIT to lease car parking spaces to non-residents by way of waivers, please refer to the enclosed letter dated 30 September 2009 issued to LML by the Lands Department.

Yours sincerely,

(original signed)

for Director of Housing

Encl.



電話 Tel: 2231 3802
圖文傳真 Fax: 2119 0106 / 2523 4973
電郵地址 Email: ceshq@landsd.gov.hk
本署檔號 Our Ref: (36) in L/M (4) in LD LSR/COR/DCP II
來函檔號 Your Ref:

覆函請註明本署檔號
Please quote our reference in response to this letter.

我們矢志努力不懈，提供盡善盡美的土地行政服務。
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香港北角渣華道三三三號北角政府合署二十樓
20/F., NORTH POINT GOVERNMENT OFFICES
333 JAVA ROAD, NORTH POINT, HONG KONG

網址 Web Site: www.info.gov.hk/landsd

30 September 2009

The Link Properties Limited
c/o The Link Management Limited
4/F, Multi-Storey Carpark Building,
108 Ching Tak Street,
Wong Tai Sin, Kowloon,
Hong Kong
Attn: Josephine Yee

Dear Sirs,

**Application for 'Temporary Waiver' to Permit
Letting of Surplus Carpark Spaces to Non-Residents**

I refer to our exchange of correspondence initiated by our letter dated 3.9.2009 and resting with your letter dated 24.9.2009.

By way of background, the matter first came to our attention on 3.9.2009 through media report which suggested letting of car parking spaces to non-residents of public housing estates. It appears there is a breach of the provision in the Government lease which provides car parking spaces shall not be used for any purpose other than parking of motor vehicles belonging to residents or occupiers of the building on the lot or the adjacent lot as specified and their bona fide guests and visitors ("the user restriction"). If there is a breach of the user restriction, Government is entitled to take lease enforcement action.

We wrote to you on 3.9.2009 to enquire about the media report. In your letters dated 9 and 11.9.2009, you suggested there is no breach of the user restriction, apart from pointing out 4 applications for waiver have been submitted. However, you subsequently submitted application for temporary waiver to permit letting of car parking spaces to non-residents in 20 estates by your letters dated 21 and 24.9.2009.

The available information suggests car parking spaces have been let to non-residents in breach of the user restriction, and your application is for temporary waiver to take effect retrospectively. I must stress that you should have submitted application for temporary waiver of the user restriction and obtained approval before any car parking spaces are let to non-residents, and LandsD does not normally process application for temporary waiver to take effect retrospectively. But I understand a substantial number of car parking spaces and tenants are involved, and with this in view, I am prepared to process your application for waiver of the user restriction to take effect retrospectively, subject to the following :

...../2

- (1) Where the application is approved, you are required to pay a waiver fee, to be determined by LandsD ("the waiver fee"), for the period during which the car parking spaces are let to non-residents in breach of the user restriction ("the Period"), forthwith, failing which we may take lease enforcement action.
- (2) Where the application is not approved, or where the application is approved but you do not accept the offer, you are required to advise within 28 days the time within which letting of car parking spaces in breach of the user restriction will cease and provide details of the period and rental income of the letting, and to pay the waiver fee for the Period.
- (3) Within 28 days of this letter, you are required to provide details of estates where there was a breach of the user restriction and where no application for waiver has been submitted, with details of the period and rental income of the letting, certified correct by a Certified Public Accountant. You are further required to provide an undertaking to pay the waiver fee for the Period.

The following is in relation to application for temporary waiver submitted to date :

- (a) In relation to Leung King, Wah Lai, and Kwong Yuen, the application was submitted before 3.9.2009. The respective DLO has made an offer for temporary waiver, pending acceptance of the offer. If you do not accept the offer, (2) above applies.
- (b) In relation to Fu Tai, the application is not approved. (2) above applies.
- (c) In relation to the 20 estates set out in the attached list, LandsD is processing your application in consultation with other departments. I understand you will seek Town Planning Board's approval in parallel. I cannot approve your application unless Town Planning Board approval is obtained. The application will take some time. Subject to compliance with (3) above, I will withhold lease enforcement action pending processing of the application, and acceptance of the offer. If the application in relation to any estate is not approved, or if the application is approved but you do not accept the offer in relation to any estate, (1) and (2) above apply.

Other than the estates referred to in (a) and (c) above, I take it that there is no current breach of the user restriction. Nevertheless, if it comes to my attention that there is a breach of the user restriction, I shall take lease enforcement action without further notice.

Nothing in this letter shall imply or constitute a waiver of any of the rights of the Government under the respective Government leases. All rights of the Government under the Government leases or otherwise are reserved.

Yours faithfully,



(Edwin CHAN)
Chief Estate Surveyor/Headquarters
Lands Department

Encl.

20 cases with application for temporary waivers
(as at 28 September 2009)

Estate/Court

1. Cheung Fat Estate 長發邨
2. Choi Ha Estate 彩霞邨
3. Fu Shin Estate 富善邨
4. Fu Tung Estate 富東邨
5. Hing Wah (I) Estate 興華(一)邨
6. Hoi Fu Court 海富苑
7. Kam Tai Court 錦泰苑
8. Kwai Hing Estate 葵興邨
9. Lek Yuen Estate 瀝源邨
10. Sha Kok Estate 沙角邨
11. Sun Chui Estate 新翠邨
12. Tai Ping Estate 太平邨
13. Tai Wo Estate 太和邨
14. Tai Wo Hau Estate 大窩口邨
15. Wah Sum Estate 華心邨
16. Wo Che Estate 禾輦邨
17. Yee Kok Court 怡閣苑
18. Yu Chui Court 愉翠苑
19. Upper Wong Tai Sin Estate 黃大仙上邨
20. Siu Hei Court 兆禧苑