

For information

**Legislative Council
Subcommittee on Issues Relating to Policy on Industrial Buildings**

**Lease Enforcement Actions
on Non-conforming Uses of Industrial Buildings**

BACKGROUND

Land leases are private contracts between the Government and the landowners. The landowners are required to ensure that the uses of land are in compliance with the lease conditions. Whether a particular use is in breach of the lease conditions cannot be generalised as it depends on the actual operation of the particular use and the relevant lease conditions of the private lot. In fact, even the same type of buildings can be governed by land leases with different terms and conditions. It should be noted that land leases aim at administering use of land through private contracts, whereas statutory requirements such as safety are governed by separate legislation.

2. At present, the land lease of most industrial buildings specifies that the lot shall not be used for purposes other than "industrial and/or godown". Under such circumstances, if an industrial building is used for other purposes (e.g. retail purpose), it may be in breach of lease conditions unless the owner has applied for and obtained approval from the Lands Department (LandsD) for a waiver or modification of the user clause, and obtained the relevant planning permission in advance where applicable. Otherwise, LandsD has to carry out lease enforcement actions on the lease breach according to prevailing policy and guidelines.

GENERAL LEASE ENFORCEMENT POLICY

3. Given the huge number of private land leases and the extensive area and uses involved, it is not practicable for LandsD including its District Lands Offices (DLOs) to patrol every piece of private land (including multi-storey industrial buildings) regularly, nor is it cost-effective or efficient to do so for the purpose of lease enforcement. Instead, LandsD acts on complaints, referrals or enquiries about suspected lease breaches. Based on previous frequent lease breaches established, LandsD will also as necessary re-inspect black spots with a view to detecting and deterring further breaches.

Depending on the volume of complaints received, priorities may also be set to handle cases allegedly involving more serious and endangering breaches first and to take appropriate enforcement actions accordingly.

4. Generally speaking, if a breach of lease conditions is substantiated, LandsD will take appropriate lease enforcement actions according to the prevailing policy, procedures and priorities. The first step is to issue a warning letter to the owners requiring them to rectify the breach of uses. Upon issuing of warning letter, the owner concerned is responsible for ensuring that the substantiated lease breach cases must be purged or cease operation to LandsD's satisfaction within the period specified in the warning letters (normally within 28 days). After the breach is purged, LandsD will carry out regular re-inspections during the first 12 months after the lease breach to avoid and deter a recurrence of the breach.

5. If the breach is not rectified by the deadline, LandsD will proceed to take actions to register the warning letter in the Land Registry (LR), commonly known as "imposing an encumbrance". Where necessary and subject to priorities having regard to the circumstances of individual cases, LandsD may take further lease enforcement actions including re-entry or vesting under the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126). Should there be any recurrent breach upon re-inspection, subject to priorities LandsD may also proceed to issue the final warning letter to the concerned owners leading to vesting action under the Cap. 126 without any further warning. Generally speaking, priorities are accorded to cases with more serious breaches and those that may endanger public safety. As the land lease is enforced by LandsD in its capacity as landlord, such lease enforcement action does not involve prosecution nor penalty.

6. In general, the above-mentioned approach is also adopted in the handling of lease breaches in industrial buildings. The statistics for lease enforcement action taken by LandsD in respect of non-conforming uses in industrial buildings in 2018 and 2019 are as follows:-

Number of cases	2018	2019
Number of complaints received by LandsD in respect of suspected non-conforming uses in industrial buildings	1 440	1 460
Number of substantiated cases with warning letters issued during the year	536	515

Number of substantiated cases with breaches being rectified during the year	279	340
Number of substantiated cases with warning letters registered in the Land Registry during the year	164	158
Number of substantiated cases with re-entry/ vesting action taken during the year	0	0

Remarks: As the processing of a case may straddle different years, the cases with breaches being rectified and the cases with warning letters registered in the LR in a year may not necessarily correspond to the cases with warning letters issued in the same year.

RISK-BASED ENFORCEMENT ARRANGEMENTS

7. To address public concerns about unauthorised use of premises in industrial buildings that constitute lease breaches and might endanger public safety, LandsD has commenced the risk-based enforcement action against lease breaches involving the change of uses in industrial buildings since August 2016, targeting industrial units in breach of the lease matching two conditions:

- (i) there are other premises in the same industrial building currently issued with Licenses for Manufacture and/or Storage of Dangerous Goods (DGLs) by the Fire Services Department (FSD); and
- (ii) the breach of uses attracts attract the flow of people, such as learning centres, religious gathering places, shops, restaurants and places of entertainment/recreation, etc.

