

Buildings Department's monitoring of repair works by consultant and contractor under the Mandatory Building Inspection Scheme Investigation Report

Between 8 December 2021 and 11 January 2022, the complainant lodged a complaint with this Office against the Buildings Department (“BD”) and provided supplementary information.

The Complaint

2. The complainant lived in a “three-nil” building (“the Building”). Following the Building owners’ failure to comply with a statutory notice served on them by BD under the Mandatory Building Inspection Scheme (“MBIS”), BD appointed a consultant and a contractor to carry out the inspection and repairs on their behalf, and issued a letter to the owners indicating that the contractor would carry out the works between March and September 2021. However, the complainant found that the works only commenced in August, and came to a halt after the contractor had carried out minor repairs along the staircase walls and erected scaffolding on the ground level of the rear lane. The contractor subsequently notified the owners in November that the works completion date would be postponed to late December. Nonetheless, it did not go further with the works since. The complainant considered that the contractor had procrastinated the repair works, thereby causing inconvenience to the residents and problems relating to environmental hygiene, fire safety and security. Between September and December 2021, the complainant repeatedly enquired BD/the consultant about works progress and the actual works completion date, only to be told that warnings would be issued to the contractor. The complainant was dissatisfied that BD had failed to monitor the contractor properly such that the repair works at the Building dragged on and on.

Our Investigation

3. Having examined the relevant information, The Ombudsman decided to launch a full investigation into the case in January 2022 pursuant to the Ombudsman Ordinance. The investigation was completed in July 2022. Our findings are as follows.

Our Findings

MBIS Monitoring Regime

4. BD closely monitors the performance of consultants and contractors in executing repair works under MBIS to ensure that the works are carried out in accordance with the contract requirements and time schedule. During the contract period, BD meets monthly with the consultant and the contractor for progress update and overall oversight and discussion on works items. Regarding the works details of individual target buildings, the consultant would submit monthly progress reports to BD for its regular monitoring of the works progress. Continuous monitoring is also conducted by BD through close liaison with the consultant and the contractor by telephone and email. Generally speaking, the consultant, as the works supervisor, would check works progress with the contractor, and instruct or assist the contractor to handle any problems it encounters. BD would also render assistance to the consultant and the contractor (such as coordinating with other government departments) if the circumstances so require.

5. Should there be delay in the works, BD would ask the consultant and the contractor to explain and make remedy proposals. A warning would be issued to the contractor if it fails to provide a reasonable explanation or make timely rectification. Besides, BD would prepare quarterly appraisal reports on the performance of consultants and contractors. Those with unsatisfactory performance would be given warnings or adverse appraisal reports as appropriate, or even be temporarily suspended from bidding for works contracts. Other actions appropriate under the contract terms, such as termination of contract, might also be taken. Upon completion of a works project, BD would conduct a joint site inspection with the consultant and the contractor to ensure satisfactory completion of the works.

Inspection and Repair Works at the Building

6. In August 2019, BD served a statutory notice for mandatory building inspection on the Building owners in accordance with the Buildings Ordinance, requiring them to carry out within the specified period the prescribed inspection and repair works found necessary in the common parts of the Building. As a result of the owners' non-compliance of the said notice, the Building was listed as a target building

under Operation Building Bright 2.0 in 2020.

7. The BD-appointed consultant completed the prescribed inspection at the Building in January 2021 and estimated that the repair works could be completed within six months. Having examined the inspection report, BD wrote to the Building owners in March that the contractor would carry out the necessary repair works¹ under the supervision of the consultant. The works were expected to commence and complete in late March and mid-September 2021 respectively.

Sequence of Events

8. According to the contractor's original works schedule, the "hammer tests" on the external walls and the indoor common parts were to be carried out in tandem with the necessary repairs once the scaffolding was erected. As such, erecting the scaffolding was the first and foremost item before any repair works could begin.

9. Between mid-April and mid-May 2021, the contractor made several attempts to transport the bamboo poles to the Building but to no avail because of the road conditions and the nearby environmental constraints. In view of the slow works progress, the consultant issued a written reminder and a warning to the contractor in June and July respectively, requesting it to promptly commence the works and forewarning that the slow works progress would be reflected in its appraisal report. In response, the contractor explained that the Building was situated on a one-way street and surrounded by a large number of hardware shops. In addition to heavy vehicles coming and going frequently for loading and unloading, some vehicles were parked on the road for an extended period. Transportation of the bamboo poles under such circumstances was difficult. It was only after rounds of discussions and coordination with the on-street shops in question that the contractor finally succeeded in transporting the first batch of bamboo poles to the Building in mid-August 2021.

