

LCQ8: Unauthorised building works and occupation of government land by housing on hillsides

Following is a question by the Hon Ma Fung-kwok and a written reply by the Secretary for Development, Ms Bernadette Linn, in the Legislative Council today (July 17):

Question:

It has been reported that the landslide at Redhill Peninsula on the Hong Kong Island caused by the once-in-a-century torrential rain last year has not only uncovered the serious problem of unauthorised building works (UBWs) at the houses there, but also revealed that issues such as UBWs on hillsides and unlawful occupation of government land are involved. In the light of the incident, the Government has indicated that it would conduct large-scale inspections targeting houses. On the other hand, there are views that the risk borne by housing situated on hillsides involving UBWs will increase significantly with the typhoon season approaching. In this connection, will the Government inform this Council:

(1) upon the comprehensive inspection conducted in respect of the UBW problems of the houses at Redhill Peninsula, of the districts in which housing situated on dangerous hillsides and soil have been inspected by the authorities, and whether they have grasped the respective numbers of such housing involving UBWs, illegal addition works and unlawful occupation of government land;

(2) of the approaches adopted/to be adopted by the authorities to handle the cases mentioned in (1), as well as the number of actions taken and their effectiveness;

(3) of the actions taken by the authorities in the past year in respect of housing situated on hillsides involving UBWs, illegal addition works or unlawful occupation of government land, as well as their effectiveness; and

(4) in respect of housing situated on hillsides involving UBWs, illegal addition works or unlawful occupation of government land, apart from issuing removal orders, whether the Government will, on the premise that the structures concerned are assessed by professional Authorised Persons to be safe, consider adopting other rectification or compensation methods to address the problems?

Reply:

President,

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

(1) As pointed out in Hon Ma's question, the rainstorm in September last year revealed the safety risks of houses with irregularities situated on the slope. Therefore, the Buildings Department (BD) and the Lands Department (LandsD) commenced a joint operation from September to November last year to inspect 89 houses situated on the slope along the seafront of Redhill Peninsula (including the four houses at the landslide location), with a view to combating unauthorised building works (UBWs) and unlawful occupation of government land. The two departments then commenced a joint inspection of all 40 houses on Beaulieu Peninsula in Tuen Mun in December last year; and completed inspections of all 16 houses in Block B of Flamingo Garden in Sai Kung, and all 18 houses in Seaview Villas in Tai Po in the first half of this year.

(2) and (3) The BD issues removal orders for UBWs to the owners in accordance with the Buildings Ordinance (Note 1) and registers the removal orders in the Land Registry (commonly known as "imposing an encumbrance"). The LandsD posts statutory notices requiring the cessation of occupation of government land and the demolition of structures on government land in accordance with the Land (Miscellaneous Provisions) Ordinance (Note 2).

Regarding the joint operation against 89 houses situated on the slope along the seafront on Redhill Peninsula, 32 houses involved both UBWs and unlawful occupation of government land, 41 involved UBWs, one involved unlawful occupation of government land. No UBWs or unlawful occupation of government land was found for the remaining 15 houses. The two departments respectively issued 72 removal orders and posted statutory notices to 33 houses. As at end-June this year, among the 72 removal orders, substantive progress has been made for 42 orders, i.e. the orders have been complied with, remedial works were in progress, or the owners have appointed registered building professionals to prepare or submit proposals and building plans for the remedial works. Appeals against two orders have been dismissed by the Appeal Tribunal. Twenty-seven orders were pending processing by the Appeal Tribunal. One order has not yet expired. As for unlawful occupation of government land, more than half of the house owners concerned have submitted or were going to submit proposals for demolition works. Demolition and reinstatement works for some of the houses were in progress.

For the joint operation on Beaulieu Peninsula, the two departments initiated investigation into 40 houses. Amongst these houses, 12 involved both UBWs and unlawful occupation of government land, 27 involved UBWs and one involved unlawful occupation of government land. The two departments respectively issued 46 removal orders and posted statutory notices to 13 houses. As at end-June this year, substantive progress has been made for 11 orders, seven orders were pending processing by the Appeal Tribunal, 16 orders have not yet expired. For the remaining 12 non-complied orders which have expired, the BD has initiated or is considering initiating prosecution action. As regards the statutory notices issued by the LandsD, nine have not yet expired and the remaining four have expired. Depending on the progress of individual cases, the department would consider instigating prosecution after seeking legal advice.

