

LCQ3: Provision of amenities ancillary to housing

Following is a question by the Hon Regina Ip and a reply by the Acting Secretary for Transport and Housing, Dr Raymond So Wai-man, in the Legislative Council today (May 16):

Question :

In 2005, the Hong Kong Housing Authority (HA) divested certain retail and car parking facilities of its public rental housing (PRH) estates to The Link Real Estate Investment Trust (The Link). The Link was subsequently renamed as Link Real Estate Investment Trust (Link REIT). Following the relaxation in 2014 of the constraints under the Code on Real Estate Investment Trusts regarding the investment scope of this type of trusts, Link REIT repeatedly divested a number of properties in PRH estates. Some members of the public have pointed out that to achieve profit maximisation, Link REIT has substantially raised the rents of shops after the refurbishment of the shopping centres and markets in PRH estates, refused to renew tenancy agreements with small shop operators so as to introduce large chain stores, as well as divested incessantly its assets. They opine that Link REIT and the new owners have only profits in mind and disregard the livelihood of small shop operators and the daily needs of the PRH residents. In this connection, will the Government inform this Council:

(1) given that according to the provisions in the sale and purchase agreement signed back then between HA and The Link, if, within 10 years from the listing of The Link, HA wished to further divest its retail and car parking facilities, HA had to offer a sale proposal to The Link first, meaning that The Link was entitled to a right of first refusal, of the reasons why HA made such an arrangement back then and the specific contents of the relevant provisions; and

(2) as section 4(1) of the Housing Ordinance provides that HA has the duty to secure, for the residents, the provision of amenities ancillary to housing as HA thinks fit, of the new measures to be put in place to ensure that HA will fully discharge its duty under this provision, and that the usage of the commercial facilities in its housing estates complies with the relevant land lease conditions and meet the needs in the daily lives of PRH residents?

Reply:

President,

My consolidated reply to various parts of the Hon Regina Ip's question is as follows.

In 2005, the Hong Kong Housing Authority (HA) divested 180 properties, including retail and carparking facilities, through The Link Real Estate

Investment Trust (The Link) (now known as Link Real Estate Investment Trust (Link)) in order to focus on its core function of providing subsidised public housing and improve its financial position in the short-to-medium term with proceeds from divestment. It was also considered that the efficiency of the relevant commercial facilities would be enhanced under the operation of a private entity in accordance with commercial principles.

One of the documents relating to the listing of The Link was the Deed of Right of First Refusal (the Deed), under which HA is obliged offer The Link a right of first refusal in the event that it wished to sell certain retail and carparking facilities retained within its housing estates or that HA might develop in the future. Since 2005, HA has not further divested its commercial facilities, and thus the right of first refusal has never been exercised. The right of first refusal was effective for a period of ten years commencing from the listing day, which means that it has already expired in November 2015.

Under the right of first refusal, the price at which HA would offer the properties to The Link is the higher of two independent valuations calculated by specific valuation methods. If The Link does not opt to purchase the properties, HA can complete the sale by offering the properties to any third parties on such terms as it determines within two years, otherwise the right of first refusal will apply again to such properties. When the Government briefed the Legislative Council on matters about the divestment of HA's retail and carparking facilities in January 2006, it had provided detailed information on the right of first refusal .

HA's decision then to grant the right of first refusal had gone thorough in depth deliberation, and taken into account a variety of views during the process. One of the main reasons for making this decision was because, in preparation for the divestment, HA considered that the revenue potential of some of its facilities had yet been fully realised. In an effort to maximise its revenue from the public offering, HA did not incorporate these retail and carparking facilities into its divestment plan. HA considered that some of these properties might be suitable for divestment when their revenue potential was fully realised in future. HA also had plans at that time to divest the retail and carparking facilities of its new estates which would be completed in the coming years, with a view to withdrawing from commercial operation and focusing on its core function as a provider of public housing.

At that time, HA believed that granting the right of first refusal might help attract investors and maximise its revenue from the public offering. Furthermore, in order not to compromise HA's long-term pursuit of more innovative asset management/disposal avenues, a time limit was set for the right of first refusal.

HA's then decision to divest its properties was made after careful deliberation. HA was of the view that such a decision would be conducive to the discharge of its function as a provider of subsidised housing. Given the limited land and public resources, HA has to prioritise and focus its resources on providing public rental housing (PRH) to eligible families, especially to the low-income families who cannot afford private rental

accommodation. In responding to the motion debates in the Legislative Council in November 2012 and November 2016, the then Secretary for Transport and Housing clearly stated that the Government and HA had no plan to buy back Link or individual divested properties, as this would be incompatible with public interests and the principle of prudent financial management. This position still remains valid.

Section 4(1) of the Housing Ordinance requires HA to secure the provision of housing and "such amenities ancillary thereto as the Authority thinks fit" for the persons concerned. As for HA's divestment of its properties in 2005, when handing down its Judgement in 2005 on a relevant judicial review case, the Court of Final Appeal (CFA) affirmed that the divestment plan by HA was consistent with the objective laid down in section 4(1) above. According to CFA, it was not stipulated in the Housing Ordinance that tenants of PRH had any statutory right to the continued retention and control by HA of the facilities while the tenants were still using the facilities; and so long as the facilities were available to tenants, it meant that HA had secured the provision of such facilities, even if they were provided by a third party over whom HA had no control. In reaching its conclusions, CFA noted that a market-oriented commercial approach would be adopted in operating the divested properties, whereas HA's approach at that time might not be in line with private sector practice. CFA was also aware of the fact that there might be changes in the operation of the relevant facilities, such as the tenant trade mix might be different.

In fact, HA would consult the public when designing each new public housing project, and try to include, as far as practicable, various facilities suggested by the public, such as retail, welfare, community, education, transport, etc. For existing estates, HA regularly receives opinions on various facilities from Estate Management Advisory Committees and other members of the public. HA would try to adjust existing facilities or add new facilities as far as practicable. The above practices and procedures are established, regular and transparent.

In respect of lease enforcement, the Lands Department (LandsD), in the capacity of the landlord, handles the leased land under the conditions in the land leases. As with other private properties, LandsD mainly acts on complaints, referrals or enquiries about suspected breaches of the lease conditions of the divested properties by conducting inspections and taking follow-up actions in accordance with the existing procedures. Depending on the circumstances, LandsD will also consult the relevant policy bureaux/government departments and seek legal advice. If breaches of the lease conditions are confirmed, LandsD will take appropriate lease enforcement actions. HA, as one of the owners of housing estates, maintains communication with other owners on matters relating to the daily management of such estates, with a view to protecting its rights under the deeds of mutual covenant (DMCs) and the restrictive covenants. Any suspected breach of land leases identified by HA will be referred to DMC Managers, Owners' Corporation and the relevant District Lands Offices for follow-up.

Apart from the land lease conditions, owners of divested properties must, in the same manner as other private property owners, abide by the

relevant statutory requirements and the restrictive covenants contained in the assignment deeds of the properties during the operation of such properties, whereas the government departments concerned would carry out supervision in the light of the actual circumstances. As long as the relevant statutory requirements and land lease conditions are complied with, and the aforementioned covenants with HA are not breached, the Government and HA cannot and will not interfere with the owners' day-to-day operations and commercial decisions. However, if it is confirmed that the owner concerned is in breach of any laws, land lease conditions or covenants with HA, the relevant government departments and HA will certainly pursue the matter seriously and take appropriate actions.