

LCQ15: Unlawful occupation of government land

Following is a question by the Hon Chan Yuet-ming and a written reply by the Secretary for Development, Ms Bernadette Linn, in the Legislative Council today (June 19):

Question:

It has been reported that according to the information of the Lands Department (LandsD), 34 407 cases of unlawful occupation of government land were substantiated by the LandsD in the past three years, and among them, the LandsD instituted prosecution for a total of 54 cases which resulted in conviction, representing a conviction rate of only 0.15 per cent. Moreover, there was no downward trend in cases of unlawful occupation of land in the past three years. There are views that the Government should increase the penalties for unlawful occupation of government land to enhance the deterrent effect, particularly for acts involving unlawful occupation of government land of relatively large area for brownfield operations or erection of domestic structures for profit-making purposes. In this connection, will the Government inform this Council:

(1) of the following information on cases of unlawful occupation of government land in each of the past three years: (i) the number of suspected cases, (ii) the number of substantiated cases, and (iii) the number of cases for various purposes of unlawful occupation, with a tabulated breakdown by the 18 districts in Hong Kong;

(2) given that in reply to a question raised by a Member of this Council on January 10 this year, the Government indicated that the existing framework of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) gave allowance for the occupiers to first cease the unlawful occupation of government land themselves, and prosecution would only be invoked if the occupiers did not cease the occupation before the expiry date stipulated in the Government's statutory notice, and such "self-rectification" arrangement was believed to be one of the reasons accounting for the small number of prosecution cases at present, whether the Government will make adjustments to the framework of the Ordinance focusing on cases of unlawful occupation of government land of relatively large area; if not, of the reasons for that;

(3) as there are views that the fines imposed on the convicted under the ordinances related to unlawful occupation of government land are too low, whether the Government will consider, by amending the legislation, linking the fines for unlawful occupation of government land of relatively large area for brownfield operations with the illicit proceeds made; if not, of the reasons for that; and

(4) in order to step up efforts in combating unlawful occupation of

government land of relatively large area for brownfield operations, whether the Government will deploy manpower to strengthen the relevant law enforcement work and consider intervening by other administrative means (e.g. suspending water supply to the occupiers of the land concerned); if not, of the reasons for that?

Reply:

President,

As stated in the Government's reply to a question raised by a Member of the Legislative Council on January 10 this year, the Lands Department (LandsD) handles over 10 000 cases of unlawful occupation of government land pursuant to the Land (Miscellaneous Provisions) Ordinance every year. The form and nature of these cases vary significantly. Most of them are small-scale and minor cases of disposal of sundry items and street obstruction (e.g. piling of waste/construction wastes, bamboo scaffolds, skips, abandoned vehicles, illegal bicycle parking, shop front extensions, etc.), while the rest are more serious cases which involve the erection of structures and fencing off of government land for brownfield operations or domestic use. To optimise the use of limited manpower resources for best enforcement effectiveness, the LandsD has to adopt a pragmatic "risk-based" approach to prioritise its enforcement actions, with priority given to cases of larger scale, more serious contraventions, or cases involving safety or environmental hygiene risks.

When taking land control actions, the LandsD will post a statutory notice in accordance with the law requiring the occupier to cease occupation before a specified deadline. If the situation does not improve upon the expiry of the deadline, the LandsD will take further actions, including taking possession of and clearing the property or structures remaining on the land, as well as considering instituting prosecutions against the occupier (if the identity of the occupier can be ascertained with evidence).

The Government has always been very concerned about cases involving unlawful occupation of a large area of government land for brownfield operations or domestic structures, which are classified by the LandsD as high-priority enforcement cases. In recent years, the LandsD has also introduced a number of enhancement measures to strengthen the efficiency of its enforcement on this type of cases, and has been reviewing the effectiveness of the measures and making adjustments where necessary, with details explained in the ensuing paragraphs.

The reply to various parts of the Hon Chan's questions is as follows:

(1) The relevant figures on cases of unlawful occupation of government land received and enforcement actions taken by the LandsD in the past three years (i.e. from 2021 to 2023) are set out in the Annex.

(2) The existing Land (Miscellaneous Provisions) Ordinance indeed allows an occupier to first cease unlawful occupation of government land himself, and

the occupier must bear the responsibility for and expenses of demolition and clearance. If the occupier fails to cease occupation of government land before the expiry date stipulated in the statutory notice posted by the LandsD, the Government may initiate prosecution under section 6(4) of the Ordinance. Nevertheless, one of the main reasons for the low prosecution figures in the past is that the majority of cases are minor in nature. The strategy of the LandsD is to focus its resources on putting an end to such land occupation, with less focus on instigating prosecution. Instigating prosecutions on a large scale is not an optimal use of public resources, because even if the prosecution is successful, the manpower and resources devoted by the Government in investigation, evidence collection and prosecution are not proportional to the court sentences (mainly fines). Unsuccessful gathering of evidence or inadequate evidence to ascertain the identity of the occupier for instituting prosecutions is also one of the reasons for the low prosecution figures.

That said, we agree with the Hon Chan's views that with regard to more serious cases, including large-scale occupation of government land or cases involving high safety risks, we should adopt a resolute and stringent enforcement approach. In response to the unauthorised building works and unlawful occupation of government land by some standalone houses on seafront slopes of the Redhill Peninsula which were revealed by the heavy rainstorms last September and October, the LandsD initiated prosecutions against three cases of erection of structures on government land directly by invoking section 6(4A) of the Land (Miscellaneous Provisions) Ordinance for the first time in recent years. The offence stipulated in section 6(4A) is a separate offence from that in section 6(4) focusing on the erection of a structure on government land. The provision empowers the Government to initiate prosecution directly against any person who is engaged, arranges or directs the erection of a structure on government land, without the pre-requisite that the occupier has not ceased occupation in accordance with the statutory notice pursuant to section 6(4) as mentioned above before prosecution can be initiated. Relevant provisions also stipulate a higher sentence for gainful situations (see part (3) below). At the moment, legal proceedings of these cases are ongoing. Depending on the outcomes of the cases, the LandsD will consider extending it to other severe cases, as well as review whether the Government's prosecution power should be enhanced under the Ordinance in the future where necessary.

