

For Information

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT**

**Handling of illegal rooftop structures
in multi-storey buildings in the New Territories**

INTRODUCTION

This paper sets out the Administration's view on the handling of illegal rooftop structures (IRS) in multi-storey buildings in the New Territories.

BACKGROUND

2. During the discussion on the topic of the control of unauthorized building works (UBWs) under Buildings Ordinance (Cap. 123) (BO) at the meeting of the Legislative Council Panel on Development on 20 June 2011, a Member of the Panel pointed out that some owners of IRS in multi-storey buildings in the New Territories claimed that their IRS had existed before 1975 and therefore should be covered by an amnesty agreement between the Government and Heung Yee Kuk (HYK) reached in 1975 and that the demolition of those IRS should be suspended. The Member referred to a judicial review case considered by the High Court in 2004/05 involving the Building Authority and the Appeal Tribunal (Buildings) (the SIU Kwok-wah case) (HCAL8/2004) and asked about the legality of the new enforcement policy of the Buildings Department (BD) against IRS in multi-storey buildings in the New Territories. According to the Member, amnesty has been granted to such rooftop structures that existed before 27 February 1975 ("the 1975 amnesty"), and demolition of the structures should not be required if they pose no danger to the public. The Administration told the Panel at the meeting that, in subsequent court cases, the Court had ruled that the "1975 amnesty" might be overridden in view of the importance of public safety

in clearing the IRS concerned, and that BD had been taking enforcement action against such IRS and other forms of UBWs in multi-storey buildings in the New Territories in order to ensure public safety. To enable Members to have a better understanding of the subject and the legal basis of BD's enforcement action, the Administration was requested to provide an information paper to the Panel.

ADMINISTRATION'S VIEW

The SIU Kwok-wah case and other related judgment

3. The SIU Kwok-wah case referred to by the Member concerns a judicial review sought by the BD regarding the determination made by the Appeal Tribunal (Buildings) (“Tribunal”) in allowing the appeal against a removal order issued by BD¹. In 2005, the court affirmed the determination by the Tribunal and held the view that the public had a legitimate expectation that the officer making the decision to issue the removal order should take into account a letter issued by the then Tai Po District Office (“the amnesty letter”) which stipulated the agreement between the Government and HYK in 1975 as mentioned in paragraph 2 above. However, the court also affirmed the Tribunal’s determination to impose a condition that the fire escape route at the roof-top level should be reasonably improved by the owner to the Building Authority’s satisfaction immediately. The BD considers that this is an individual case and should not affect the enforcement policy against IRS in general.

4. Having sought legal advice and set up a working group to look into the issues in the amnesty letter, BD concluded that if the UBWs constituted threat to the public, public safety should override the “amnesty letter” concerned. If necessary, the BD might issue fresh removal orders to the owners. The High Court held the same view in a

¹ In this case, a removal order was issued by the Building Authority (BA) in 2002, requiring the owner to remove an UBW erected since 1967 on the roof top of a multi-storey building in Tai Po. The Appellant claimed, and the Tribunal accepted, that the letter issued by the District Officer (Tai Po) in 1981, which referred to the agreement between the Government and HYK in 1975, was applicable to the unauthorized roof-top structure in question.

judgment handed down in 2010 (HCMA395/2009)², which pointed out that “the BD may exercise its endowed discretionary power to weigh between the appellant’s legitimate expectation and the significant threat posed by the UBWs to public safety, and in view of the importance of public safety, any amnesty letter may be overridden”. However, the High Court advised that a fresh order should be issued in respect of the case to provide the owner concerned with the right to appeal. The BD follows the above principle in handling all cases of a similar nature at present.

The operation against the IRS in multi-storey buildings

5. IRS in multi-storey buildings in areas with dense population or busy traffic pose significant threats to building and fire safety, as well as the safety of pedestrians. Over the past 10 years, BD has carried out removal operations against IRS in some 5 000 single-staircase buildings in the urban area as well as in the New Territories that posed risks to the occupants and the general public.

6. As reported to the Panel on 20 June 2011 (vide paper CB(1)2487/10-11(01)), to implement the multi-pronged approach to tackle the issue of building safety, since 1 April 2011, BD has been adopting a new enforcement policy under which the coverage of actionable UBWs has been extended to include unauthorized works in roof-tops, podiums, as well as yards and back-lanes of buildings. All “actionable UBWs” on the rooftops of multi-storey buildings are included in the removal programme. The BD is now taking appropriate enforcement action against UBWs on the rooftops of multi-storey buildings in the urban area as well as in the New Territories in accordance with the new policy. We consider that the approach being undertaken in respect of IRS in multi-storey buildings has suitably taken into account the need to reduce the threat posed by such structures in order to protect the safety of the general public.

² In this case, a removal order was issued by BA in July 2002 requiring the owner to remove an UBW in a multi-storey building in Tsuen Wan. The owner did not comply with the order and BA instigated a prosecution action against him in 2008. The owner appealed against the conviction by the Magistrate Court for failure to comply with the removal order issued.

ADVICE SOUGHT

7. Members are invited to note the Administration's view on handling IRS in multi-storey buildings in the New Territories.

Development Bureau
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