

**For Discussion
on 17 December 2012**

**LEGISLATIVE COUNCIL
PANEL ON DEVELOPMENT**

**Enforcement Strategy in relation to Recent
Unauthorised Building Works Cases with Major Public Concerns**

PURPOSE

This paper informs Members of the enforcement policy and procedures adopted by the Administration in handling unauthorised building works (UBWs) and provides information on the case of Houses 4 and 5 of No.4 Peel Rise, which has aroused much concern recently.

BACKGROUND

Enforcement policy against UBWs

2. The Government attaches great importance to building safety, and the handling of UBWs is one of the major focuses of the work of the Development Bureau and the Buildings Department (BD) in recent years. On the issue of UBWs, the Government has always put the safety of buildings in the first place, and will take a pragmatic stance to handle the issue through prioritisation and categorisation. To this end, we regularly review and adjust the enforcement policy against UBWs.

3. Under the Buildings Ordinance (Cap.123) (BO), all building works, with the exception of exempted works as defined under section 41 of the BO and the designated minor works items that may be carried out under the simplified requirements of the Minor Works Control System (MWCS), 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 BD.

4. BD formulated and launched a ten-year enforcement programme against UBWs in 2001 to handle 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). BD also took enforcement actions against new UBWs and those found under construction, i.e. works-in-progress cases. For UBWs not under BD's priority enforcement category or not included in its "large scale operations", upon receipt of complaints, BD would either issue warning notices and register the same in the Land Registry, or issue advisory letters to advise the owners to take action to rectify the situation voluntarily.

5. While the ten-year programme had achieved its desired effects by March 2011 as planned, there were strong views in the community that BD should also take enforcement actions against UBWs that fell outside those specified categories to reduce potential risks and to uphold the law. Accordingly, the Government has since 1 April 2011 implemented the prevailing enforcement policy against UBWs. As we have reported to the Panel before, under the prevailing enforcement policy, BD has extended the coverage of actionable UBWs to include all UBWs (except minor amenity features) on the exterior of the approved building, such as those on roof-tops and podiums, as well as those in yards and lanes of buildings. With this extension, BD is in effect taking enforcement action against most actionable UBWs found on the façade and exterior of a building. BD will actively respond to complaints and, if there are confirmed actionable UBWs after inspection, issue advisory letters, advising the owners to rectify the irregularities of the properties as soon as possible. If the owner is not able to commence the rectification works within the specified period, BD will issue statutory orders requiring the owners to immediately carry out works to rectify the situation. BD will also register the orders in the Land Registry (commonly known as "imposing an encumbrance"). If the owner does not comply with the statutory order, BD will also instigate prosecution actions.

6. Regarding the UBWs that have not been accorded higher priority for clearance (the "non-actionable" UBWs), BD will, depending on the situation, serve advisory letters or warning notices requesting the owners to remove the UBWs voluntarily. If the owner fails to remove the UBWs specified in the warning notice by the date specified therein, BD will register the warning notice in the Land Registry (i.e. "imposing an encumbrance").

BD's inspection procedures and principles for handling public or media reports involving UBWs

7. When handling public or media reports involving UBWs, BD will send its staff to conduct site inspection and check its file records, and take

appropriate follow-up actions in accordance with the BO and the prevailing enforcement policy. During the inspection, BD staff mainly seek to confirm whether the suspected UBWs as reported are substantiated and will not inspect other areas of the private building at will.

8. As regards the handling of alteration and addition (A&A) works carried out in individual premises, BD staff will also conduct site inspection in accordance with the established procedures to confirm whether the A&A works have been completed according to the approved plans. BD staff also conducted inspection in accordance with the above procedures and principles, and will not inspect other areas of the private building at will.

Established practice for handling UBW cases involving senior Government officials and celebrities which have aroused public concern

9. In handling UBW cases, BD has been following the principle of acting in accordance with the law and being impartial to all to take appropriate actions pursuant to the BO and the prevailing enforcement policy. For all UBW cases, BD will take enforcement actions in an impartial manner, without making any special arrangements for enforcement actions because of the identity of the owner. In gist, BD will not be particularly stringent or lenient in its enforcement actions because the owner is a senior Government official or celebrity. However, BD will, as a matter of established practice, accord priority to follow up on and carry out site inspection for 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, BD will be impartial to all in taking appropriate enforcement action in accordance with the BO and the prevailing enforcement policy on UBWs.

