

**Enforcement against the irregularities of a plastics recycling yard by
Environmental Protection Department, Planning Department,
Lands Department and Buildings Department
Investigation Report**

On 15 September 2021, the complainant made a complaint to this Office.

The Complaint

Allegation (1)

2. A plastics liquefaction plant (“the Plant”) near the complainant’s apartment emitted odour causing air pollution, and caused noise nuisance. After receiving complaints repeatedly from the complainant since April 2018, the Environmental Protection Department (“EPD”) prosecuted the operator concerned. However, the Plant resumed operation in early 2021.

3. The complainant was dissatisfied that EPD had failed to follow up on the problem rigorously, and failed to resolve it. He was also dissatisfied with EPD’s failure to accede to his request for employing scientific methods to test the pollutants emitted by the Plant.

Allegations (2) to (4)

4. In 2021, the complainant complained to the Planning Department (“PlanD”) that the Plant was a suspected unauthorised development. PlanD replied that since the site had been used for workshop and storage purposes before the relevant Development Permission Area (“DPA”) Plan was gazetted, the Plant was not an unauthorised development. However, the complainant considered that the Plant should be regarded as an “industrial” rather than “workshop” use.

5. The complainant had also complained to the Lands Department (“LandsD”) that the Plant had occupied Government land and violated the permitted land use. In June 2021, LandsD removed the hoardings and the iron gate on the Government land, but the Plant re-erected the hoardings and iron gate in July 2021.

6. Moreover, the Plant started to construct its roof in August 2021. The complainant repeatedly requested PlanD and LandsD to follow up on this matter. Although LandsD had referred the case to the Buildings Department (“BD”), the construction of the roof was still completed in September 2021.

7. Based on what mentioned in **paragraphs 4 to 6**, the complainant complained that:

- PlanD had failed to take enforcement action on the wrong basis that the Plant was not an unauthorised development, and failed to stop the construction of the Plant’s roof (Allegation (2));
- LandsD had failed to follow up on the irregularities of the Plant rigorously, and failed to stop the construction of the Plant’s roof (Allegation (3)); and
- BD had failed to take action against the construction of the Plant’s roof after receiving LandsD’s referral of the case (Allegation (4)).

Our Findings

Allegation (1)

EPD’s Procedures for Handling Complaints of Air Pollution and Noise

8. Upon receiving complaints of air pollution and noise, EPD would send officers to trace the source of odour and noise. Based on the investigation result, EPD would take action under the Air Pollution Control Ordinance (“APCO”) or the Noise Control Ordinance (“NCO”), including issuing Air Pollution Abatement Notices or Noise Abatement Notices to require the persons concerned to take measures to abate air pollution or noise before a specified date.

9. Any person who fails to comply with an Air Pollution Abatement Notice or a Noise Abatement Notice commits an offence. EPD would conduct compliance inspections after issuing statutory notices.

Methodology for Air Pollution Assessment

10. Section 9 of the APCO stipulates that the Secretary for Environment may issue a technical memorandum for assessment of air pollution¹. According to the memorandum, EPD may adopt various methods for air pollution assessment based on actual circumstances, including using equipment to measure whether the concentration of air pollutants is in excess of relevant standards. It can also assess whether the air pollutants have caused a nuisance by sniffing.

11. Moreover, pursuant to section 10(2) of the APCO, EPD, in addition to the aforesaid technical memorandum, may take into account other factors, such as whether or not the emission has caused or constituted any objectionable odour or irritation of the eye, nose or skin, to determine whether the emission of air pollutants has caused air pollution.

Sequence of Events

12. Between January 2018 and November 2021, EPD received 27 complaints about air pollution caused by the plastics recycling yard, i.e. the Plant, at the location concerned.

13. EPD's inspections found that three operators ("Operator A", "Operator B" and "Operator C") had operated the plastics recycling yard at different times. EPD's major actions for handling the air pollution complaints are summarised below:

Operator A

- (1) In April 2018, the complainant made the first complaint to EPD about odour nuisance caused by a plastics recycling yard at the site. EPD's five inspections in April and May revealed that the odour nuisance was caused by the plastics recycling yard, which was being run by Operator A at that time.

