

For Information

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT**

**Unauthorised building works
at Nos. 5A and 7 York Road, Kowloon Tong**

Purpose

This paper informs Members of the handling of unauthorized building works (UBWs) at Nos. 5A and 7 York Road, Kowloon Tong by the Buildings Department (BD) and Lands Department (LandsD).

BACKGROUND

Current enforcement policy on UBWs

2. Under the Buildings Ordinance (Cap. 123) (BO), all building works, with the exception of exempted works¹ as defined under section 41 of the BO and the designated minor works items under the Minor Works Control System, require the prior approval and consent of the Building Authority (BA) before such works may commence. Otherwise, regardless of the scale of such works, they will be regarded as UBWs and subject to enforcement action by the BD.

3. The ten-year enforcement programme against UBWs launched in 2001 by the BD came to an end in March 2011. This ten-year enforcement programme focused on UBWs that were then most prevalent in Hong Kong, posing imminent dangers or high potential risk to public safety (such as steel cages, large canopies and large supporting frames for air conditioners on external walls of buildings, illegal rooftop structures on single-staircase buildings and UBWs on canopies and cantilevered slab balconies). New UBWs and those found under construction, i.e. works-in-progress (WIPs) cases were also enforced against. For UBWs not under BD's priority enforcement category or included in its "large

¹ As far as building works in private buildings are concerned, section 41(3) of the BO provides that building works carried in a building are exempted works if they do not involve the structure of the building and are not designated minor works. Typical examples of such works include common household renovation works, such as painting and internal plastering or wall-paper works. While it is not necessary to apply for the BA's prior approval, such works still have to comply with other relevant statutory requirements (including those under the BO and its subsidiary legislation); otherwise the works can still be subject to enforcement action by the BD.

scale operations”, upon receipt of complaints, BD would either issue warning notices and register defaults in the Land Registry, or issue advisory letters to advise the building owners to take action to rectify the situation.

4. While the ten-year programme has achieved its desired effects, there were strong views in the community that UBWs which fell outside those specified categories should also be made subject to enforcement to reduce potential risks and to uphold the law. Accordingly, the BD has since 1 April 2011 adopted a new approach in enforcement action against UBWs. As we have reported to this Panel before, under the new approach, BD has extended the coverage of actionable UBWs to include all UBWs on the exterior of the approved building, except minor amenity features, such as those on roof-tops and podiums, as well as those in yards and back-lanes of buildings. With this extension, the BD is in effect taking enforcement action against most, if not all, actionable UBWs found on the façade and exterior of a building. BD will actively respond to complaints and will issue statutory orders requiring owners to conduct rectification works immediately if there are confirmed actionable UBWs after inspection. BD will also instigate prosecution actions more readily to sanction owners who do not duly observe the statutory orders to protect building safety.

5. Regarding the UBWs which have not been accorded high priority for clearance (the “non-actionable” UBWs), the BD will, depending on the situation, serve advisory letters or warning notices encouraging the owners to remove the UBWs voluntarily. If an owner fails to remove the UBWs specified in the warning notice by the date specified therein, the BD will register the warning notice in the Land Registry (commonly known as "imposing an encumbrance").

Established practice for handling UBW cases involving senior Government officials and celebrities

6. The Government’s long standing position in handling the problem of UBWs is to act in accordance with the law and to be impartial to all. However, the BD would, as a matter of established practice, accord priority to follow up on cases reported by members of the public or by the media involving senior government officials and celebrities with the objective of clearing any public concerns as soon as possible. After on-site inspection, the BD will take appropriate enforcement action in accordance with the BO and the prevailing enforcement policy on UBWs in an impartial manner. There is no special arrangement in relation to

the taking of enforcement action for such cases.

HANDLING OF UBWS IN NO. 5A & NO. 7 YORK ROAD

The properties

7. According to BD's information and file records, the occupation permit for No. 5A York Road was issued on 19 March 1974. It stipulates that the building is a two-storey family house for domestic use. As regards No. 7 York Road, BD staff, upon receipt of an application for occupation permit in respect of the property from the authorised person (AP) on 22 January 2007, conducted a site inspection on 24 January 2007 in accordance with established procedures. The inspection revealed that the construction of the house did not contravene the provisions of the BO and Regulations. The building was completed in accordance with the approved building plans, and no UBWs were found. The BD issued an occupation permit on 2 February 2007, which stipulates that the building is a two-storey single family house for domestic use over a one-storey covered car park and swimming pool on the lower ground floor for non-domestic use. The BD had not received any application for alteration and addition works since the occupation permits for the two houses were issued.

