

Government appeals against judgment on judicial review of Small House Policy

The Development Bureau (DEVB) said today (July 9) that the Government has decided to appeal against the judgment of the Court of First Instance of the High Court (the CFI) on the judicial review of the Small House Policy (the Policy).

"The CFI ruled that arrangements to apply for grants of government land through Private Treaty Grant (PTG) and Land Exchange for building small houses under the Policy are not a lawful traditional right and interest of the indigenous inhabitants of the New Territories within the meaning of Article 40 of the Basic Law. The judgment involves the interpretation of Article 40 of the Basic Law, which is a matter of constitutional importance. Having considered legal advice, the Government considers that it has grounds to lodge an appeal with the Court of Appeal against the CFI judgment," a spokesperson for the DEVB said. The spokesperson added that it would not be appropriate for the Government to comment openly on the details of the grounds of appeal at this stage in view of the judicial procedures involved.

Separately, the CFI stated earlier that the judgment made on April 8, 2019, would take effect on October 8, 2019. Although the judgment is not yet effective at the moment, since the CFI has already ruled that arrangements to apply for government land for building small houses through PTG and Land Exchange are not a lawful traditional right and interest within the meaning of Article 40 of the Basic Law, the Government considers that a prudent approach should be adopted in determining how to handle these two types of applications before the judgment takes effect. In view of this, the Government will only process those cases that were near completion before the judgment was handed down. Specifically, in respect of applications for PTG and Land Exchange involving government land:

(1) Starting from today (July 9) until the judgment takes effect, the Government will resume the remaining procedures for those cases that were already prepared for execution on or before the day the judgment was handed down (i.e. on or before April 8, 2019). The Lands Department (LandsD) will contact the applicants concerned shortly to follow up.

(2) Pending the results of the appeal, the LandsD will continue to suspend the processing of the other applications already received for these two types of small house grants, as well as the receipt of new applications for these two types of grants.

"After careful consideration, we believe that the above arrangement is an appropriate and pragmatic way forward," the spokesperson said.

The CFI ruled on April 8 that the arrangements to apply for building small houses on private land through Free Building Licence (FBL), being a

lawful traditional right and interest of the indigenous inhabitants of the New Territories within the meaning of Article 40 of the Basic Law, is lawful and constitutional. Subsequently, the Court confirmed in the orders granted on April 30 that as far as Land Exchange is concerned, the unconstitutional ruling handed down on April 8 applied only to Land Exchange involving government land. Therefore, the LandsD will continue to process as usual applications for building small houses on private land through FBL and Land Exchange under the Policy.