Criminal investigation

10. The policy and stance all along adopted by BD in its enforcement work against UBWs is to require the owner to rectify the irregularities as soon as possible. Under normal circumstances, BD will not initiate criminal investigation on whether there have been contraventions to the BO. However, there will be exceptions where there is information showing that registered persons under the BO are suspected to be involved in the erection of UBWs or that the registered persons knowingly submit misrepresented documents to BD, etc.

HANDLING OF UBWS IN HOUSES 4 AND 5 OF NO. 4 PEEL RISE

The properties

11. According to BD's information and file records, the occupation permit for Houses 4 and 5 of No. 4 Peel Rise was issued on 30 April 1992. It stipulates that, inter alia, House 4 is a three-storey and House 5 a two-storey family residence for domestic use. Both Houses have open parking area for non-domestic use. Since the issue of occupation permit, BD has received one submission for A&A works in respect of Houses 4 and 5 in 2000, comprising addition of a glass canopy near the front entrances of Houses 4 and 5, conversion of the four open car parking spaces situated between Houses 4 and 5 into landscaped area and alteration to external staircases at the gardens of Houses 4 and 5. The submission was approved and the works was completed in 2001. According to the Land Registry's records, the current owner acquired the subject properties in June 2000.

BD's follow-up and enforcement actions since media reports on the case in late June

12. After the media reported on 21 June that the case involved the then Chief Executive-elect, pursuant to the above procedures for handling cases involving senior Government officials and celebrities, BD immediately deployed its staff to visit the subject premises for inspection on the same day and made detailed records of the inspecting findings. In response to media reports on 22 June concerning a suspected unauthorised structure in the garden of House 4, BD sent its staff to inspect the premises again on the same day. According to the results of the inspections on the two days, apart from the glass shelter in the garden of House 5 which was reported by the media on 21 June and removed before BD's inspection in the same morning, BD staff identified the following UBWs in the two premises:

House 4:

- (a) a trellis that was erected in the garden and reported by the media on 22 June 2012. The trellis has a width of about 6m and a depth of about 1m;
- (b) a structure erected next to the trellis, with an area of about 2m by 2m and about 2.5m in height;
- (c) a metal gate erected at the access road near the house;

House 5:

- (d) the parking space on the ground floor was enclosed and a roof cover was erected; and
- (e) the location beneath the parking space and at the garden level was altered into a floor space with an area of about 6.4m by 3.5m and a height ranging from about 1.7m to 2m.

13. In accordance with the established procedures, BD issued an advisory letter to the owner on 22 June, advising him to rectify the above irregularities as soon as possible. Under the prevailing enforcement policy, UBWs located at the exterior of buildings (in particular those situated on the rooftops and podiums as well as in yards and lanes) are “actionable” items. As such, with the exception of the metal gate near House 4 which is an amenity feature, all the other four UBWs listed above are “actionable” items. According to the inspection carried out by BD staff on 26 June, the trellis and the structure erected next to the trellis at House 4, as well as the glass shelter in the garden and the enclosure and roof cover of the parking space on the ground floor of House 5, had been removed. As the removal works were minor works items under the MWCS, the owner may choose to follow the simplified requirements of the MWCS in carrying out the rectification works, without the need to obtain BD’s prior approval of the relevant building plans and consent to commencement of works pursuant to section 14(1) of the BO. According to the requirements of the MWCS in respect of the relevant minor works items, the prescribed registered contractor appointed by the owner submitted the relevant documents to BD on 29 June; BD finished checking the documents and acknowledged the receipt of the same on 3 July.

14. As regards the floor space at the garden level beneath the parking space of House 5, the authorised person (AP) submitted a remedial proposal on 20 August and, following discussion with BD on the details of the works, submitted a revised proposal on 11 October, which was accepted by BD on 30 October. BD will continue to follow up with the AP.