¹ Pursuant to section 2 of the Air Pollution Control Ordinance, air pollution means an emission of air pollutant which either alone or with another emission of air pollutant—

- (a) is prejudicial to health;
- (b) is a nuisance;
- (c) imperils or is likely to imperil the safety of or otherwise interferes with the normal operation of aircraft; or
- (d) is determined to be air pollution under a technical memorandum.

- (2) In May 2018, EPD issued an Air Pollution Abatement Notice to Operator A, demanding it to abate the emission of air pollutants before a specified date to avoid emitting or causing objectionable odour to the residents nearby.
- (3) From May to December 2018, EPD officers conducted ten inspections. During an inspection in November, they found breaching of the requirements of the Air Pollution Abatement Notice as the plastics recycling yard caused odour nuisance. Consequently, EPD prosecuted Operator A.
- (4) In March 2019, Operator A was fined \$10,000 upon conviction under the APCO. In June 2019, EPD officers conducted two inspections and found that Operator A's plastics recycling yard had ceased operation.

Operator B

- (5) In December 2019, EPD received complaints about odour nuisance caused by a plastics recycling yard near the site. EPD's five inspections from December 2019 to April 2020 revealed that Operator B's plastics recycling yard had caused the odour nuisance.
- (6) In May 2020, EPD issued an Air Pollution Abatement Notice to Operator B, demanding it to abate emission of air pollutants before a specified date to avoid emitting or causing objectionable odour to the residents nearby.
- (7) In July 2020, EPD officers did not find any odour nuisance during their site inspection.

Operator C

- (8) In January 2021, EPD received complaints about odour nuisance caused by a plastics recycling yard at the site. EPD's four inspections from January to March 2021 revealed that Operator C's plastics recycling yard had caused the odour nuisance.
- (9) In March 2021, EPD issued an Air Pollution Abatement Notice to

Operator C, demanding it to abate the emission of air pollutants before a specified date to avoid emitting or causing objectionable odour to the residents nearby.

- (10) During the 15 inspections from March to September 2021, EPD officers did not find the plastics recycling yard causing odour nuisance anymore. In October 2021, EPD officers found the plastics recycling yard standing idle during their inspection.
- (11) In December 2021, the complainant complained to EPD against the plastics recycling yard for causing odour nuisance. EPD's two inspections in January 2022 found that some workers were clearing Operator C's plastics recycling yard and sorting out its stocks, seemingly preparing for resumption of operation. However, the recycling yard was not in operation during the inspections, nor did EPD find any bad odour.

14. The complainant also complained to EPD in September 2021 about noise nuisance coming from the site. EPD's major actions in handling this noise complaint are summarised below:

- (1) After six inspections in September and October 2021, EPD identified the scrap aluminium recycling yard at the site to be the source of noise.
- (2) In November 2021, EPD issued a Noise Abatement Notice under the NCO to the land owner of the scrap aluminium recycling yard, demanding the land owner to abate the noise before a specified date.
- (3) In January 2022, EPD officers conducted two inspections but the scrap aluminium recycling yard was not in operation at those times.

Response from EPD

Enforcement Action against the Plastics and Scrap Aluminium Recycling Yards

15. Pursuant to the APCO, EPD may issue Air Pollution Abatement Notices demanding the persons concerned to reduce emission of air pollutants, as well as to

cease the polluting process².

16. According to EPD's investigation, three consecutive operators had operated the plastics recycling yard at the site. The setup and machinery of the plastics recycling yard varied under different operators. As no information could show the existence of common directors or proprietors, and also no evidence could show any affiliation between them, they were three separate body corporates legally. Besides, only Operator A had been convicted. Hence, even though the other operators had caused air pollution at the same site again, EPD did not have sufficient legal grounds to stop their operation. It could only issue separate statutory notices to demand them to reduce the emission of air pollutants.

17. EPD may also issue Air Pollution Abatement Notice under the APCO to the owner of the premises (see **note 2**), besides issuing the same to the operators. Nevertheless, the polluting process was carried out by the operators, and the premises owner might not have participated or have any control in the process. In general, EPD will issue a statutory notice to the operator as far as its identity can be confirmed. That said, if EPD cannot confirm the identity of the operator and the premises owner refused to provide relevant information, EPD will consider issuing the statutory notice to the premises owner.