As regards the joint operation against Flamingo Garden, the two

departments initiated investigation into 16 houses. Amongst these houses, nine involved both UBWs and unlawful occupation of government land, six involved UBWs. No UBWs or unlawful occupation of government land was found for the remaining house. The two departments respectively issued 15 removal orders and posted statutory notices to nine houses. As at end-June this year, none of the removal orders and statutory notices have expired. Amongst which, two statutory notices have been complied with.

As for Seaview Villas, the two departments initiated investigation into 18 houses. Amongst these houses, 14 involved both UBWs and unlawful occupation of government land, three involved UBWs and one involved unlawful occupation of government land. The two departments respectively issued 17 removal orders and posted statutory notices to 15 houses. As at end-June this year, none of the removal orders have expired, and remedial works for two orders were in progress. As regards the statutory notices issued by the LandsD, demolition works were in progress for three notices. Fourteen notices have not yet expired.

The two departments will continue to follow up on the compliance of the remaining removal orders/statutory notices in the above operations. If the orders/notices are still not complied with after expiry, depending on the progress of individual cases, the departments will consider instigating prosecution.

Apart from instigating prosecution against persons for non-compliance with expired removal orders or statutory notices, the two departments will also consider taking further prosecution action against persons (including owners, professionals and contractors participating in the relevant works) involved in the contraventions cases. For example, the LandsD has invoked section 6(4A) of the Land (Miscellaneous Provisions) Ordinance this year to instigate prosecution directly against the act of erecting structures on government land with regard to three cases on the Redhill Peninsula. Legal proceedings of the above cases are ongoing. Depending on the outcome of the cases, the LandsD will consider extending application to other severe cases. The BD is also seeking advice from the Department of Justice on instigating prosecution under section 40(1AA) of the Buildings Ordinance against parties involved in some of the cases on the Redhill Peninsula for knowingly carrying out building works without having obtained prior approval from the BD (Note 3).

(4) The prior approval systems for building works are effective in ensuring that all building works as well as completed structures comply with the requisite building standards for safety and health, and are constructed by registered building professionals and registered contractors as required in accordance with the requirements of the Buildings Ordinance and its subsidiary legislation.

Serious UBWs such as any unauthorised basements, damage to retaining walls or construction of unauthorised storeys in buildings situated on the slope will pose a risk to the structural safety of buildings, whose overall safety may not necessarily be ascertained by means of inspections afterwards. In addition, if the Government grants exemption in the form of compensation

for serious cases such as large-scale UBWs or UBWs on slopes, such as payment of land premium, payment of punitive fines or other fees, this will convey a wrong message to the community that serious contraventions can be legitimised or legalised by financial means. As evident from the UBW problems unfolded on the Redhill Peninsula and other estates, there are strong calls in the community that the Government should take robust enforcement action against UBWs posing danger to public safety and/or with serious contraventions. Furthermore, in view of slope safety considerations, it would be problematic for the Government to consider regularisation arrangements for UBWs situated on slopes.

As announced in the Chief Executive's 2023 Policy Address, the Government is reviewing the Buildings Ordinance to consider increasing the relevant penalties, lowering prosecution threshold, etc, so as to enable the Government to focus more effectively on and combat UBWs of high risk and serious contraventions. We will put forth recommendations for legislative amendments within this year for consultation with the industry and the public.

Note 1: The maximum penalty for non-compliance of removal orders issued by the BD without reasonable excuse is a fine of \$200,000 and one-year imprisonment, and a further fine of \$20,000 for each day that the offence continues.

Note 2: For persons who, without reasonable excuse, fail to demolish structures on government land or continue to occupy government land in accordance with the notices issued by the LandsD, if convicted on the first occasion, the maximum penalty is a fine of \$500,000 and imprisonment of six months, and a further fine of \$50,000 for each day that the offence continues; on each subsequent occasion of conviction, the maximum penalty is a fine of \$1,000,000 and imprisonment of six months, and a further fine of \$100,000 for each day that the offence continues.

Note 3: The maximum penalty is a fine of \$400,000 and two-year imprisonment, and a further fine of \$20,000 for each day that the offence continues.