BD's inspection

8. Following a media report on 13 February 2012 of suspected UBWs in the property owned by a public figure who had declared his intention to run in the 2012 Chief Executive Election and his family at No. 5A and No. 7 York Road, the BD took immediate follow-up action in accordance with the established procedures outlined in paragraph 6 above as the case had aroused great public concern. The BD examined the approved building plan of the properties on the same day. On the following morning (14 February 2012), the BD sent its officers to the addresses but could not gain access to the buildings for inspection. They left their contact details in the mail boxes to ask the owner to arrange for inspection by BD staff as soon as possible. On 15 February 2012, the AP appointed by the owner submitted the appointment notice to the BD. The BD successfully made contact with the AP and made arrangements for entering the properties for inspection on the following day (16 February 2012).

9. According to the results of BD's inspection on 16 February 2012 and its initial assessment, the two houses were generally safe structurally

but UBWs that are actionable for priority enforcement under the prevailing enforcement policy were found in both houses.

The actionable UBWs found in Nos. 5A & 7 York Road

10. According to BD's inspection and their initial assessment, the actionable UBWs at No. 5A and 7 York Road include -

No. 5A York Road

- UBWs surrounding the two sides and the back of the building on the G/F yard
- UBWs on the main roof
- Unauthorised enclosure to the balcony on 1/F

No. 7 York Road

- An unauthorised basement (about 19m in length x 11m in width x 3.5m in height) constructed underneath the Lower G/F
- Unauthorised glass windows installed at the bottom of the swimming pool

No. 5A and No. 7 York Road

- An unauthorised bridge constructed at the Upper G/F of No.7 connecting to 1/F of No. 5A

Follow-up action by BD and LandsD

Rectification of UBWs

11. As the owner has appointed an AP to follow up on the rectification work for the UBWs, in accordance with the established practice, the BD issued a letter to the owners concerned on 17 February 2012 advising the owners to rectify the irregularities in the subject properties as soon as possible. The advisory letter sets out the aforementioned actionable UBWs, and requires the owners to submit a work programme for the rectification works through their AP within a week (i.e. by 24 February 2012). The BD is now considering the work programme and the preliminary rectification proposal submitted by the AP on 22 February 2012. The scale and complexity of the required works will be taken into account in determining whether the work programme and rectification proposal should be accepted. The BD could not confirm at this stage the specific items and completion date of the remedial works.

Lease matters

12. The lots concerned are leased land. LandsD acts in the lessor capacity in dealing with lease matters under the relevant land documents. According to the records, a set of building plans was approved in October 1972 by the then Director of Public Works under the lease for the building at No.5A York Road and subsequently BD issued the occupation permit on 19 March 1974 as referred to in paragraph 7 above. As for the building at No. 7 York Road, the building plans approved by the District Lands Officer/Kowloon East in October 2006 was consistent with the building plans covered by the occupation permit issued by BD on 2 February 2007 as referred to in paragraph 7 above. LandsD has been keeping in view the development related to the rectification works as referred to in paragraph 11 above, in consultation with its legal advisers.

Criminal investigation

13. In view of the recent media reports that preparation for the construction of the unauthorised basement at No. 7 York Road might have already been made before the occupation permit for the house was issued in 2007, as the BD announced on 17 February 2012, the BD had already issued letters on that day inviting the relevant parties, including the AP, registered structural engineers, registered contractors and the property owner concerned, to provide information to facilitate the BD's investigation. The BD had met with some parties so far.

14. Under section 14(1) of the BO, "no person shall commence or carry out any building works or street works without having first obtained the approval and consent from the Building Authority". Under section 40(1AA) of the BO, "any person who knowingly contravenes section 14(1) shall be guilty of an offence", and shall be liable on conviction to a fine of \$400,000 and to imprisonment for two years. Moreover, under section 40(2A)(c) of the BO, "any person for whom any building works and street works are being carried out and any authorised person, registered structural engineer, registered geotechnical engineer, registered general building contractor, registered specialist contractor or registered minor works contractor directly concerned with any such works who knowingly misrepresents a material fact in any plan, certificate, form or notice given to the BA under this Ordinance, shall be guilty of an offence", and shall be liable on conviction to a fine of \$1,000,000 and to imprisonment for three years. BD's investigation will include whether the parties involved in the subject UBWs may have contravened sections 40(1AA) and 40(2A)(c) of the BO. Nevertheless, it has to be pointed

out that the burden of proof for the offences under the two provisions is considerably high given that the prosecution has to produce evidence to prove that the concerned party knowingly contravenes the relevant requirements.

15. The BD is still conducting the investigation into whether any person has committed offences under the BO for the construction of the unauthorised basement in No.7 York Road. Upon completion of its investigation, the BD will submit a prosecution report to the Department of Justice for the latter to consider whether prosecution should be instigated against any person.

**Development Bureau
Buildings Department
Lands Department
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