

Executive Summary Direct Investigation Report

Government's Enforcement against Unauthorised Building Works in New Territories Exempted Houses

Introduction

Unauthorised building works ("UBWs") in New Territories Exempted Houses ("NTEHs") has been a long-standing problem of considerable concern.

2. On 1 April 2012, the Government implemented an enhanced enforcement strategy against UBWs in NTEHs, viz "safeguarding building and public safety, acting in accordance with the law, categorisation for control and management, and prioritisation for progressive enforcement". Enforcement actions against newly completed UBWs and existing ones in NTEHs would be prioritised according to their severity and risk level. As the enforcement authority, the Buildings Department ("BD") accords priority to UBWs constituting imminent danger, UBWs under construction or newly completed ones¹, and existing UBWs not posing imminent danger but constituting serious contravention of the law and posing higher potential risks, that is first round targets. Besides, through the "Reporting Scheme for UBWs in NTEHs", BD collects information on UBWs constituting less serious contravention of the law and ensures their safety. On the other hand, the Lands Department ("LandsD") plays a supporting role by providing relevant information to BD and takes lease enforcement actions against UBWs constituting imminent danger or those outside the ambit of BD.

3. After examining the work of BD and LandsD, we have the following comments and recommendations.

Our Findings

Statistics on UBWs Not Compiled

4. In the past, the Government had not conducted any comprehensive surveys or compiled statistics on NTEHs or UBWs in those houses, hence the absence of overall statistics on UBWs in NTEHs. Since the implementation of the enhanced strategy, BD has, in the course of follow-up on reports of UBWs or large-scale operations for the identification of first round targets, maintained figures on the number of NTEHs with UBWs found and the number of removal orders issued. It has also input the content of removal orders (comprising the types and numbers of UBWs concerned) into the Building Condition Information System. Nevertheless, BD has not made use of the aforesaid information to compile statistics on UBWs for analysis.

¹ Newly completed UBWs refer to UBWs completed on or after 28 June 2011.

5. We consider that without statistics on UBWs, it is difficult for BD to make systematic assessment of the effectiveness of the enhanced strategy in tackling UBWs in NTEHs and the overall changes after its implementation. For the purpose of analysis, BD should compile statistics on UBWs (including the types and numbers of UBWs involved in removal orders and of those subsequently removed) based on the information collected from its follow-up and enforcement actions. While the statistical information may not cover all NTEHs in the territory, the cumulative data can still provide an objective basis for BD's review of its enforcement actions.

Failing to Curb the Proliferation of UBWs

6. Since the implementation of the enhanced strategy, BD had issued 606 removal orders against UBWs under construction as at 2021. Of those orders, 147 (about 24.3%) remained outstanding as at the end of 2021, among which about 68% were issued in or before 2018, reflecting the long existence of the UBWs concerned. Similarly, of the 2,020 removal orders issued by BD against newly completed UBWs, 755 (about 37.4%) remained outstanding as at the end of 2021, among which 47.8% were issued in or before 2018. On the other hand, our case studies revealed that although BD could meet its performance pledge to arrange site inspection by a consultant within 48 hours after receiving a report of UBWs under construction, it took 9 to 18 months to issue a removal order after the inspection, which was an obvious failure to meet the objective of taking "immediate" enforcement action. BD's failure to take prompt enforcement actions has in a way encouraged non-compliant owners to delay fulfilling their legal responsibilities.

7. In our view, BD should review the existing guidelines and set clearer internal targets for processing tasks other than site inspections, so as to effectively combat UBWs under construction, thereby meeting the policy objective of curbing the proliferation of UBWs. BD should also explore streamlining the enforcement procedures for tackling UBWs under construction to expedite enforcement and demonstrate its determination to curb UBWs. After the launch of our investigation, BD and LandsD have reached a consensus where as long as a case fulfils certain criteria, BD is no longer obligated to consult LandsD whether the latter has issued or will issue a certificate of exemption. BD reckoned that this new arrangement could substantially reduce the number of cases warranting consultation with LandsD, thereby enhancing work efficiency.

Slow Progress of Large-Scale Operations

8. Each year, BD's consultants carry out large-scale operations in a number of target villages in the New Territories, during which preliminary inspections will be conducted, followed by detailed inspections at individual NTEHs with first round targets. As at the end of December 2021, BD completed inspections of only about 46% of recognised villages², and the large-scale operations launched in 2018 remained at the

² LandsD's List of Recognised Villages covers a total of 642 recognised villages in the territory.

stage of identifying NTEHs with first round targets. A forecast based on BD's latest work targets shows that the Department will need another 10 years to complete inspections of all recognised villages in Hong Kong.

