

Legislative Council
Subcommittee on Issues Relating to Shopping Centres,
Markets and Carparks in Public Rental Housing Estates and
Home Ownership Scheme Estates

Supplementary Information

The Subcommittee on Issues Relating to Shopping Centres, Markets and Carparks in Public Rental Housing Estates and Home Ownership Scheme Estates (the Subcommittee) requested, in a letter dated 5 March 2018, the Government to provide supplementary information on parking spaces for electric vehicles in carparks under the Hong Kong Housing Authority (HA), as well as issues relating to the operation of commercial facilities, enforcement of land lease conditions, car parking facilities, renovation and alteration works, environmental hygiene and rental of social welfare organisations, etc. in HA's divested properties stated in LC Paper No. CB(4)461/17-18(01) as per the discussion in the Subcommittee's meeting on 26 February 2018. The relevant information is provided below.

Parking Spaces for Electric Vehicles (EVs)

2. As at end-December 2017, there were about 580 parking spaces in carparks under HA installed with EV charging facilities, including about 450 monthly parking spaces and about 130 hourly parking spaces.

Operation of Commercial Facilities

3. The Government has, in the past, explained to the Legislative Council on various occasions¹ the background and objectives of the divestment of retail and car parking facilities by the HA in 2005 and the mechanism for regulating these facilities. The Government and HA have all along been paying attention to the operation of the divested properties and performing

¹ Including the motion debate on "Vigorously promoting healthy market competition to counteract the market dominance of Link REIT" moved by Hon YUNG Hoi-yan on 23 November 2016, and the questions on "The duty of the Hong Kong Housing Authority to secure the provision of amenities ancillary to housing" by Hon Jeremy TAM on 6 December 2017 and "Commercial facilities divested by the Hong Kong Housing Authority" by Hon Alice MAK on 17 January 2018, etc.

regulatory actions in accordance with the laws and contracts. If there is evidence showing any breach of the requirements under the regulations, lease conditions, or the restrictive covenants entered into with HA, the relevant government departments and HA will follow up seriously and take corresponding actions. At the same time, when the common parts of the housing estates or courts are affected by the operation of owners of the divested properties, such as obstruction of passages or environmental hygiene problems, the Deed of Mutual Covenant (DMC) Managers will also take appropriate actions with the powers conferred to them under the DMCs.

4. However, as with other private owners, if the above requirements have been complied with, the Government and HA cannot and will not interfere with their rights to use their properties and their decisions on daily operations, such as disposal of the properties, determination of rent, letting arrangements, renovation works, and tenant mix, etc.

Enforcement of Land Lease Conditions

5. In respect of lease enforcement, the Lands Department (LandsD), in the capacity of the landlord, handles the leased land under the conditions of the land leases. As with other private properties, LandsD mainly acts on complaints, referrals or enquiries about suspected breaches of the leases of the divested properties by conducting inspections and taking follow-up actions in accordance with the existing procedures. Depending on the circumstances, LandsD will also consult the relevant policy bureaux/government departments and seek legal advice. If breaches of the lease conditions are confirmed, LandsD will take appropriate lease enforcement actions.

6. Generally speaking, if breaches of the lease conditions are established, LandsD will issue warning letters to demand the owners to rectify the breaches or process the applications made by owners for regularisation based on the actual circumstances. Where the breaches have not been rectified or regularised, LandsD will register the warning letters at the Land Registry (commonly known as "imposing an encumbrance"), and, where necessary, take further lease enforcement actions including re-entry of land or vesting the relevant interests in The Financial Secretary Incorporated pursuant to the provisions of the Government Rights (Re-entry and Vesting Remedies) Ordinance.

7. HA, as one of the owners of these housing estates, maintains communication with other owners on matters relating to the daily management of the relevant housing estates, with a view to protecting HA's rights under the DMCs and the restrictive covenants. If HA is aware of any suspected breach of the land leases, HA will refer such to the DMC Managers, Owners' Corporation and relevant District Lands Offices for follow-up. For example, HA has already referred some cases covered by the said LC paper involving alleged non-compliance of lease conditions by renting the parking spaces to non-residents to LandsD for follow-up.

Car parking Facilities

8. Regarding the car parking facilities, the land leases generally contain provisions stipulating the number of parking spaces to be provided, the types of vehicles to be parked, etc. in the relevant lots. Individual land leases also contain provisions stipulating that some of the parking spaces shall be provided for parking of vehicles of the residents or visitors of the nearby housing estates or courts. The owners concerned may apply to LandsD for temporary waivers if they wish to waive some specified provisions of the original leases. Residents or management companies can file a complaint with LandsD in case they find that individual owners of parking spaces are in breach of the lease conditions. If breaches of the lease conditions are confirmed, LandsD will take appropriate lease enforcement action.

9. In addition, according to the restrictive covenants in relation to the carparks in the assignment deeds of the divested properties, if HA owns all the residential units in the relevant housing estates or courts, the carparks can only be sold as a whole, i.e. individual parking spaces cannot be sold separately. These restrictive covenants also apply to the subsequent assignees of the divested retail and parking facilities. However, if individual carparks are not subject to the relevant restrictive covenants², their owners may dispose of the parking spaces separately to individual owners, but these owners are still required to comply with the relevant lease conditions.