10. Upon learning of the contractor's difficulties in transporting the bamboo poles, BD discussed with the consultant and the contractor repeatedly between August and November 2021 other possible options, which included transporting the poles on Saturdays or during the night time, or carrying them manually to the Building from streets farther away², etc. Meanwhile, BD urged the consultant and the contractor to

¹ The repair works covered mainly: conducting "hammer tests" on the external walls and internal common parts of the Building to ascertain the scope of problematic area in need of repair; repairing the dilapidated smoke stop doors and staircases; and replacing the defective public drainage pipes.

² Transporting the bamboo poles during the night might lead to complaints by the residents. Besides, the Building

review the procedures to catch up with the works schedule by, say, erecting scaffolding on the rear side of the Building and commencing indoor repairs at the same time. In late September, BD learned that some bamboo poles had been successfully transported to the Building and the scaffolding partially erected. The consultant indicated that the contractor would continue to deliberate with the on-street shops for facilitating the transportation of the bamboo poles.

11. In view of the lack of apparent works progress, in September and October 2021, BD requested the consultant and the contractor respectively to speed up and complete the works. The consultant expressed that part of the scaffolding was yet to be erected. In addition to the aforementioned difficulties in transporting the bamboo poles, stricter cross-border control and lockdown measures during the epidemic had also resulted in a shortage of construction workers and obstruction to the delivery and supply of construction materials. Furthermore, construction sites across the territory gradually resumed normal operation as the fourth wave of the epidemic subsided. An especially keen demand for both construction workers and materials coupled with an unlikely relief in manpower supply within a short time had caused delay in the repair works. BD officers had conducted a site inspection on the works progress in October and confirmed that transportation of the bamboo poles was still being affected by external factors such as road conditions and environmental constraints. Since the works completion date was expected to be postponed to late December, the consultant asked the contractor to review the works progress and submit a revised works schedule. In view that the subsequent progress was still unsatisfactory, BD and the consultant issued multiple written warnings to the contractor between November and December, demanding speedier completion of the repair works.

12. After rounds of discussion with the on-street shops in question, the contractor finally transported all the bamboo poles to the Building by late December 2021 and completed the scaffolding works in March 2022. While the transportation problem of bamboo poles was out of the way, the fifth wave of the epidemic struck and a lot of the contractor's workers contracted COVID-19. The works progress was further dragged down. After reviewing the contractor's revised works schedule and related works progress, the consultant postponed the completion date to late May 2022.

13. As a result of the rainy weather in May and June 2022, the contractor could only complete the repair works by late June.

is actually made up of a row of buildings, so a huge amount of bamboo poles would be involved, making it impossible to transport them manually. BD, therefore, considered the option infeasible.

BD's Response

14. BD explained that works progress is subject to the influence of external factors. In this case, transportation of the bamboo poles depended on the cooperation of the on-street shops and usage of the roads involved, which was beyond the prediction and control of the consultant and the contractor. Besides, the contractor faced a number of challenges during the epidemic (see **paras 9, 11 and 12**), which further thwarted the works progress.

15. Upon learning of the contractor's difficulties in transporting the bamboo poles in August 2021, BD at once discussed with the consultant and the contractor other feasible means of transportation, and urged them to review the works procedures to catch up with the schedule. In addition, the Department had, between October 2021 and February 2022, issued four written warnings to the contractor in view of the slow progress, and reflected its unsatisfactory performance in the appraisal report. BD would assess the contractor's performance in a compassionate and reasonable manner after considering the external factors involved. As regards the consultant, it had been monitoring the contractor and its works progress in accordance with the contract terms. For instance, it had issued timely warnings to the contractor in an effort to rectify the situation, arranged for indoor repairs upon a review of the works procedures, and revised the works completion date in view of the actual circumstances. BD, therefore, considered the consultant to have properly followed up on the contractor's performance.

16. BD had all along followed the established mechanism and procedures to continuously monitor the performance of and works progress by the consultant and the contractor. BD had communicated with the consultant in a timely manner in order to solve the problems it encountered during the works process, and taken actions to urge the contractor to resolve the problem and press ahead with the repair works in accordance with the revised works schedule. Overall, BD considered its monitoring of works progress by the consultant and the contractor adequate in the case.

17. Notwithstanding the above, BD would review its monitoring efforts from time to time and enhance related arrangements having regard to the actual circumstances. In January 2022, BD updated the content of the consultants' monthly progress report to additionally require them to conduct monthly progress reviews on all works items, and to provide explanations and rectification proposals in case of delay. Since April 2022, BD had begun to conduct random inspections (including document scrutiny and site

inspections) of the monthly progress reports submitted by consultants to enhance the effectiveness of monitoring. Taking the lesson learned from this case, BD also reminded frontline staff to proactively look into the matter when they learn that a contractor has encountered trickier problems; and if a works project is being affected by other parties, they should assist to mediate. BD undertook to continue to monitor the performance of consultants and contractors and improve its monitoring efforts, as well as strengthen on-the-job training for its staff.