18. Since there was no evidence of the premises owner's participation in the operation of the plastics recycling yard or its affiliation with the operators concerned, EPD issued the statutory notices to the operators only, but not to the premises owner. As regards the noise nuisance of the scrap aluminium recycling yard, EPD could not confirm the identity of the operator based on the evidence collected. Since the premises owner refused to provide relevant information, EPD issued the Noise Abatement Notice to the premises owner only (see **para. 14(2)**).

19. EPD would conduct further inspections in respect of the Air Pollution Abatement Notice issued in March 2021 (see **para. 13(9)**) and the Noise Abatement Notice issued in November 2021 (see **para. 14(2)**), and would take enforcement action should any violations be found.

² Section 10(1) of the APCO stipulates that where the emission of air pollutants from a polluting process is causing air pollution, EPD may give an Air Pollution Abatement Notice to the owner of the premises or to the person carrying out the activity requiring him—

- (a) to cease the emission of air pollutants from the premises or to cease the operation of the polluting process;
- (b) to reduce the emission of air pollutants from the premises or polluting process;
- (c) to take other steps to abate the emission of air pollutants from the premises or polluting process.

Methodology for Air Pollution Assessment

20. What method will be used to assess whether air pollution (including nuisance) has been caused depends on the emission characteristics and the effects of the pollutants from a particular polluting process. For pollutants of a high emission volume, such as nitrogen dioxide and sulphur dioxide, equipment can be used to measure the concentration of pollutants. Since human's sense of smell is more sensitive than equipment, sniffing is the most appropriate and direct method to determine whether certain pollutants of a low emission volume has caused odour nuisance. A similar practice is widely accepted in Europe and America.

21. In response to the complainant's allegation that EPD had failed to test the air pollutants from the plastics recycling yard using scientific methods (see **para. 3**), EPD explained that plastics recycling yards are usually operating in a small scale (including the three plastics recycling yards under complaint), and their process involves liquefaction only but not burning of plastics, or combustion of a large amount of fuels. The concentration of the air pollutants generated is usually low, sometimes lower than the levels measurable by equipment. Hence, equipment is normally not used for assessment. In handling cases involving other plastics recycling yards, EPD had used measuring equipment to assist in odour assessment (mainly for measuring volatile organic compounds). There were instances where investigation officers could smell odour, but the concentration of air pollutants was still lower than the levels that equipment could measure.

22. For the grounds explained in **paragraphs 20 and 21** above, EPD would handle complaints about odour nuisance involving plastics recycling yards by means of sniffing. Two or more officers would assess and decide on the condition of the odour from a reasonable person's perspective. Compared with measuring by equipment, this method is more effective in telling the intensity of odour, hence enabling EPD to take enforcement action more effectively.

Our Observations and Comments

23. As shown in **paragraphs 13 and 14** above, EPD conducted a number of inspections after receiving complaints and took actions against the plastics and scrap aluminium recycling yards according to the law and its inspection outcomes. The actions included issuing statutory notices to the operators found to have caused air

pollution, demanding them to reduce the emission of air pollutants. After issuing the statutory notices, EPD also conducted further compliance checks as regards the statutory notices and prosecuted Operator A for violation. Since there was no evidence of affiliation among Operators A, B and C, EPD had to start over the statutory procedures against Operators B and C for their causing air pollution subsequently by issuing first Air Pollution Abatement Notice, despite successful prosecution of Operator A.

24. It was EPD's professional judgement why testing by sniffing was adopted for assessing the intensity of air pollution, and EPD has explained its rationale (see **paras. 20 to 22**). Since this is not an administrative matter and there is nothing apparently unreasonable in EPD's rationale, we refrain from making any further comments.

25. Overall speaking, EPD had taken proper actions to handle the complaints received according to the relevant legislation and its jurisdiction. No information could show that there has been any maladministration. We, therefore, consider Allegation (1) unsubstantiated.

26. Nevertheless, we consider it understandable for the complainant to feel aggrieved as the pollution problem has persisted for years. We, therefore, urge EPD to closely monitor the situation of the location and take enforcement action promptly when any non-compliance with the Air Pollution Abatement Notice or the Noise Abatement Notice is detected. In the long run, EPD should explore how to uproot the recurrent problem resulting from the change of operator.

Allegation (2)

Background

27. According to the approved Outline Zoning Plan, the site is mainly located within a "Green Belt", with a small part within an "Agriculture" zone.

