

Executive Summary

Direct Investigation into Regulation of Fire Safety Measures for New Territories Exempted Houses

Background

The Building (Planning) Regulations under the Buildings Ordinance stipulate that all buildings shall be provided with an emergency vehicular access (“EVA”) to facilitate rescue services. As New Territories Exempted Houses (“NTEH”) are not subject to the Regulations, the Government can only use administrative means to regulate fire safety measures for NTEHs.

2. The efficacy of fire safety measures has a direct bearing on the lives and safety of NTEH residents. The Ombudsman, therefore, conducted this direct investigation to look into the current system and procedures for regulating fire safety measures for NTEHs, with a view to identifying inadequacies.

A Guide to Fire Safety Requirements for NTEHs

3. Since 1 July 2006, the Government has been using “A Guide to Fire Safety Requirements for New Territories Exempted Houses” (“the Guide”), as an administrative means to regulate fire safety measures for NTEHs. Salient points of the Guide are as follows:

- (1) Houses within a circle with a radius of 30 metres measuring from the site of the house proposed to be built are collectively regarded as a “cluster” of houses.
 - (a) Where a cluster comprises only 9 houses or less (including the proposed house), there will be no need to provide an EVA.
 - (b) Where a cluster comprises 10 houses or more (including the proposed house), the provision of an EVA will be required.
- (2) If provision of an EVA is impracticable due to problems such as geographical constraints or land ownership issues, an NTEH applicant should apply to the Lands Department (“Lands D”) to adopt one of the following alternative safety measures—
 - (a) automatic sprinkler system;

- (b) fire detection system and hose reel system (applicable to cases where there is no fire separation between floors of the three-storey NTEH); or
- (c) fire detection system and fire extinguisher on each floor (applicable to cases where there is fire separation between floors of the three-storey NTEH).

If the NTEH applicant opts for alternative safety measure (b) or (c), he or his representative will have to attend a fire safety training course arranged by the Fire Services Department (“FSD”) and obtain the relevant certificate before applying for a Certificate of Compliance for the NTEH.

FSD’s Fire Risk Assessment of NTEHs

4. FSD had explained that the provision of an EVA is to ensure that in case of emergency, emergency vehicles, including fire engines and ambulances, can access the houses concerned quickly and safely. With regard to handling of emergencies, an EVA is certainly useful in protecting the lives and property of residents of NTEHs.

5. FSD accepts what are contained in the Guide as the fire safety requirements for NTEHs (which, among other things, allow NTEH applicants to adopt alternative safety measures instead of providing an EVA). The Department holds that the overall fire risk of NTEHs is relatively low (given that village houses are low-rise, that each floor accommodates only a small number of residents, and that villages are sparsely populated), and NTEH residents have simpler and more direct means of escape compared with residents of multi-storey buildings. Therefore, the standard of fire safety requirements for NTEHs is lower than those for high-rise buildings.

Our Findings

6. Our investigation has revealed that not only are the fire safety requirements in the Guide for NTEHs less stringent than those for high-rise buildings, the implementation of the Guide had also failed to meet the original objective of providing adequate fire safety protection for NTEH residents. Furthermore, Lands D’s and FSD’s monitoring of the fire safety measures for NTEH is less than satisfactory.

Requirement for Provision of EVA More or Less Non-existent

7. According to the stipulations in the Guide (paragraph 3 above) and FSD’s explanation (paragraphs 4 and 5 above), provision of an EVA is certainly the most preferred option among all the fire safety measures. The alternative safety measures, while allowed by the Government, are in fact second-rate.

8. Nevertheless, since the introduction of the Guide, in over 90% of the cases in which Lands D considered the provision of an EVA necessary, no EVA was eventually provided, all because the land owners concerned refused to “lease” their private land to the NTEH applicants for such provision of EVA. Consequently, the NTEHs are not served by EVA, which is a more effective means for fire safety protection. Since 2011, the situation has further worsened: nearly all cases ended up without an EVA.

9. Moreover, even when an NTEH applicant succeeds in providing an EVA, there is no assurance that the EVA would not be blocked or rescinded later on, and there would be little that Lands D and FSD could do in such cases:

- (1) Although Lands D would have imposed a lease condition on the owner of the newly built NTEHs that he must provide an EVA and keep it free from obstruction, the Department can, in case of non-compliance, usually only issue a warning letter to the owner and register it against the title of the property concerned on the Land Register. Indeed, it would be extremely difficult for Lands D to resort to the ultimate action, i.e. resumption of the NTEH site.
- (2) Generally speaking, FSD can invoke the Fire Services (Fire Hazard Abatement) Regulation to require the removal, before a specified deadline, of any object obstructing an EVA.