8. The regulatory arrangement aims at protecting the safety of the public such as learners and customers accessing the units because an obvious risk will be posed to these members of the public if the units are located in industrial buildings which have premises issued with DGLs by FSD. Hence, for cases meeting the above two criteria, LandsD will escalate its enforcement action and deal with the case stringently by issuing warning letters to the owners of these industrial building units requiring rectification of the breach of uses within 14 days. LandsD will proceed with re-entry or vesting action under the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) if the breaches are not rectified in time. As at 31 March 2020,

LandsD has handled 168 cases of this category and most of the lease breach cases were purged successfully after issuance of warning letters. Two outstanding cases are being closely monitored and followed up by LandsD.

9. As for other categories of lease breaches in industrial buildings (including industrial building premises to which the public are attracted but without DGLs issued by the FSD at other premises in the same industrial building, and cases with breaches of uses involving a smaller flow of people), LandsD will continue with the current arrangement of issuing warning letters to the owners requiring them to rectify the breach of uses within a specified period. Failure to do so will lead to registration of the warning letters in the LR. The registration imposes an encumbrance on the lot that buyers of the property should be aware and should generally speaking affect transaction of the property. LandsD will reserve the right to take further lease enforcement actions in the light of the circumstances of the case and its enforcement priorities.

WAIVER APPLICATION POLICY

(I) General Policy

10. Individual owners intending to use their premises in industrial buildings held under multiple ownership for uses other than those permitted under the lease may apply to the respective DLO of LandsD for a temporary waiver permitting the intended use. In processing the applications, DLO will take into account the nature of the intended use and consult the relevant departments including the Buildings Department (BD), Planning Department and FSD¹, and conduct local consultation through the District Offices where necessary. LandsD will, depending on the comments received from the relevant departments, consider in the capacity of the landlord whether to issue the waiver for the use. If the application is approved, the applicant will have to pay a waiver fee on full market value basis and an administrative fee, and accept other terms and conditions stipulated.

(II) Relaxing of Waiver Application Policy under New Round of Revitalisation of Industrial Buildings

11. The Chief Executive has announced in her 2018 Policy Address that the Government will permit the certain uses on a time-limited basis (i.e.

¹ Certain kinds of intended use have no chance of being regularized or less likely to be regularized for reasons that (a) the intended use is not always permitted in the respective zones of the Outline Zoning Plan; (b) planning permission cannot be obtained; or both FSD and BD would normally object in principle.

at any time during the five-year period between 1 February 2019 and 31 January 2024) to operate at premises within existing industrial buildings without the need for making separate waiver applications to LandsD, and paying waiver fees and an administrative fee which would otherwise be payable, so long as such uses are always permitted under the land use zoning of the site on the relevant Outline Zoning Plan as “Column 1” (i.e. always permitted) uses.

12. The uses covered by the above-mentioned permission includes, (i) Art Studio; (ii) Office (Audio-visual Recording Studio); (iii) Office (Design and Media Production); (iv) Office (used by “specified creative industries” only); and (v) Research, Design and Development Centre. These permitted uses should not involve uses/activities that would attract visiting members of the general public by providing direct services or goods, such as conducting hobby classes, exhibitions and sales activities, or providing rehearsal facilities for any party other than the operator, owner and tenant(s) of the premises.

13. In the event of LandsD receiving any complaint for a use falling outside the permitted uses set out in the Permission and constituting a breach of the covenants under the land lease, investigation and, where appropriate, lease enforcement action will be considered after LandsD seeking advice from the relevant bureaux² on the alleged non-compliant use outside the scope of the above-mentioned permission.

Lands Department
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² Home Affairs Bureau will advise on the use of “Art Studio”; Commerce and Economic Development and Innovation and Technology Bureau will be responsible for advising on the uses of “Office (Audio-visual Recording Studio)”, “Office (Design and Media Production)”, “Office (used by “specified creative industries” only)” and “Research, Design and Development Centre”.