28. Pursuant to the Town Planning Ordinance ("TPO"), any development within a DPA is unauthorised unless it is an existing use (i.e. building or land use that had already existed before the date of the first publication in the Gazette of the notice of the DPA Plan) or the use has got permission.

Response from PlanD

29. Since February 2021, PlanD received repeatedly from the complainant enquiries, or complaints alleging that the plastics recycling yard had caused environmental pollution, filled the land and placed scaffolding at the site.

30. From February to September 2021, PlanD officers conducted a number of site inspections and used drone to take photos. Some structures at the site and bags of objects placed in open space were found. PlanD suspected that metal and plastic scraps were processed and stored there.

31. PlanD then checked the past development status and uses of the site, especially those immediately before and after the DPA Plan was gazetted in 1999, to determine whether the suspected unauthorised development was an existing use before the draft plan was gazetted, as explained in **paragraph 28**.

32. PlanD reviewed the photos taken during its site inspection two days before the DPA Plan was gazetted, and the aerial photos taken by LandsD on the following day. All these photos showed that the site had already been used for open storage and as workshop at those times.

33. Based on the conditions observed during its site inspections, aerial photos and relevant records, PlanD considered the prevailing uses of the site to be largely the same as those before the DPA Plan was gazetted, namely rural workshop and storage uses. Accordingly, PlanD considered the evidence insufficient to show that the prevailing uses constituted an unauthorised development under the TPO, and hence no enforcement action could be taken.

34. In response to the complainant's assertion that the plastics recycling yard should be regarded as an "industrial" rather than "workshop" use (see **para. 4**), PlanD explained that according to the definition of the terms used in statutory plans, "rural workshop" means any place or premises that usually consists of low-rise buildings or temporary structures, is used for industrial purposes and has a small scale and less sophisticated. The site (including buildings/temporary structures and uncovered areas) was used for processing and storing recyclables. The operation was of a small scale and of simple industrial use. The premises consisted of low-rise buildings/temporary structures. As such, it was within the definition of "rural workshop" used in statutory plans.

35. For dealing with the problems about environmental pollution and erection of

scaffolding as alleged by the complainant (see **para. 29**), PlanD referred them to EPD and LandsD for further action. As regards his allegation that a roof was constructed in August 2021 (see **para. 6**), PlanD's inspections in August and September revealed that the site's condition was similar to that found in its earlier inspections (see **para. 30**). PlanD had already referred the issue of construction of the roof to LandsD in August.

Our Observations and Comments

36. Information shows that PlanD, after receiving the complaints, had conducted site inspections and reviewed relevant records. According to the information that PlanD had obtained, the site had been used for rural workshop and storage purposes before the DPA Plan was gazetted (see **paras. 32 and 33**).

37. Whether the site was used in a way within the definition of "rural workshop", and whether there was unauthorised development under the TPO were PlanD's judgement based on the evidence obtained. After scrutinising the relevant records, including the photos taken at the site and the aerial photos taken in 1999 (see **para. 32**), and PlanD's explanations, we do not find anything unreasonable in its judgement.

38. Regarding the complainant's allegation that PlanD had failed to stop the construction of the roof, we consider that since no unauthorised development was found in this case, PlanD would have acted *ultra vires* if it pursued the alleged unauthorised construction of the roof. It had handled the case properly by referring it to another department for further action (see **para. 35**).

39. Based on the explanations in **paragraphs 36 to 38** above, we consider Allegation (2) unsubstantiated.

Allegation (3)

Sequence of Events

40. The site comprised a private lot ("the Lot") which was agricultural land under the Old Schedule without restrictions on use under the land lease, provided that no unauthorised structures were erected (except surveyed squatter structures).

41. In April 2018, a District Lands Office ("DLO") of LandsD received a case referred by EPD, requesting the DLO to investigate some unauthorised structures at the

site, which were suspectedly in breach of the land lease. Subsequently, the DLO received a total of six complaints regarding the site referred by PlanD or 1823 in January, February and May 2020, and received the complainant's complaints in January, April and August 2021.