(3) To enhance the deterrent effect against unlawful occupation of government land, the Government amended the Land (Miscellaneous Provisions) Ordinance (Cap. 28) in 2015 to significantly increase the penalties under section 6(4) for those who did not cease occupation of government land in accordance with the statutory notice, and introduced a progressive system of maximum fines for repeated offenders as well as a system of daily fines for combating such unlawful act. Upon conviction, an offender is liable to a maximum penalty of a fine of \$500,000 and imprisonment for six months on the first occasion (the maximum penalty was a fine of \$10,000 and imprisonment for six months before the amendment), and to a further daily fine of \$50,000 for non-compliance with the statutory notice (new penalty). The offender, if convicted on each subsequent occasion, is liable to a fine of up to \$1,000,000 (new penalty)

and imprisonment for six months (new penalty), and to a further daily fine of \$100,000 for non-compliance with the statutory notice (new penalty).

After the legislative amendment came into effect in 2015, the penalties imposed by the court increased accordingly. Among the 54 convicted cases in the past three years, 23 cases had the offenders fined over \$10,000 (a fine of \$137,000 in one case) while three cases had the offenders sentenced to a suspended sentence of imprisonment.

Further, targeting the offence of the erection of structure on government land under section 6(4A), the provisions adopt fivefold fines in a gainful situation as compared with a general situation. After the 2015 amendment, for cases involving gainful situation, an offender on the first conviction is liable to a maximum penalty of a fine of \$2,500,000 and imprisonment for one year (the maximum penalty was a fine of \$50,000 and imprisonment for one year before the amendment) and on each subsequent conviction a maximum fine of \$5,000,000 and imprisonment for one year (new penalties); whereas in other situations (i.e. not involving gainful situation), an offender on the first conviction is liable to a maximum penalty of a fine of \$500,000 and imprisonment for six months (the maximum penalty was a fine of \$10,000 and imprisonment for six months before the amendment) and on each subsequent conviction a maximum fine of \$1,000,000 and imprisonment for six months (new penalties). As stated above, the LandsD has invoked section 6(4A) for prosecution on erection of structures on government land for the first time in recent years and is awaiting the court's ruling.

The Development Bureau and the LandsD will continue to monitor the implementation of the Ordinance and whether unlawful occupation of government land has deteriorated. Depending on the effectiveness of the work above, we may consider measures to enhance deterrence of the Ordinance where necessary.

(4) The LandsD attaches great importance to handling cases involving unlawful occupation of a large area of government land and has implemented various measures to enhance enforcement work in recent years.

On the policy front, the LandsD has tightened regularisation application arrangements for unlawful occupation of government land since March 2017, meaning that the department no longer accepts regularisation applications for cases of unlawful occupation of government land commencing on or after March 28, 2017 and the occupiers can no longer avoid ceasing occupation of the land pursuant to the statutory notice through regularisation applications.

On enforcement manpower, the LandsD set up the Special Duties Task Force (Task Force) in 2019 to focus manpower resources in a targeted manner against cases of unlawful occupation of relatively large areas of government land or serious lease breaches involving private agricultural land. Up to the end of May 2024, the Task Force completed a cumulative total of over 1 620 cases, with the clearance of more than 45 hectares of unlawfully occupied government land and demolition of over 2 600 unlawful or lease-breaching structures in total. Quite a number of sites in these cases involve brownfield operations. In addition, to enhance the overall operational efficiency and achieve

synergy, with effect from April 2023, the LandsD has consolidated the enforcement manpower at various District Lands Offices (DLOs), including merging the Land Control Teams, Lease Enforcement Teams and Squatter Control Teams in the New Territories DLOs into a new Land Enforcement Team, such that cases of land irregularities in the same district are handled by one single team in an integrated manner. The LandsD also leverages on technologies (e.g. using drones and personal digital assistants) to increase the enforcement effectiveness and overall efficiency of its daily land enforcement work.

On departmental collaboration, with regard to Member's suggestion to suspend water supply to the occupiers of the land concerned, legal advice had been sought in the past. According to the legal advice, the Water Authority does not have the authority to refuse to grant permission to install a water meter or supply water on grounds related to the illegal status of the premises (e.g. unlawful status due to occupation of government land). Nevertheless, if the LandsD discovers unlawful taking of water when handling cases of unlawful occupation of government land, the LandsD will refer the cases to the Water Supplies Department for corresponding enforcement action. Further, the LandsD has strengthened the communication and co-operation mechanism with the Buildings Department and the Planning Department and carried out joint operations regularly targeting serious breaches, including cases of unlawful occupation of government land and breaches of land leases involving unauthorised development in the New Territories and unauthorised building works of standalone houses.

Based on our experience, after taking large-scale enforcement actions, quite a number of occupiers will rectify the irregularities themselves through demolition of the unlawful structures or ceasing the unlawful occupation of government land. The LandsD will continue to review how to utilise the powers under the existing legislative framework and its manpower, and will determine the enforcement priority and optimise the mode of enforcement, with a view to enhancing the effectiveness of law enforcement as well as enhancing the enforcement and prosecution efforts.