

Retrospective Improvement to the Built Environment

Meeting of Legislative Council Panel on Welfare Services Subcommittee on Improving Barrier Free Access and Facilities for Persons with Disabilities 15 May 2012

~~ Submission from the Equal Opportunities Commission ~~

Purpose

This paper aims to provide views of the Equal Opportunities Commission (“EOC”) on the proposal to legislate for retrospective improvement to access in buildings built before 1997 (“pre-1997 buildings”).

Background

2. In the EOC’s paper submitted to Panel on Welfare Services Subcommittee on Improving Barrier Free Access in February 2012, we pointed out that pre-1997 buildings were not required to proactively incorporate barrier free facilities under the current law and policy. It is also noted that addressing the extensive accessibility problems by way of lodging disability discrimination complaints with the EOC may not be an effective approach due to the fact that such complaint-based approach can only address one individual problem at a time. A comprehensive and extensive retrospective improvement to access in pre-1997 buildings cannot be achieved by enforcing the Disability Discrimination Ordinance (DDO) alone.

3. In the aforementioned paper, we proposed that the Government should consider legislating for gradual incorporation of barrier free facilities and universal design concepts to all pre-1997 buildings where it is practicable to do so.

Current situation and problems

4. Based on local situation and our experience in handling accessibility complaints lodged under the DDO, the major problems hindering improvement to access in pre-1997 buildings are as follows:

Limitations of current building legislations and regulations

5. Under the existing Buildings Ordinance (“BO”), the Building Authority (“BA”) might order the building owner to perform repair and rectification works only when a building becomes dangerous or is liable to become hazardous or there is a defect in the building. The BO does not empower the BA to direct the owner to carry out periodic inspections and conduct necessary preventive repair works. Similarly, BA does not have the authority to require building owners to perform retrospective improvement to access in buildings, particularly those pre-1997 buildings.

Technical difficulties and unjustifiable hardship

6. It is noted that pre-1997 buildings in the local community were built in compliance with building legislations and regulations at the time, and some of them were constructed along difficult terrains and/or limited land space. Under such circumstances, it might not be feasible to rectify the inaccessibility problems in some pre-1997 buildings due to the inherent site difficulties or technical hardship. Section 25(2) of the DDO indeed

provides exception to those premises which are so designed or constructed as to be inaccessible to persons with a disability (“PWD”) and any alteration to the premises to provide such access would impose unjustifiable hardship to provide that access.

Resources barrier

7. Apart from technical difficulties, it is widely recognized that retrospective improvement to access in old buildings might involve considerable costs. Some owners, particularly the small owners and/or elderly owners/occupiers relying on scarce savings for their maintenance, cannot afford or are reluctant to pay for the works to rectify the inaccessibility problem or enhance the access in the building in the absence of any complaints against them. Financial consideration is a major barrier for the owners to take the initiative to rectify the inaccessibility problem or improve access in pre-1997 buildings.

Recommendations

8. It is clear that relying on urban renewal and voluntary improvement to pre-1997 buildings would take an uncertain and unreasonably long time for them to become accessible. The following recommendations have therefore been formulated on that consideration.

Amendment to current buildings legislation and regulations

9. To ensure that Hong Kong’s aging buildings can be maintained properly and to protect public safety, the Government has proposed the legislative amendments in relation to the implementation of a mandatory building inspection scheme (“MBIS”).

10. The MBIS covers private buildings aged 30 years or above, except domestic buildings not exceeding three storeys in height. Every year, the BA will select about 2,000 private buildings and require their owners to carry out inspection and repair works in relation to the common parts, external walls and projections of the buildings. After the first inspection, the selected owners will be required to undertake building inspections once every ten years.

11. Based on the model and experience of MBIS, the Government should consider initiating similar legislative amendments to the BO and make it mandatory for the owners of pre-1997 buildings to take up the responsibility to carry out inspections relating to the accessibility in their buildings, improve access in their own properties and shoulder the financial commitment for the improvement works.

“Action Plan”

12. In Australia, the Australian Human Rights Commission (“AHRC”) encourages owners of those existing buildings not undergoing new work or refurbishment to develop Action Plans to address identified barriers to access to those premises. The owner could apply for an exemption to cover the period within which the Action Plan is being developed and subsequently apply for an exemption for the period during which the Action Plan is being implemented.

13. Furthermore, section 61 of the Disability Discrimination Act 1992 (“DDA”) in Australia allows for the development of Action Plans that may be lodged with the AHRC for registration. The DDA gives AHRC the power to grant temporary exemptions from the relevant provisions of the DDA. Exemptions may be granted for up to five years, and further

justifiable exemptions might be granted. AHRC has developed procedures for considering applications for temporary exemptions which include the opportunity for all interested parties to comment on any application prior to the AHRC making a decision.