9. Our case studies revealed BD's lengthy preparation for the issuance of removal orders. Besides, its consultants are required to submit various reports and documents to BD from time to time and the Department will give responses after vetting. Since several thousand of village houses are to be inspected each year, such frequent and substantial exchange of physical documents between BD and its consultants inevitably affects their work efficiency.

10. We consider that BD should review the existing arrangements for consultants' submission of work reports regarding large-scale operations and proactively identify areas for streamlining (such as more extensive use of electronic submission of reports), as well as explore measures to expedite the vetting of consultants' reports so as to speed up the issuance of removal orders. Meanwhile, BD should continue to monitor the performance of consultants.

Lack of Proactive Follow-up on Cases

11. As at the end of 2021, among the 5,384 removal orders issued by BD, 2,016 (about 37.4%) remained outstanding whilst the deadline for removal had passed. In some of the cases studied, BD's issuance of removal orders was followed by years of inaction. BD's failure to take timely action after issuing a removal order would likely convey a wrong message to the owner concerned that there would be no legal consequences for non-compliance. The owner might even have a false expectation that BD had accepted the existence of the UBWs.

12. BD's Building Condition Information System is equipped with a "to-do list" function to remind staff to follow up on cases. At the same time, the Progress Monitoring Committee comprising BD's senior staff regularly monitors the progress of enforcement actions and draws up timetables for handling outstanding cases. Nevertheless, the serious delays in BD's follow-up and enforcement actions as revealed in our case studies reflect the ineffectiveness of the existing monitoring mechanism. We consider that BD should step up its monitoring of follow-up and enforcement actions on UBWs in NTEHs and clearance of backlog cases of non-compliance in accordance with the timetable set by the Progress Monitoring Committee.

Ineffective Monitoring of Registration of Removal Orders with Land Registry

13. BD's internal guidelines require staff to send a copy of the removal order to the Land Registry ("LR") for registration soon after posting the order at the site concerned. However, the Department has not set any specific time frame for such work. Nor has any internal monitoring mechanism been established for the registration of removal orders with LR. As a result, BD cannot prevent potential delays or even omissions in a systematic manner. In our cases studied, removal orders were sent to

LR for registration only about 4 to 19 months after issuance or even omitted from registration.

14. Owing to BD's failure to arrange timely registration of removal orders with LR, on one hand potential NTEH buyers are unable to check through the land registration records whether the village house concerned involves any outstanding removal orders; on the other hand, the deterrent effect of removal orders cannot be realised to the full extent through registration. We consider that BD should check the removal orders that are outstanding for any omitted registration with LR, and handle them promptly. In addition, for effective monitoring in the future, BD should set a specific time frame for the registration of removal orders with LR for staff to follow and establish a mechanism for internal monitoring to ensure compliance in all cases.

Insufficient Deterrent Effect

15. BD had brought a total of 1,383 charges against non-compliance with removal orders as at the end of 2021. Of those prosecutions, there were 972 convictions with 86 (8.8%) of them being reconvictions. Some of the removal orders remained outstanding for several years or more. We find it necessary for BD to take continuous enforcement actions against owners who repeatedly fail to observe statutory orders so as to urge their compliance.

16. In the past decade, the average fine for each conviction was about \$9,500 only and there were only nine cases (involving three NTEHs) in which imprisonment was imposed. The average fine upon re-conviction for persistent non-compliance increased to about \$13,400 only. We find the existing penalty insufficient to deter non-compliance. Where it involves flagrant contravention of the law (such as NTEHs of four or more storeys) or continuing irregularities, BD should reflect to the Court the seriousness of the case particularly the harm caused by UBWs to society. For greater deterrence, BD should also step up prosecutions against persistent non-compliant owners until their compliance with the removal orders.

Strengthening Publicity and Public Education

17. On publicity and public education, BD raises public awareness of the enhanced strategy through multiple channels including maintaining communication with stakeholders, publicising leaflets and launching campaigns on digital platforms. BD's effort in this regard is laudable.

18. In our view, conviction cases with a heavy penalty imposed by the Court (especially imprisonment) are important materials for publicity and education. Apart from the existing practice of citing the penalties imposed by the Court in press releases and warning letters to individual owners, BD may consider publicising more widely conviction cases involving heavy penalties as a warning to others.

