

LCQ9: Small House Policy

Following is a question by the Hon Kenneth Lau, and a written reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (May 8):

Question:

Since the implementation of the Small House Policy in December 1972, the Government has been granting small house grants to male indigenous villagers in three forms (namely the Free Building Licence, Private Treaty Grant for granting government land and Land Exchange). On the 8th of last month, the High Court handed down a judgment on a judicial review of the Small House Policy, ruling that among those three forms, only the construction of a small house under the Free Building Licence is a lawful traditional right and interest of the indigenous inhabitants of the New Territories within the meaning of Article 40 of the Basic Law, and is lawful and constitutional. In addition, the High Court ordered that the judgment was to take effect upon the expiry of six months after it was made. In this connection, will the Government inform this Council:

(1) of the respective numbers of applications for small house grants in the three aforesaid forms which were (i) received, (ii) approved, (iii) rejected and (iv) being processed in each year from 2009 to 2019 (as at the 30th of last month) by each of the District Lands Offices located in the New Territories, and set out the relevant figures in tables of the same format as the table below; and

District Lands Office: _____

Year	Number of applications											
	Free Building Licence				Private Treaty Grant				Land Exchange			
	(i)	(ii)	(iii)	(iv)	(i)	(ii)	(iii)	(iv)	(i)	(ii)	(iii)	(iv)
2009												
2010												
...												
2019 (as at 30th of last month)												

(2) given that in relation to granting small house grants in the forms of Private Treaty Grant and Land Exchange, while the Development Bureau stated in a press release issued on the 8th of last month that the Lands Department (LandsD) would suspend the receipt of new applications and the processing of those applications already received, the Director of Lands advised in his

reply to a written question I raised on the Estimates of Expenditure 2019-2020 that pending a decision on whether to appeal, applications in relation to all forms of grants made in the past would continue to be processed as usual, whether the Government can clarify the current situation regarding the processing of the applications relating to these two forms; whether LandsD will continue to process such applications until the day on which the aforesaid judgment takes effect or the Court of Appeal hands down its judgment on the relevant appeal (if any) (whichever is the earlier); if LandsD will, of the details; if not, the justifications for that?

Reply:

President,

The Small House Policy (the Policy) was introduced in 1972. Under the Policy, a male indigenous villager aged 18 years old or above who is descended through the male line from a resident in 1898 of a recognised village in the New Territories may apply to the authority once during his lifetime for permission to build for himself a small house on a suitable site within his own village.

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

(1) A breakdown on the number of applications received, approved, rejected, and being processed by the New Territories District Lands Offices of the Lands Department (LandsD) from 2009 to 2019 (up to March 31) for building small houses by way of Free Building Licence (FBL), Private Treaty Grant (PTG) and Land Exchange respectively is set out at Annex.

(2) The Court of First Instance of the High Court handed down a judgement on April 8, 2019 on a judicial review case of the Policy. The Court ruled that the FBL arrangement under the Policy, being a lawful traditional right and interest of the indigenous inhabitants of the New Territories within the meaning of Article 40 of the Basic Law, is lawful and constitutional, while the PTG and Land Exchange arrangements under the Policy are not. Separately, according to the orders granted by the Court on April 30 regarding relief and other matters, the Court confirmed that, as far as applications for Land Exchange is concerned, the unconstitutionality ruling handed down on April 8 applied only to Land Exchange involving government land.

Therefore, the Government will continue to process applications for approval to build small houses through FBL and through Land Exchange not involving government land.

With the consent of the parties, the Court approved on April 29 the extension of the deadline for appeal to May 28. At present, the Development Bureau is studying in detail with the legal team whether to lodge an appeal. Pending a decision on whether to appeal, the LandsD suspends the receipt of applications for grant of government land for building small houses through PTG and grant of government land for building small houses through Land Exchange, as well as the processing of such applications already received.

The Court has stated that the ruling on April 8 will take effect from October 8, and the validity of the grants made before the judgment takes effect would not be affected by the unconstitutional ruling. As to whether and how to handle applications for PTG and those for Land Exchange involving government land before October 8, the Development Bureau needs to carefully consider various factors with the LandsD and the legal team, including legal issues and actual operations. After all, the Court has ruled that PTG and Land Exchange involving government land for building small houses are unconstitutional, and the Court has not handed down specific orders to the Government directing how to handle these types of applications that are pending approval. The Government considers it prudent to continue suspending the processing of these types of applications at this stage pending a decision on whether to appeal.

The question mentioned that, when replying to written questions raised by Members in examining the Estimates of Expenditure for 2019-20, the Director of Lands indicated in Chinese that
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Note: The relevant part in the English reply with serial number DEVB(PL)172 is "Pending a decision on whether to appeal, applications in relation to all forms of grants made in the past (including rebuilding applications) will continue to be processed as usual"; the relevant part in the English reply with serial number DEVB(PL)184 is "While processing of outstanding applications for PTG and Land Exchange will be suspended pending a decision on whether to appeal, the FBL applications as well as applications in relation to all forms of grants made in the past will continue to be processed as usual".