14. To encourage local building owners to take the initiatives to address the inaccessibility problems in their buildings, the Government can consider adopting a similar Action Plan Scheme (the “Scheme”) in Hong Kong.

15. In the first stage of the proposed Scheme, building owners are required to conduct an access audit or feasibility study (financial assistance can be provided to eligible owners if necessary). If the access audit proves that it is technically infeasible or the burden of improvements required would impose undue hardship on the owners, the owners could apply for a permanent exemption under the DDO. Otherwise, the owners can develop Action Plans to tackle identified barriers to access in their buildings.

16. The Government should consider setting up a Panel (the “Panel”) comprising representatives from Buildings Department (“BD”), relevant professional bodies and key stakeholders to administer the proposed Scheme. Under the Scheme, the owners can apply for temporary exemptions from the relevant provisions of the DDO during the period within which the Action Plan is being developed and the period during which the Action Plan is being implemented. The Panel is responsible to vet the Action Plans and the application for temporary exemptions. To tie in with the proposed Scheme, the Government and legislators can consider adding relevant provisions corresponding to section 61 of the Australian DDA in the DDO.

17. The Panel should also be responsible to monitor the progress of the improvement works and ensure that the owners perform the works in accordance with the standards and requirements stipulated in the local buildings laws and Design Manual.

Harmonising the requirements and standards in building legislations and the DDO

18. In Australia, the Disability (Access to Premises – buildings) Standards 2010 (“the Premises Standards”) took effect on 1 May 2011. Any application for a building approval for a new building or upgrade of an existing building on or after 1 May 2011 will activate the application of the Premises Standards. Apart from ensuring that dignified, equitable, cost-effective and reasonably achievable access to buildings, and facilities and services within buildings, is provided for persons with disabilities (“PWDs”), the Premises Standards aims at giving “*certainty to building certifiers, developers and managers that if the Standards are complied with they cannot be subject to a successful complaint under the DDA in relation to those matters covered by the Premises Standards.*”

19. In addition, the Disability Standards for Accessible Public Transport (“DSAPT”) were formulated under DDA and have harmonised the requirements of the DDA with the standards for accessible public transport and premises. The DSAPT establishes minimum accessibility requirements to be met by providers and operators of public transport conveyances, infrastructure and premises and provide them with certainty about their obligations under the DDA. Compliance with relevant requirements of the DSAPT will provide operators with protection from a complaint of unlawful discrimination.

20. In view of Australian experience, the Government can consider taking measures to harmonise the requirements and standards in relevant building regulations and Design Manual - Barrier Free Access 2008 (“Design Manual”) and the DDO. As a result, it can provide assurance to owners as well as property managers of pre-1997 buildings that compliance with the requirements and standards in the relevant building regulations and Design Manual will protect them from legal actions under the DDO.

Engagement of stakeholders

21. The Government should engage key stakeholders including building owners, professional bodies as well as building industry by conducting public consultations, and collecting their views on the proper ways to tackle the accessibility problems in pre-1997 buildings. The Government must also consult the building owners and relevant stakeholders on the proposed legislative changes in relation to the recommended mandatory building accessibility improvement scheme.

Financial assistance to building owners

22. Financial consideration is a barrier for retrospective improvement to access in pre-1997 buildings even when it is technically feasible to rectify the inaccessibility problems in the buildings.

23. Starting from 1 April 2011, the Hong Kong Housing Society (“HKHS”) and Urban Renewal Authority (“URA”) have consolidated their respective schemes and jointly launched a new one-stop Integrated Building Maintenance Assistance Scheme (“IBMAS”), providing financial assistance and technical support to property owners with service optimization and relaxation of eligibility criteria. Under IBMAS, owners

can make applications for different schemes, including "Building Maintenance Grant Scheme for Elderly Owners" implemented by HKHS and "Building Safety Loan Scheme" implemented by the Buildings Department by completing one set of application forms. For instance, owners in need of financial assistance for carrying out improvement works required under the Fire Safety Directions and/or Fire Safety Improvement Directions may apply for subsidy or loan under the IBMAS.

24. To provide financial incentives to encourage building owners to improve access in their buildings, the Government should consider setting up a special fund or expanding the scope of IBMAS to cover the applications for subsidy or loans by owners in need of financial assistance to carry out essential improvement to access in their pre-1997 buildings subject to the same set of eligibility criteria adopted in the IBMAS.

Public Education

25. Last but not least, it is crucial to arouse public awareness to the importance of accessibility in the premises and instil a positive attitude towards enhancement of accessibility to the physical environment, including private premises. Regular and sustained publicity/education programs should be launched to help the public to see the need to match the accessibility of the physical environment with our aging population in a well planned and gradual manner.

Equal Opportunities Commission
May 2012