Our Comments

18. BD had explained its current monitoring regime under the MBIS, the course of the repair works at the Building by the consultant and the contractor, its monitoring and follow-up actions concerning the works progress and the performance of the consultant and the contractor, as well as the reasons for the delay in completing the works on the part of the contractor. Having examined the relevant information, we have the following comments.

19. The repair works at the Building took more than a year to complete since the original commencement date (i.e. late March 2021), far exceeding the original estimate of half a year. This would inevitably bring adverse impact on the daily lives of the residents to varying degrees. The complainant's discontent was understandable. This Office, however, accepts BD's explanation that works progress is subject to the influence of external factors, and that it is not uncommon for repair works not to be completed on schedule. Having regard to the fact that the location and surroundings of the Building had made the transportation of bamboo poles at the initial stage of the works difficult, and also the impacts of the epidemic on the construction industry (see **paras. 9, 11 and 12**) during the period, we consider the delay of works completion, though undesirable, understandable.

20. Nevertheless, this case reflected deficiencies and a lack of initiative on the part of BD in monitoring the performance and works progress of consultants and/or contractors. According to the contractor's original works schedule, all repairs on the external walls and indoor area would be carried out in tandem upon erection of the scaffolding (see **para. 8**). In other words, the successful transportation of bamboo poles and erection of the scaffolding by the contractor directly affected the overall works progress. According to the sequence of events above, the contractor already encountered difficulties in transporting the bamboo poles at the early stage of the works (i.e. April and May 2021). The consultant, upon learning of the problems, issued

written warnings to the contractor in June, July and November, urging it to commence the works as soon as possible or speed up. We note that save for continuous pushing and issuance of warnings, the consultant and BD had not taken any initiatives to understand the contractor's plight, or offer substantial assistance or remedy proposals. The contractor was left to negotiate with the on-street shops regarding the transportation of the bamboo poles on its own.

21. The contractor had been in discussion with the on-street shops since mid-April 2021 (i.e. the time of the contractor's first unsuccessful attempt to transport the bamboo poles), but had only succeeded in delivering all the poles to the Building by late December. The time taken was even longer than the original estimated duration of the works. The works progress had been extremely slow. Having examined the relevant information (including the consultancy contract and relevant work records), we are of the view that the consultant, as the works supervisor, should have taken reasonable action to instruct or assist the contractor to handle the delay, or escalate the case to the attention of BD earlier to facilitate a resolution, rather than discharged its monitoring duties by merely completing the work procedures. In this light, we have reservations about BD's view that the consultant had monitored the works progress in accordance with the contract requirements (see **para. 15**).

22. On the other hand, after examining the consultant's monthly progress reports submitted to BD, we discover that there had been "zero" works progress between April and July 2021. Yet, there is no information showing that BD had taken follow-up action during the period or enquired of the consultant and the contractor about the situation or the reasons for the complete absence of progress. It was not until August 2021 (i.e. five months since works commencement or one month before the original completion date) that BD intervened and followed up on the slack. While BD had explored other feasible options with the consultant and the contractor, it just left the discussion with the on-street shops to the contractor when those options were found to be impracticable (see **paras. 10 and 12**). Later on, when BD became aware of the unsatisfactory works progress during the site-inspection in October, it still failed to urge the consultant (as the works supervisor) to implement practical and feasible measures to quickly resolve the problems of transporting the bamboo poles, or provide specific assistance to the consultant/contractor in view of the circumstances (such as liaising with the Police regarding the persistent parking of vehicles and/or assisting to coordinate with the on-street shops). Overall, BD had not been proactive in monitoring the works progress and taking follow-up actions.

23. In hindsight, it is not uncommon for contractors to encounter uncooperative on-street shop owners, BD and its consultant should have acted and provided substantial assistance and support earlier when they had learned of the contractor's difficulties in transporting the bamboo poles. Their intervention should have speeded things up for the contractor, even if the epidemic would still have caused inevitable delay to the works.

Final Remarks

24. In light of the elaborations in paragraphs 20 to 23, The Ombudsman found inadequacies in BD's monitoring of the repair works progress by the consultant and/or the contractor. This complaint was, therefore, **partially substantiated**.

25. We are glad to note that in a bid to strengthen the effectiveness of monitoring, BD had implemented a number of improvement measures in the course of our investigation. The measures included updating the content of the monthly progress reports and conducting random inspections. In addition, the Department had arranged experience-sharing sessions concerning the case to remind its staff to assist contractors to deal with trickier situations (see **para. 17**). It is noted that BD has become more proactive and implemented appropriate remedies. We hope that BD could continue to review and enhance the arrangements for monitoring works projects, step up on-the-job training for its staff to raise their awareness and initiative for better monitoring of the performance of consultants and contractors.

Office of The Ombudsman
July 2022