

Buildings Department's handling of unauthorised building works Investigation Report

In April 2024, a company (“the Complainant”) complained to this Office against the Buildings Department (“BD”). In May 2024, the Complainant provided supplementary information to this Office.

The Complaint

2. Allegedly, the Complainant is the owner of G/F (“the Premises”), nos. I and II of a street (“the Building”). There are unauthorised building works (“UBWs”) on 2/F of the Building, which, according to the investigation conducted by an independent surveyor appointed by the Complainant, is the highly probable source of the water seepage that has occurred at the Premises since around August 2022. Though several building orders and notices were issued by BD to the relevant owners of the UBWs between December 2002 and November 2013, the UBWs remain intact. The Complainant considers that the UBWs have caused nuisance and damage, and jeopardised the structural integrity and safety of the Building. Its legal representative requested BD to follow up, but BD merely replied that there was no imminent danger posed by the UBWs in question and that prosecution action would be taken against the owners concerned following the issuance of warning letters.

3. Against this background, the Complainant lodged a complaint with this Office against BD for failing to take timely enforcement actions and/or remedial measures (e.g. to apply to the District Court for a priority demolition order) to address the problem.

Our Findings

Background

4. In December 2002, BD issued removal orders under section 24(1) of the Buildings Ordinance (“the Ordinance”) to the respective owners of the UBWs in question under a large scale operation (“LSO”). The orders were withdrawn in September 2006 upon completion of the modification works. Subsequently, warning

notices under section 24C of the Ordinance were issued against the modified UBWs in November 2007 according to the established procedures at that time.

5. Following the promulgation of the revised enforcement policy against UBWs in 2011, the Building was selected for LSO again in 2012, and BD issued removal orders to the relevant owners in November 2013 requiring their removal of the UBWs in question.

Response from BD

6. To follow up the non-compliance of the removal order issued in 2013, BD instigated prosecution against the owner of the UBWs at 2/F, no. II in September 2015. In May 2018, BD assigned its in-house Social Service Team to provide social assistance and to encourage the owner to comply with the removal order. The owner was fined upon conviction by the Court in December 2018. As non-compliance continued, BD instigated prosecution for the second time in May 2022. Nonetheless, the owner concerned failed to appear in the plea hearings scheduled for August 2023 and July 2024.

7. As for the UBWs at 2/F, no. I, BD was informed in September 2015 that the owner concerned had appointed an authorised person to follow up on the removal order issued in 2013. Nonetheless, the UBWs were not removed afterwards. Subsequent to the warning letter issued by BD in June 2019, the owner concerned indicated that there was site constraint obstructing the removal works. A joint inspection was conducted by the owner's representative, the authorised person, the owner's contractor and BD's staff in July 2019 to discuss the required works for compliance with the removal order. In October 2022, November 2022 and January 2024, BD conducted further inspections to ascertain the progress of the removal. Since the above inspections revealed no obvious obstruction to the removal works but the owner concerned did not comply with the order, BD issued further warning letters to the owner and instigated prosecution against the owner between January and July 2024.

8. BD explained that as the inspections conducted by BD's staff did not reveal any obvious danger or public nuisance in connection with the UBWs in question and the Building, BD was unable to invoke section 24B(1) of the Ordinance to remove the UBWs in question by priority demolition orders as suggested by the Complainant's legal representative. Nevertheless, as the owners of the UBWs in question had persistently failed to comply with the respective removal orders, and the representative of the owner

of 2/F, no. II had advised BD that the owner was not in Hong Kong and refused to carry out the requested removal works, BD issued letters to the owners concerned in August 2024 informing them that default works to remove the UBWs in question would be carried out by a government contractor. Notices of intention to apply for a closure order were served in October 2024 in accordance with the Ordinance. BD will apply to the District Court for the closure order for carrying out the default works, and will liaise with relevant departments to offer assistance to the affected occupants.

9. BD admitted that there had been delay in following up on the removal order for the UBWs at 2/F, no. I due to the implementation of intermittent special work arrangement during the COVID-19 pandemic from late 2019 to March 2022. BD tendered its apology to the Complainant and had reminded the officer concerned to closely follow up on and monitor the progress of the compliance of removal orders to avoid recurrence of similar incidents.

Our Comments

10. We refrain from commenting on the connection between the UBWs in question and the alleged sources of water seepage at the Premises and likewise, on whether the UBWs constitute any public danger or nuisance because they are professional matters outside our purview. Our focus is whether or not BD has committed maladministration whilst following up on the UBWs in question.

11. Regarding the UBWs at 2/F, no. I, after being notified of the appointment of an authorised person by the owner concerned in September 2015, BD did not take further action for over three years before carrying out a compliance inspection in December 2018. Prior to June 2019, BD only issued one warning letter and allowed the removal order to remain outstanding. Furthermore, after conducting a joint inspection with the authorised person and the owner's contractor in July 2019, BD had not followed up on the matter again until October 2022 when it merely conducted another inspection. Even if the inspection in 2022 revealed that the UBWs had not been removed almost nine years after the removal order was issued, no further action was taken by BD before the Complainant's legal representative raised the matter with BD in January 2024. It was not until recently that BD stepped up its follow-up actions by instigating prosecution against the relevant owner and arranging default works.

12. As for the UBWs at 2/F, no. II, although BD instigated prosecution action as early as 2015, resulting in a fine to the relevant owner in December 2018, the UBWs

remained intact thereafter. Nonetheless, no further action had been taken by BD until it instigated prosecution against the owner concerned for the second time in May 2022. Furthermore, though prosecution did not seem to be effective in making the relevant owner remove the UBWs, BD had not made a decision to take default action until recently.

13. Despite BD's explanation on the COVID-19 pandemic's impact on its work between late 2019 and early 2022, we still consider BD's delay undesirable. It is indeed imperative for BD to take rigorous and expeditious enforcement actions to ensure compliance of the removal orders issued, as the relevant UBWs are considered actionable and warrant immediate enforcement actions under the current regime. It is essential to achieve a stronger deterrent effect and maintain public confidence in BD's determination to tackle the problem of UBWs.

Conclusion

14. In view of the analysis in **paragraphs 10 to 13**, The Ombudsman considers this complaint **substantiated**.

Recommendations

15. The Ombudsman recommends that BD should:

- (1) remind its staff to closely monitor the progress of the compliance of removal orders and take follow-up actions where appropriate;
- (2) consider taking more stringent enforcement actions regarding removal orders that have been outstanding for a long time;
- (3) closely monitor the default works to be taken at the Building to expedite the removal of the UBWs in question;
- (4) take reference from this case for internal experience sharing or training purposes;

- (5) take appropriate follow-up and enforcement actions if there are other outstanding removal orders at the Building; and
- (6) conduct a high-level review and explore measures to increase deterrence against non-compliance with removal orders.

Office of The Ombudsman

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