

LCQ17: Illegal conversion of car parking spaces into shops

Following is a question by the Hon Luk Chung-hung and a written reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (June 24):

Question:

It has recently been uncovered by the media that the street-level car parking spaces of a number of old buildings in Kowloon City have been illegally converted into shops for as long as several decades. The Lands Department (LandsD) and the Buildings Department (BD) have all along failed to take follow-up actions, and the Rating and Valuation Department (RVD) has determined the rates payable by the landlords concerned on the basis of the rateable values of such premises as shops. In this connection, will the Government inform this Council:

(1) whether the LandsD and the BD have, since the occupation of the aforesaid buildings, received any applications for converting the carparking spaces concerned into shops; if so, of the number;

(2) whether the LandsD and the BD have, since the occupation of the aforesaid buildings, uncovered the relevant cases of illegal conversion; if so, of the number, as well as the law enforcement actions and follow-up work taken; and

(3) of the reasons why the RVD has determined the rates payable for such premises on the basis of their rateable values as shops?

Reply:

President,

After consulting the Financial Services and the Treasury Bureau, our reply to the various parts of the question raised by Hon Luk is as follows:

(1) and (2) It has been reported by the media in late December 2019 that certain street-level car parking spaces were for unauthorised conversion into shops at the following locations in Kowloon City, including: four ground floor properties of the building at Nos. 49 and 49A Nga Tsin Wai Road, No. 10 Grampian Road and 9 Junction Road (Location 1); four ground floor properties at Camay House at Nos. 4 and 4A Grampian Road and Nos. 3 and 3A Junction Road (Location 2); two ground floor properties at Nos. 6 and 6A Grampian Road (Location 3); two ground floor properties at Nos. 8 and 8A Grampian Road (Location 4) and two ground floor properties at No. 7C Junction Road (Location 5).

In terms of land administration, whether a certain use in a building is

in breach of the land lease depends on the terms and conditions of the relevant lease and the actual circumstances regarding how the land and buildings thereon are being used. If a breach of lease conditions is detected, the Lands Department (LandsD) will take appropriate lease enforcement actions having regard to the actual circumstances of each case and enforcement priorities. Generally speaking, the LandsD will first issue a warning letter to the owner concerned requesting rectification of the lease breach within a specified period. If the owner does not rectify the breach by the deadline, the LandsD may register the warning letter at the Land Registry, commonly known as "imposing an encumbrance". If the seriousness of the breach warrants further action, for instance where the breach poses a serious threat to public safety, the LandsD may consider proceeding with re-entry of the lot or vesting of the relevant interest to the Government.

For the above cases, the relevant lease provides that ground floor of the buildings should be used for car parking with car parking facilities. With regard to the properties at the abovementioned locations, the LandsD did not receive any applications for lease modification or waiver of the relevant lease conditions to permit the car parking area to be used for other purposes. Arising from public complaints and media enquiries, the LandsD conducted site inspections and investigations at the above locations in turn, and found that except part of Location 3, which is vacant at present, properties at other locations are being used for commercial purposes and are in breach of the lease conditions. The LandsD has been issuing warning letters to the owners liable for breach of lease conditions since September 2019 requesting rectification of the lease breach. For cases where the breach has not been rectified by the deadline, the LandsD would continue to register the warning letters at the Land Registry, and reserves the right to further lease enforcement actions.

In so far as the enforcement actions under the Buildings Ordinance (BO) is concerned, the conversion of car parking spaces into commercial use may involve unauthorised building works (UBWs) and/or unauthorised changes in use of buildings. Upon receipt of reports, the BD will conduct inspection and take follow-up or enforcement actions based on the inspection findings. For UBWs, according to the existing enforcement policy, the BD will issue removal orders to owners under section 24 of the BO requiring the removal of UBWs that constitute obvious hazard or imminent danger to life or property, or constitute serious health hazards or serious environmental nuisances. For cases involving unauthorised change in use of buildings, the BD will accord priority to deal with those which pose obvious hazard or imminent danger to life or property, or cause serious health hazards or serious environmental nuisances. For these cases, depending on the circumstances, the BD will issue statutory order in accordance with section 25 of the BO to require the owner or occupier to discontinue such unauthorised use of a building.

According to records, the BD did not receive application from the owners of the properties at the abovementioned locations for converting the uses of the properties as shops. In light of complaints and referrals, the BD paid inspections and found that the car parking spaces at the above addresses were used as shops. These changes in use did not pose obvious hazard or imminent

danger to life or property, or cause serious health hazards or serious environmental nuisances. Having said that, BD found that there were actionable UBWs in some premises that had been converted into commercial use. The BD has issued removal orders to the relevant owners in accordance with the BO and the enforcement policy against UBWs, requiring the removal of the UBWs concerned.

(3) According to the Rating Ordinance (Cap 116), the rateable value of a tenement is assessed on the basis of the actual use and occupation status of the tenement. If the tenement concerned is used as a shop, the Rating and Valuation Department (RVD) will assess the rateable value of the tenement on the basis of a shop. Assessment of the rateable value by the RVD based on the use of a tenement does not mean that the authority concerned confers legal sanction or authorisation for such use, nor does it mean that the Government will stop taking enforcement action against violation of relevant legislations or lease conditions.