Nevertheless, EVAs of NTEHs often lie on private land. To comply with the EVA requirement in the Guide, an NTEH applicant often needs to obtain the consent of the relevant private land owner to use the land as an EVA. Such consent is, after all, only private agreement between the land owner and the NTEH applicant. The Government (including Lands D) is not a party to it. As a matter of fact, the land owner has not given any undertaking to the Government, nor is the Government entitled to enforce any terms under such agreement against the land owner to ensure that the land will be permanently used for EVA purpose. Hence, the land owner can change the use of the land so long as the new use is in keeping with the lease conditions (such as farming or planting trees). The Government basically cannot intervene. In other words, an EVA on private land can lawfully “disappear” at any time.

FSD has also admitted that it is not empowered to take enforcement action in the above circumstances.

10. Overall, while NTEH owners are required by the Government to provide an EVA under the Guide, that requirement exists more in form than in substance.

No Dedicated Database for EVAs of NTEHs

11. Currently, neither Lands D nor FSD has set up a database for the EVAs of NTEHs.

12. Lands D considers it unnecessary to set up such a dedicated database because the information relating to EVAs in its Land Status Plans is sufficient to cope with the Department's operational needs in handling applications and complaints from the public. However, from the complaint cases handled by Lands D and FSD about obstruction of EVAs, we have learned that it often took several weeks or even longer for Lands D to confirm to FSD whether the access road concerned was in fact an EVA. This would affect the efficiency of FSD's enforcement action.

No System of Regular Inspections of Villages and EVAs

13. At present, neither Lands D nor FSD regularly inspects the EVAs of NTEHs. They conduct site inspections only in response to complaints.

14. While FSD officers inspect the villages from time to time, the Department has admitted that it does not have in place any schedule or a fixed frequency for such inspections. In fact, FSD's records show that its inspections of villages are conducted at random without any regular pattern.

Existing NTEHs Not Covered by Alternative Safety Measures

15. As already pointed out by Lands D in 2001, when NTEHs increase to a certain number, there would be a "cumulative effect" (including greater difficulty for fire engines and ambulances to access a house in distress), which means that the provision of an EVA is essential. In other words, an EVA is for the benefit of **all** the NTEHs within a cluster, not just the one newly built.

16. By the same logic, if provision of EVA is impracticable and fire engines and ambulances may not quickly reach a house in distress, it is advisable for all the houses within the cluster, including those existing ones, to adopt the alternative safety measures mentioned in the Guide. Having alternative safety measures in the new built house only is not going to help any of the existing houses in the cluster.

17. It is a fact that the Guide is not applicable to pre-existing NTEHs and Lands D cannot require all existing houses to adopt fire safety measures. However, the Government/FSD should at least clearly apprise the residents of existing houses of the increased fire risks caused by the "cumulative effect" of houses, and advise them to adopt fire safety measures in their own houses.

Lax Procedures in Allowing Representatives to Attend Fire Safety Training Courses

18. According to Lands D's internal instructions, if an NTEH applicant is unable to attend a fire safety training course (paragraph 3(2) above) on grounds of old age, poor health or being outside of Hong Kong, he may ask a fellow resident of the same village to do so on his behalf.

19. From the cases we studied, we have noticed that some NTEH applicants were allowed to attend the fire safety training course by proxy simply on the excuse of "busy at work". Furthermore, Lands D only requires the representative of the NTEH applicant to be a resident of the same village, not necessarily someone who is going to live in the same house. Clearly, in case of emergency, such a representative may not always be able to come to the scene to use the fire safety equipment installed in the house concerned.

Recommendations

20. In the light of the above findings, The Ombudsman has made the following recommendations to Lands D and FSD:

Lands D and FSD

- (1) to comprehensively review, jointly with the policy bureaux and departments concerned, the Guide to evaluate whether it is providing adequate protection to NTEH residents against fire hazards, and to explore feasible improvement measures;

Lands D

- (2) to set up a dedicated database for the EVAs of NTEHs, and make it open to the public for inspection;
- (3) to tighten up the procedures for approving attendance of fire safety training courses by proxy, stipulating that the NTEH applicant can only appoint a resident who is going to live in the same house as representative unless he has genuine difficulties;

FSD

- (4) to formulate a system of regular inspections of villages and EVAs, so as to ensure quick and safe access by firefighting and rescue services in case of emergency; and

- (5) to step up publicity and education on fire safety among NTEH residents, clearly informing them of the associated fire risks and advising them to adopt fire safety measures in their own houses.

Office of The Ombudsman
August 2015