10. As with all other private owners, owners of the car parking facilities

² Since the residential units in Home Ownership Scheme (HOS) courts and Tenants Purchase Scheme (TPS) estates had already been sold when HA divested relevant commercial facilities in 2005, the assignment deeds of these properties do not include the restrictive covenant in relation to carparks.

will decide on the mode of operation of their car parks, including the rental and concession arrangements for parking spaces therein.

Renovation and Alteration Works

11. The public has raised concerns about the impact of renovation works of the divested properties on the tenants and the public. At present, all divested properties are subject to the Buildings Ordinance. Any building works involving major alterations of the building structure and uses requires submitting applications to the Building Authority, and the Building Authority has already delegated the powers to process such applications to the Independent Checking Unit (ICU) under the Office of the Permanent Secretary for Transport and Housing (Housing). The ICU adopts the same enforcement arrangements as the Buildings Department (BD). It will, according to the guidelines of BD, refer plans to other relevant Government departments, including the Fire Services Department, Lands Department and Planning Department under the centralised processing system when processing an application. These departments will make an assessment on issues under their purviews to ensure that the fire services equipment is up to standard, and the land lease conditions and statutory planning requirements are complied with.

12. For the several cases involving suspected unauthorised alteration works mentioned in the LC paper such as enclosing the entrance and exits as well as alteration works of the shopping centre, etc., HA has already referred them to the relevant Government departments for follow-up and investigation. As we understand, amendments on the building plans are required for some works which do not comply with the land lease conditions. However, we are not aware of cases involving violation of the Buildings Ordinance.

Environmental Hygiene

13. For the several cases in the paper relating to environmental hygiene, the Food and Environmental Hygiene Department (FEHD) will, upon receiving these complaints, conduct site visits together with the property management companies, and provide appropriate recommendations to the companies' responsible persons, urging them to step up efforts on cleansing, pest control, etc. FEHD will continue to monitor the situation and take appropriate actions, with a view to ensuring the environmental hygiene of the relevant locations.

Regarding the case relating to illegal sewer connection mentioned in the LC paper, HA has already referred it to the Environmental Protection Department for follow-up. As we understand, the illegal act has already been convicted.

Rental Arrangements for Social Welfare Organisations

14. The assignment deeds of some divested properties also contain the Welfare-letting Covenant, which requires the owner to let certain designated commercial units at concessionary rent to non-profit-making organisations nominated by the nominating authorities (including the Social Welfare Department, Education Bureau, etc.) for the operation of welfare, education and community facilities. Changes in the management or ownership of these units will not affect the continual use of the premises for social services and educational purposes. When the divested properties are to be sold subsequently, HA will write to the new owners, reminding them of the requirements under the Welfare-letting Covenant, and continue to maintain close liaison with the nominating authorities for the provision of necessary assistance to the relevant organisations.

15. The Welfare-letting Covenant also specifies that the rent for these units shall not exceed the level of concessionary rent for HA's welfare premises. For premises used as kindergartens, the rent for the initial term shall not exceed half of the market rent as assessed by HA. For the renewal term, the rent shall not exceed half of the market rent or the concessionary rent, whichever is the higher. The current level of concessionary rent is \$55 per square meter per month (excluding rates and government rents). HA's Commercial Properties Committee will review the concessionary rent once every three years. In determining the level of the concessionary rent, HA has taken full account of the cost of management, maintenance and other recurrent expenses for its welfare premises. Owners of the divested properties can only charge the relevant organisations the concessionary rent determined by HA. No management fee or other fees shall be charged. Otherwise, HA will treat it as a breach of the restrictive covenant.

16. In the past, HA dealt with several cases of suspected breach of the Welfare-letting Covenant by owners of the divested properties, which involved the owners allegedly over-charging the operating organisations additional rent or management fees, as well as matters relating to fitting-out works and the relocation of premises. The relevant problems have been solved upon HA's

intervention. HA will continue to maintain liaison with the nominating authorities for the provision of assistance to relevant organisations where necessary. HA will also write to the new owners of divested properties, reminding them of the requirements under the Welfare-letting Covenant. If any breach of the various restrictive covenants is found, the Housing Department will follow up and take appropriate actions.

17. There are views suggesting that the Government and HA should increase the number of premises subject to the Welfare-letting Covenant. This proposal is not feasible. At present, there are about 170 premises subject to the relevant covenants. The number and location of premises subject to the Welfare-letting Covenant are set out in the assignment deeds of the relevant divested properties. It is not impossible for HA to alter the content of the assignment deeds unilaterally. As to certain organisations renting premises through commercial leasing arrangements to provide services, the Government and HA do not have the right to interfere with the relevant leasing arrangements. We understand that certain owners of the divested properties may lease certain premises to non-profit-making organisations under concessionary rent on a voluntary basis. We support such practices and encourage the relevant owners to maintain communications with the concerned organisations.

Conclusion

18. HA, as one of the owners of the public housing estates or courts, maintains continued communication with other owners in the daily management of such estates or courts with a view to protecting HA's rights and interests under the DMCs and the restrictive covenants, and improving the living environment of the residents. In respect of public housing estates, HA will invite owners of divested properties to attend meetings of the Estate Management Advisory Committee as necessary to listen to residents' views on their services, so as to improve the quality of services. Where necessary, HA will refer residents' requests to the management of the companies concerned.

19. We encourage stakeholders to offer views to owners of divested properties, such that they can better understand the concerns of the residents and the public when formulating their business strategies and achieve a win-win outcome.

**Housing Department
Transport and Housing Bureau
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