42. Major actions of relevant offices under LandsD for following up on the suspected irregularities at the site are summarised below:

- (1) In September 2018, the DLO made an enquiry with a former regional Squatter Control Office ("SCO"), also under LandsD, about the squatter survey records of the Lot. In February 2019, the DLO made the same enquiry with the former SCO.
- (2) In March and April 2020, the DLO asked the former SCO to provide the squatter survey records of the Lot. During an inspection, DLO officers found an iron gate and hoardings on the Government land adjacent to the Lot.
- (3) In June 2020, the DLO affixed a notice under the Land (Miscellaneous Provisions) Ordinance ("LMPO") on the iron gate and hoardings, demanding cessation of occupation of Government land before a deadline in July. During the inspections in September and October 2020, DLO officers found that the iron gate and hoardings had not been removed.
- (4) In November 2020, March and April 2021, the DLO made enquiries with the former SCO about the squatter survey records of the Lot and adjacent Government land.
- (5) In June 2021, the DLO arranged demolition of the iron gate and hoardings mentioned in sub-paragraph (3) above by its contractor, and installed a notice board specifying "Government land" on the site. In the same month, LandsD subsumed its regional SCOs under different DLOs gradually.
- (6) In July and August 2021, the complainant complained to the DLO about an iron gate having been newly erected and new structures being built at the site. In their inspection, DLO officers found that some structures

were being built on a private lot. Since the structures covered a larger area than that eligible for regularisation, the DLO referred the case to BD for further action according to their guidelines. (In a reply to the DLO in December 2021, BD said a removal order had been issued against the newly built structures.)

- (7) In October 2021, the DLO, based on the squatter survey records and the survey reports provided by the Survey and Mapping Office (“SMO”), confirmed that the unauthorised structures were in breach of land lease and inconsistent with squatter survey records. It then issued warning letters to the lot owner and the occupier of the structures demanding rectification.
- (8) In the same month, the DLO affixed notices under the LMPO for the second time on the iron gate and hoardings of the site, demanding cessation of occupation of Government land before a specified date. After the specified date, DLO’s contractor demolished the aforesaid iron gate and hoardings, and installed a notice board specifying “Government land”.
- (9) Later in the same month, the DLO received from the occupier an application for short-term tenancy to use the Government land concerned. Hence, the DLO suspended land enforcement action according to procedures. In the following month, the DLO rejected the application and resumed land enforcement action. It found that the occupier had re-erected the iron gate and hoardings.
- (10) In November 2021, the DLO found that the Lot’s irregularities were still not rectified. So it registered a warning letter against the property on the Land Registry.
- (11) In the following month, the DLO affixed notices under the LMPO on the site for the third time, demanding cessation of occupation of Government land before a specified date. A copy of the notice was also sent to the occupier by registered mail.
- (12) In January 2022, as the SMO’s survey reports showed that the squatter hut structures on the Lot had remained inconsistent with survey records,

the DLO cancelled the squatter survey number.

Responses from LandsD

43. LandsD's responses to the complainant's allegation were as follows:

- (1) Surveyed squatter hut structures on Government or private land are tolerated on a temporary basis. Consequently, before formulating any action plan, the DLO had to first confirm whether the structures on the Lot and the adjacent Government land were surveyed squatter hut structures. And if so, whether their condition was consistent with survey records. As the DLO was able to confirm right away that the iron gate and hoardings were not surveyed squatter structures based on the condition at the site, it could take action in June 2020 (see **para. 42(3)**).
- (2) Although the DLO had repeatedly requested the former SCO to provide the squatter survey records of the Lot, it could only receive a detailed reply until the former SCO was subsumed under the DLO. In June 2021, LandsD phased in the subsuming of regional SCOs to become Squatter Control Teams under DLOs to enhance efficiency (see **para. 42(5)**). The early coordination between the DLO concerned and the former SCO revealed a need for improvement. And improvement had already been seen under the new organisational structure. In September 2021, the DLO came across this outstanding case in the course of complaint handling. Its Squatter Control Team provided the squatter survey records of the Lot in the same month and took enforcement action subsequently.
- (3) As to why only the iron gate and hoardings at the site were demolished but the occupation of Government land was not cleared at the same time in June 2021, the reason was partly due to what are mentioned in subparagraphs (1) and (2) above, and DLO and its contractor could not enter and inspect the Government land enclosed by the iron gate and hoardings. Without fully grasping the site's condition, the contractor could not prepare a quotation for the clearance operation and draw up its details. Moreover, the DLO had difficulties in drawing up the statutory notice (including the site's boundary and the deadline for cessation of

occupation).