Mechanism for Information Exchange and Coordination between BD and LandsD Should be Improved

19. Construction of an NTEH does not require submission of a plan for BD's approval, but application to LandsD for a certificate of exemption instead. BD has to seek information on individual village houses from LandsD before it can determine whether any UBWs are involved and what enforcement actions should be taken. Similarly, LandsD's decision whether to take lease enforcement actions depends on BD's follow-up actions. Currently, BD can obtain information on lot boundaries and locations of NTEHs, aerial photographs and relevant land leases from the Government's internal geographic information system and LR's Integrated Registration Information System. Nevertheless, in the course of follow-up on UBWs in NTEHs, it is still necessary for BD and LandsD to exchange other important information such as whether the NTEH concerned involves any application for redevelopment and whether LandsD would issue a retrospective certificate of exemption for the house.

20. After the launch of our investigation, BD and LandsD have reached a consensus to streamline the procedures in order to reduce the number of cases warranting consultation with LandsD (see **para. 7**). Nevertheless, we consider it is still necessary for BD and LandsD to make improvement measures to ensure timely handling of cases where information exchange is required. The departments should regularly draw up a list of pending cases with information outstanding, so as to monitor information exchange and avoid delays or omissions, which would compromise enforcement efficiency. The departments should also consider setting up an inter-departmental liaison group to strengthen coordination and enhance the effectiveness of handling special cases.

Holistic Review of Enhanced Strategy and Mechanism for Assessing Effectiveness

21. It is commendable of the Government to have implemented the enhanced strategy in April 2012 with a clear policy objective to step up enforcement against newly completed UBWs and existing ones which constitute serious contravention of the law. However, the above analysis reveals multiple inadequacies in the actual implementation of the strategy in the past decade that inhibit full accomplishment of the policy objective. As a matter of fact, there were already a large number of UBWs in NTEHs prior to the implementation of the enhanced strategy. Worst still, during the implementation of the enhanced strategy, nearly half of BD's enforcement actions have been against UBWs built after the implementation (i.e. UBWs under construction or newly completed ones), and the number of reports of UBWs has been rising. While we acknowledge BD's continuous effort in curbing UBWs, the slow progress of large-scale operations and the backlog of cases reflect that the Department may not have the capacity to manage all necessary enforcement actions. This would not only distract BD from tackling cases involving the most serious contravention of the law, but also undermine the credibility of the enforcement policy attributable to ineffective enforcement.

22. We consider that BD should consolidate its experience in implementing the

enhanced strategy in the past decade, holistically review the policy and resource utilisation and explore how the limited resources can be utilised pragmatically to target the most serious types of UBWs and repeated offenders for the time being. BD should in tandem formulate performance indicators for measuring effectiveness in accordance with the policy objective. This would not only help BD evaluate the effectiveness of work and review the measures, but also allow members of the public to understand more easily whether the problem of UBWs in NTEHs has been improved.

Our Recommendations

23. We have made the following recommendations to BD and LandsD:

BD

- (1) compile statistics on UBWs (including the types and numbers of UBWs involved in removal orders and of those subsequently removed) based on the information collected from follow-up and enforcement actions for analysis purposes;
- (2) review the existing guidelines and set clearer internal targets for processing tasks other than site inspections regarding UBWs under construction;
- (3) explore streamlining the enforcement procedures for tackling UBWs under construction;
- (4) review the existing arrangements for consultants' submission of work reports regarding large-scale operations and proactively identify areas for streamlining (such as more extensive use of electronic submission of reports) as well as explore measures to expedite the vetting of consultants' reports. Meanwhile, BD should continue to monitor the performance of consultants;
- (5) step up the monitoring of follow-up and enforcement actions on UBWs in NTEHs and the clearance of backlog cases of non-compliance in accordance with the timetable set by the Progress Monitoring Committee;
- (6) check the removal orders that are outstanding for any omitted registration with LR, set a specific time frame for the registration of removal orders with LR and establish a mechanism for internal monitoring;
- (7) reflect to the Court the seriousness of cases involving flagrant contravention of the law or continuing irregularities and step up

prosecutions against persistent non-compliant owners for greater deterrent effect;

- (8) consider publicising more widely conviction cases involving heavy penalties as a warning to others;
- (9) holistically review the policy of the enhanced strategy and resource utilisation and explore how the limited resources can be utilised pragmatically to target the most serious types of UBWs and repeated offenders for the time being. BD should in tandem formulate performance indicators for measuring effectiveness in accordance with the policy objective;

BD and LandsD

- (10) regularly draw up a list of pending cases with information outstanding for monitoring possible delays or omissions in information exchange; and
- (11) consider setting up an inter-departmental liaison group to strengthen coordination and enhance the effectiveness of handling special cases.

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