

LCQ13: Handling of cases of illegal conversions and unauthorised building works

Following is a question by the Hon Paul Tse and a written reply by the Secretary for Development, Ms Bernadette Linn, in the Legislative Council today (April 24):

Question:

According to the Government's estimate in 2000, there were about 800 000 unauthorised building works (UBWs) in Hong Kong at that time. It has been reported that due to an excessive backlog of cases of illegal conversions and UBWs, and possibly as a result of the Government's lax and time-consuming law enforcement, the Buildings Department (BD) estimated some years ago that it would take 100 years to thoroughly deal with the nearly 800 000 UBWs. There are views that after some 20 years, hidden hazards are now ubiquitous in the community, especially in old composite buildings in the urban areas where both guesthouses and subdivided units can be found under the same roof. In the event of a fire, such buildings may cause heavy casualties, and the recent fire at New Lucky House in Jordan, in which five people were killed and 40 injured, is sadly the latest example. In this connection, will the Government inform this Council:

(1) whether it has compiled statistics on the current number of old buildings in Hong Kong which are similar to New Lucky House (i.e. over 50 years old and for both commercial/residential use) that involve UBWs and structural alterations; among them, of the number of buildings for which the BD has issued Mandatory Building Inspection Scheme notices, repair orders or even removal orders, as well as the number of cases involving expired notices/orders that have not been complied with;

(2) as some members of the public have suggested that, in view of the heavy casualties caused by the fire in the aforesaid old building and BD's progress in law enforcement, which makes it almost "impossible" to complete the handling of cases of illegal conversions and UBWs, the BD should focus on the level of risks involved in the cases and the number of people affected as the main factors for consideration when setting priorities for investigation and law enforcement actions in respect of the cases, instead of being unduly influenced by media attention or reports, whether the BD will consider such a suggestion; and

(3) with regard to cases of illegal conversions and UBWs located in remote and non-densely populated districts, and in areas with low traffic volume, as well as those affecting a relatively smaller number of people and posing relatively lower safety risks, whether it has examined the possibility of allowing the owners concerned to settle such cases by way of payments such as

punitive fines, arrears of government rent arising from the violation and premiums, after the safety of the buildings in question has been assured by relevant professional Authorized Persons, so as to minimise the nuisance and burden caused to the public under the generally adverse socio-economic circumstances, enable the public to improve their living space and environment while reducing the environmental pollution caused by the demolished materials, and supplement the revenue of the Treasury and enhance the law enforcement efficiency of the BD?

Reply:

President,

The Buildings Department (BD) takes enforcement actions against unauthorised building works (UBWs) in accordance with the Buildings Ordinance (BO). In order to optimise the use of limited manpower resources in the most effective manner in view of the large number of cases, the BD has adopted a pragmatic "risk-based" approach to set priorities for enforcement, with priority given to cases constituting obvious hazard or imminent danger to life or property, newly erected or constituting serious health or environmental nuisance etc. The BD will accord priority to handle UBWs falling into these categories by issuing removal orders to the owners and registering the removal orders in the Land Registry, i.e. "imposing an encumbrance". If the owner fails to rectify the situation within the specified period without reasonable excuse, the BD will consider instigating prosecution.

In addition, under the Mandatory Building Inspection Scheme (MBIS) implemented in 2012, the BD each year selects about 600 private buildings aged 30 years or above (Note 1) on a risk basis, and owners of such buildings served with statutory MBIS notices are required to carry out prescribed inspections and repairs for their buildings. The Government subsequently allocated \$6 billion in 2018 to the Urban Renewal Authority for implementing the Operation Building Bright 2.0 to provide technical and financial assistance to eligible owners in complying with MBIS notices.

In addition to the MBIS, the BD also selects target buildings to conduct large-scale operations each year and issues repair orders and removal orders requiring the owners to deal with dilapidated or defective external walls and common parts of these buildings as well as their UBWs. In addition, the BD will also follow up on reports from the public on dilapidation and defects of buildings and UBWs, including issuing repair orders and removal orders to owners, as well as carrying out emergency works where necessary to ensure public safety.