- (4) Due to the COVID-19 epidemic, LandsD (including all its sub-offices) had implemented special work arrangements³. In the periods concerned, only limited essential services were provided, and so its work progress was hindered.

44. For resolving the problem of the Government land being enclosed, the DLO affixed two notices in October 2021 on the iron gate and hoardings at the site after making reference to SMO's survey reports (see **para. 42(8)**). One of the notices demanded cessation of occupation of the Government land on which the iron gate and hoardings were erected by the deadline. Another notice, to which a map was attached, demanded cessation of occupation of remaining Government land (i.e. the Government land behind the iron gate and hoardings). SMO's aerial photos showed that the occupier had demolished the structures on the enclosed Government land. On 18 January 2022, the DLO found that the aforesaid iron gate and hoardings had been removed. Its subsequent inspection on 8 March found no enclosure of Government land.

Our Observations and Comments

45. As seen from aerial photos of the site, the unauthorised structures and illegally enclosed Government land covered not so small an area. Moreover, the plastics recycling yard caused air pollution time and again, but EPD had taken enforcement action (see **paras. 12 and 13**).

46. Information shows that the DLO received the EPD's referral of the complaint about the site in as early as April 2018 (see **para. 41**). However, the former SCO did not provide the site's squatter survey records all along requested by the DLO, resulting in the lack of progress in the handling of the case. Not until June 2021 when the gradual subsuming of regional SCOs under DLOs did the breakthrough come up. Eventually, the DLO confirmed in October 2021 that the unauthorised structures were in breach of the land lease and inconsistent with squatter survey records (see **para. 42(7)**). Put simply, three and a half years had elapsed since the DLO received the complaint.

³ Due to the COVID-19 epidemic, the Government implemented special work arrangements in January to May 2020, July to September 2020 and December 2020 to February 2021. All departments (including LandsD) provided essential services on a limited basis during these periods.

47. We notice from DLO's work records that in 2015 the DLO in fact had requested the former SCO to provide the site's squatter survey records when handling other cases also involving the site. Nevertheless, the former SCO also did not respond to DLO's request. We are appalled by the former SCO's unreasonable delay, and consider the matter serious and unacceptable.

48. On the other hand, after requesting the former SCO in September 2018 and February 2019 to provide the squatter survey records (see **para. 42(1)**), the DLO did not pursue the matter with the former SCO, leaving the case unattended for a long time. Not until January 2020 when the DLO received a number of complaints (see **para. 41**) did it send officers to conduct site inspections and request the former SCO to provide information again. Evidently, the DLO was also lax in handling this case.

49. To tackle the problem of illegal occupation of Government land, the DLO affixed statutory notices on iron gate and hoardings in June 2020, demanding cessation of occupation of the Government land before 16 July. However, the DLO demolished the iron gate and hoardings only a year after the deadline (see **paras. 42(3) and 42(5)**). The DLO explained that the demolition progress was affected after the discovery of asbestos materials in part of the hoardings because it needed to carefully consider and draw up the details of the demolition plan. We have considered the above reason and the fact that LandsD (including the DLO) had implemented special work arrangements (see **para. 43(4) and note 3**). We still find the handling of the case inefficient and unsatisfactory.

50. In response to the allegation that the DLO had failed to stop the construction of the plastics recycling yard's roof, LandsD explained that the DLO referred the matter to BD according to their operational guidelines, and BD subsequently issued a removal order in respect of the newly built structures (see **para. 42(6)**). We consider DLO's referring the matter to BD according to the guidelines not an act of maladministration.

51. Based on what have been mentioned in **paragraphs 45 to 50** above, we consider Allegation (3) partially substantiated.

52. We recommend that LandsD:

- (1) remind all the offices under it to swiftly respond to enquiries from other offices in future, and escalate matters promptly where necessary, for

handling at a more senior level instead of leaving them unattended;

- (2) take measures to prevent the Government land concerned from being occupied again; and
- (3) proactively review if there are sufficient evidence to prosecute the occupier for the repeated occupation of Government land as mentioned in **paragraphs 42(6) and 42(9)**, or where necessary and feasible, gather further evidence to explore the possibility of initiating prosecution.