Floor space on lower ground floor of House 4

15. In response to media reports on 26 June this year that there might be an “unauthorised servant’s room” on the lower ground floor of House 4, BD conducted on-site inspection on the same day. At that time, BD did not identify any “unauthorised servant’s room” or new UBWs, but

noticed that the position of part of a wall of the original store room did not match with that shown on the original approved plan. As according to the inspection on 26 June it was yet to be confirmed whether that wall was a UBW, and there was no sign of obvious danger, BD, in accordance with the established practice, issued a letter on the following day (i.e. 27 June) to the AP and copied to the owner, requesting for information on the construction and purpose of the wall. This practice was consistent with the established practice of BD in handling other cases. Further to its letter of 27 June to the owner and AP requesting for information on the construction and purpose of the wall, BD thereafter issued three written reminders to the AP urging him to provide the information.

16. When replying to media enquiries on 28 June, BD responded according to the facts that it did not identify any “unauthorised servant’s room” or new UBWs during the inspection on 26 June. In its reply, BD also pointed out that it was following up with the AP appointed by the owner because while it did not identify any “unauthorised servant’s room” as reported, it noticed that the position of part of a wall did not match with that shown on the original approved plan, and therefore needed to follow up with the AP appointed by the owner. In accordance with the established practice, BD will not announce investigations that have yet to be completed. Therefore, in its reply to media enquiries on 28 June, it did not mention the above wall, which was still under investigation.

Storage cabinet in House 5

17. During the inspection on 26 June, BD staff noticed that the enclosure and roof cover of the parking space on the ground floor at House 5 had been removed. The storage cabinet originally placed in the parking space was thus exposed in open air and became an outdoor structure. After taking measurements of the storage cabinet, BD staff confirmed that the storage cabinet was an “actionable” UBW. BD staff have requested the AP to remove the storage cabinet and will continue to follow up.

Electrical retractable canopy at House 4

18. In relation to media enquires on 29 June on an unauthorised electrical retractable canopy at House 4, according to BD staff’s inspection on 9 July, the canopy was confirmed to be a UBW. However, since it is an amenity feature, it is not an “actionable” item. Therefore, while BD did not intend to issue a statutory order to the owner, it issued a letter to the owner on 19 July, advising him to remove the UBWs or

rectify the irregularities voluntarily.

Inspection after the owner issued a statement on his property

19. After the owner issued a statement on his property in the afternoon of 23 November, BD staff conducted inspection of Houses 4 and 5 together with the AP appointed by the owner in the afternoon of the first working day that followed (i.e. Monday, 26 November). The purpose of the inspection was to follow up on and investigate two UBWs mentioned in the statement, including:

- (a) a toilet on the ground floor at the yard of House 4; and
- (b) the floor space on the lower ground floor.

(a) Toilet on the ground floor at the yard of House 4

According to BD's inspection on 26 November, a roof cover was erected over the open yard on the ground floor of House 4. The space was altered to a toilet. Since the A&A works were carried out without the prior approval and consent of BD, they were UBWs. These UBWs were "actionable" items under the prevailing enforcement policy. During the inspection, it was noticed that part of the structure had been removed. BD will continue to follow up.

(b) Floor space on the lower ground floor

According to the inspection on 26 November, the condition of the wall of the store room was more or less the same as that revealed in the inspection on 26 June. BD staff immediately requested the AP to arrange for the opening up of that wall as soon as possible for detailed inspection. During BD's subsequent site inspection on 29 November, an opening had been made in the wall, and BD staff identified that there was an extended floor space of about 30 square metres behind the wall. After inspection and assessment, BD confirmed that the floor space was an "actionable" UBW and issued an advisory letter to the owner on 3 December, advising him to remove the UBW as soon as possible. The owner and AP are required to submit a remedial proposal in respect of the removal works to BD, and the works may only commence after BD has given its consent. As regards the wall itself, as it was erected within the area of the lower ground floor of the original building, and did not involve the structure of the building, upon assessment it is confirmed to

be an exempted works, which does not require BD's approval before erection.

Follow-up action by BD

20. Apart from taking follow-up actions in light of the inspection results, BD staff will continue to analyse and assess the information obtained in the inspection and follow up with the AP appointed by the owner with a view to determining the further enforcement action that should be taken.

**Development Bureau
Buildings Department
December 2012**