The BD will adjust enforcement priorities from time to time in the light of the actual situation. For example, the landslide on the Redhill Peninsula after continuous heavy rainstorms last year revealed that UBWs in houses situated on the slope along the seafront could pose safety risks. In this connection, the BD, in collaboration with the Lands Department, inspected 89 houses on the Redhill Peninsula and has been taking enforcement actions based

on investigation results. In addition, after the Jordan fire, the BD will re-assess its enforcement priorities, targeting those with higher risks among old buildings, such as single-staircase buildings, buildings with higher concentration of guesthouses or sub-divided units, and buildings which have not complied with MBIS notices and have not appointed building inspectors, and will step up prosecution against non-compliance with the Fire Safety Directions.

Our reply to various parts of the question is as follows:

(1) As at end of 2023, there were in total 5 442 composite buildings aged 50 or above. Statistics of MBIS notices, repair orders or removal orders issued and have not been complied with in relation to these buildings are tabulated as follows (the figures in brackets denote the number of buildings involved):

	No. of notices/orders issued (Note 2)	No. of notices/orders expired and not complied with (Note 2)
MBIS notices	53 367 (3 716)	7 947 (2 020)
Repair orders	1 406 (954)	327 (283)
Removal orders	55 264 (4 340)	12 175 (2 777)

(2) As mentioned above, the "risk-based" approach has all along been BD's pragmatic approach in enforcement. The BD will review enforcement priorities and optimise the mode of enforcement from time to time with a view to enhancing the effectiveness of enforcement, including strengthening law enforcement and deterrent effect by stepping up prosecution work; and setting higher priority for buildings with greater fire safety/public risk or hazard when considering instigating prosecutions and selecting target buildings for large-scale operations. In the longer term, as announced in the Chief Executive's 2023 Policy Address, the Government is taking forward in full steam the exercise of reviewing the B0, targeting UBWs and illegal building works as well as non-compliance with expired statutory orders or notices, so as to more effectively combat illegal behaviours including UBWs by way of streamlining prosecution procedures, lowering the prosecution threshold and increasing penalties. The Government will put forth the proposed amendments to the B0 this year for consultation with the industry and the public.

(3) As regards the Hon Tse's proposal to dispose of UBWs through payment of fines or land premium, we have the following considerations:

(i) Building and public safety: Under the B0, any person intending to carry out building works is required to appoint an authorised person before commencement of works and, where necessary, a registered structural engineer and/or a registered geotechnical engineer to prepare and submit building plans for approval by the BD (Note 3). In addition, the Minor Works Control

System under the B0 allows minor works to be carried out in a simplified manner. These systems ensure that all building works as well as the completed building/structure comply with the requisite building standards on safety and health. Building works carried out on any structures completed not in compliance with the B0 are unauthorised and their building safety may not necessarily be ascertained solely by means of inspections afterwards.

â€(ii) Fairness of policy: Such suggestion would be unfair to those owners who have adhered to the B0, without financial means, or have voluntarily removed their UBWs upon receiving advisory letters or removal orders issued by the BD. Such practice would also convey a wrong message to the community who may mistakenly believe that the illegal behaviour of UBWs could be exonerated by financial means. As evident from the UBW problems unfolded on the Redhill Peninsula and other luxury estates, there are strong calls in the community that the Government should take robust enforcement actions against UBWs posing danger to public safety and/or with serious legal contraventions.

Since the Government is reviewing the B0 to enhance the effectiveness of enforcement, pragmatic and robust enforcement policies must also be formulated to deal with the backlog cases. Notwithstanding this, based on the above principles, the Government will not consider lightly the suggestion of granting exemption from removal of UBWs in the form of payment of land premium, payment of punitive fines, payment of Government rent, etc. For cases of UBWs that constitute serious contraventions, we all the more do not want to convey a wrong message to the community that serious contraventions could be legalised by financial means. The possibility of increasing Government revenue through such means is also not among our considerations.

Note 1: Except domestic buildings not exceeding three storeys.

Note 2: The figures are the cumulative numbers of MBIS notices, repair orders and removal orders issued since 2012. The figures also include notices/orders received before the buildings concerned reached 50 years of age. The figures in brackets denote the number of buildings involved.

Note 3: Except for works falling within the scope of designated minor works that can be carried out under the simplified requirements of the Minor Works Control System or are exempted works under the B0.