53. LandsD accepted the above three recommendations and agreed that there was room for improvement in the handling of the case, and its responsibility could not be denied. After organisation restructuring, the problem of the former SCO causing delay was rectified. The Squatter Control Team under the DLO has proactively followed up on the case, and progress has been made for other outstanding cases gradually.

Allegation (4)

BD's Enforcement Policy

54. BD classified unauthorised structures constituting obvious hazard or imminent danger to life or property, illegal works in progress and newly built unauthorised structures in the need-to-be-removed category. BD would issue statutory notices under the Buildings Ordinance to demand property owners to rectify.

55. The design and construction of structures on private land (including private agricultural land) in the New Territories will be exempted from certain provisions of the Buildings Ordinance and its subsidiary regulations if they comply with such exemption criteria like height, roofed-over area, etc. stipulated in the Buildings Ordinance (Application to the New Territories) Ordinance.

Sequence of Events

56. In August 2021, BD received a complaint referred by the DLO, which mentioned that there were works in progress on the agricultural land within a private lot (see **para. 42(6)**). On 26 August, BD also received a complaint concerning the same lot referred by PlanD.

57. Subsequently in September, BD received the complainant's report via 1823, in which the complainant alleged that there were works in progress on the Lot. Later in the same month and the following month, it received complainant's photos of the site, which were forwarded to it by the DLO.

58. BD's actions upon receiving the above complaint/report are summarised below:

- (1) In August, a consultant engaged by BD conducted site inspection but could not enter the Lot. Its staff did not find any works in progress from outside. They left a slip to ask the lot owner or occupier to contact BD for making an appointment for it to enter the Lot for inspection.
- (2) In September and October, the consultant's staff conducted two more site inspections but still could not enter the Lot. But they found metal frame structures on the Lot, with metal panel roofs and their heights more than 4.57 metres. They were not in compliance with the relevant exemption criterion (i.e. a height not higher than 4.57 metres) under the Buildings Ordinance (Application to the New Territories) Ordinance (see **para. 55**).
- (3) In October, the consultant submitted its September inspection report to BD. After scrutinising the report and cross-checking it against the information (including photos of the site) forwarded by the DLO in October, BD found that the unauthorised metal frame structures still existed and its scale had become larger. Some external walls had metal panels installed on them.
- (4) In late October, BD officers conducted a site inspection to ascertain the scale of the unauthorised structures.
- (5) Given that the structures on the Lot were higher than 4.57 metres, and so not in compliance with the exemption criteria (see sub-paragraph (2) above), and were considered by BD to be newly built structures or works in progress after its checking of DLO's aerial photos, a removal order was issued to the lot owner in December, demanding removal of the unauthorised structures before a specified date.

Our Observations and Comments

59. Information shows that BD's consultant conducted site inspection two days after BD received DLO's referral of the case on 23 August 2021 (see **para. 58(1)**). BD subsequently issued a removal order to the lot owner based on the consultant's inspection outcomes and DLO's information (see **para. 58(5)**).

60. After scrutinising the information, we consider BD to have handled the unauthorised building works on the Lot according to its enforcement policy. Allegation (4), therefore, is unsubstantiated. We urge BD to monitor the compliance of its removal order and take proper action in correspondence with further development of the matter.

61. Despite the aforesaid, we consider the following unsatisfactory and not up to the expectation of members of the public. The complainant lodged a complaint with the departments concerned when the unauthorised building works were in progress. However, information showed that the scale of the works had become larger subsequently (see **para. 58(3)**). This indicated that the works had proceeded for a certain period despite the complaint. We also notice that in this case, although the consultant conducted site inspections in August and September, it was only able to submit its inspection report to BD about a month later (see **para. 58(3)**). Moreover, since its inspection staff were unable to enter the Lot and could only make observation from outside, the investigation progress and result were possibly affected.

62. While Allegation (4) is unsubstantiated, in the light of the above observations, we recommend that BD:

- (1) review whether it is possible to improve the efficiency of its handling of unauthorised building works in progress; and
- (2) when inspection staff are unable to enter a land on which there may be building structures that have to be removed, consider using drones or other tools that can help take photos at height for facilitating its investigation.

63. BD accepted the above two recommendations.

Office of The Ombudsman
April 2022