

LCQ19: Unauthorised building works and related prosecutions

Following is a question by the Hon Chu Hoi-dick and a written reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (February 20):

Question:

On December 21 last year, the Director of Public Prosecutions (DPP) issued a statement expounding the prosecution decisions made by him in respect of the unauthorised building works (UBWs) at House 3 and House 4 of Villa de Mer, Tuen Mun. DPP would not institute any prosecution against the Secretary for Justice (SJ) on the grounds that there was no evidence indicating that the UBWs at House 4 were constructed subsequent to SJ's acquisition of the unit. As to the UBWs at House 3, DPP would institute prosecution against only one of the two owners of the property (i.e. the husband of SJ). On the other hand, it has been reported that the sale and purchase agreement through which SJ acquired a property in Repulse Bay had expressly stated the existence of UBWs in that property. In this connection, will the Government inform this Council:

- (1) whether the authorities instituted, by invoking sections 14(1) and 40(1AA) of the Buildings Ordinance (Cap. 123), prosecutions in the past 10 years against those persons who had commenced or carried out UBWs in their properties but subsequently sold the properties concerned; if so, of the number and details of such cases; if not, the reasons for that;
- (2) whether the Buildings Department (BD) will institute prosecution(s) against the former owner(s) of House 4 who carried out the UBWs therein; if so, of the details; if not, the reasons for that;
- (3) whether BD has investigated if the UBWs at the aforesaid property in Repulse Bay had been constructed by the person(s) who sold the property to SJ;
- (4) of the circumstances, in general, under which a person who holds part of the title to a property (i) is required and (ii) is not required to bear the legal liability for the commencement or carrying out of UBWs at that property; and
- (5) as section 14(1) of Cap. 123 stipulates that "[s]ave as otherwise provided, no person shall commence or carry out any building works...without having first obtained from the Building Authority... his approval...and...consent...", whether the authorities regard a property owner who has engaged a contractor to carry out UBWs as a person who has commenced or carried out UBWs under that provision; if so, of the details?

Reply:

President,

The policy that has all along been adopted by the Buildings Department (BD) in its enforcement against unauthorised building works (UBWs) is to require the owner to rectify the irregularities as soon as practicable. If an owner does not comply with BD's statutory orders, the department will consider instigating prosecution. On the other hand, under normal circumstances, the department will not proactively initiate criminal investigation on whether there have been contraventions of the Buildings Ordinance (BO) (Cap. 123), unless there is information showing that registered building professionals under the BO are suspected to be involved in the erection of UBWs, or that any person knowingly submits misrepresented documents to BD or knowingly contravenes section 14(1) of the BO, etc. Under these circumstances, BD will undertake follow-up action, including initiating criminal investigation and considering instigating prosecution subject to the result of such investigation.

The above principle of enforcement policy on whether to initiate criminal investigation applies to all cases related to UBWs. The identity and social status of the person involved are not amongst the considerations. In fact, in handling UBW cases, BD has been acting in accordance with the law and is impartial to all; it has been taking appropriate actions pursuant to the BO and the prevailing enforcement policy.

In consultation with BD, the Development Bureau provides a consolidated reply as follows:

(1) If BD decides to conduct criminal investigation into an UBW case per the above enforcement policy, the investigation target will include any registered building professionals who are suspected to be involved in the erection of UBWs, or any person knowingly submits misrepresented documents to BD or knowingly contravenes section 14(1) of the BO, including current and any former owners. BD will consider whether the evidence is sufficient in deciding whether to instigate prosecution procedures. BD will seek legal advice from the Department of Justice (DoJ) timely as needed. Having checked the records, in the past 10 years, BD had not instigated prosecution against persons who have already sold their properties concerned by invoking section 40(1AA) of the BO.

(2) Regarding the UBWs at House 4 of Villa De Mer, Tuen Mun, as there is no sufficient evidence to establish that any registered building professional is suspected to be involved in the erection of UBWs, or there is any person knowingly submitted misrepresented documents to BD or knowingly contravened section 14(1) of the BO, BD did not instigate prosecution against any person.

(3) Following the above enforcement policy on whether criminal investigation should be initiated, BD did not conduct criminal investigation into the case concerned.

(4) and (5) Under section 40(1AA) of the BO, any person who knowingly carries out building works without having first obtained the approval and consent from the Building Authority (BA) shall be guilty of an offence. If BD conducts an investigation per the above enforcement policy on whether criminal investigation should be initiated, BD will consider whether the evidence collected could sufficiently demonstrate that the persons involved (including the persons who carry out the works and the persons who appoint other persons to carry out the works, no matter whether such persons hold the entire or part of the title to the premises) knowingly contravene the requirements for obtaining prior approval and consent from the BA in deciding if prosecution should be instigated. If necessary, BD will seek legal advice from DoJ timely.