

CONTROLLING OFFICER'S REPLY

DEVB(PL)241

(Question Serial No. 6076)

Head: (82) Buildings Department
Subhead (No. & title): (000) Operational expenses
Programme: (1) Buildings and Building Works
Controlling Officer: Director of Buildings (HUI Siu-wai)
Director of Bureau: Secretary for Development

Question:

Regarding the handling of unauthorised building works (UBWs) cases involving social celebrities' properties, the Buildings Department (BD) has explained to the Office of the Ombudsman the "special procedures" implemented by the BD. In this connection, please provide the following information (broken down into six categories, namely (1) the Chief Executive; (2) Secretaries of Bureaux and officials under the accountability system; (3) permanent secretaries and heads of departments; (4) Executive Council members; (5) Legislative Council members; and (6) influential people in the community):

- i. the numbers of complaint cases received;
- ii. the numbers of follow-up cases;
- iii. the numbers of cases with investigations or follow-up actions completed;
- iv. the numbers of cases confirmed not illegal;
- v. the numbers of cases confirmed illegal;
- vi. the numbers of cases with advisory letters issued;
- vii. the numbers of cases with statutory warning notices issued;
- viii. the numbers of cases with statutory removal orders issued;
- ix. the numbers of cases of non-compliance with removal orders for one to three months, four to six months, seven to nine months, ten to twelve months, and twelve months or above after the specified time;
- x. the numbers of prosecution cases;
- xi. the numbers of conviction cases; and

- xii. the expected completion dates for cases handled in accordance with the “special procedures”.

Asked by: Hon CHAN Ka-lok, Kenneth (Member Question No. 365)

Reply:

In handling unauthorised building works (UBWs), the Buildings Department (BD) has been following the principle of acting in accordance with the law and being impartial to all in taking appropriate actions pursuant to the Buildings Ordinance (BO) and the prevailing enforcement policy. BD will, as a matter of established practice since mid-2011, accord priority to carrying out site inspection for cases reported by members of the public or by the media involving senior Government officials and community celebrities with the objective of ascertaining as soon as possible whether the suspected UBWs exist so as to clear any public concerns (the established practice). After on-site inspection, BD will impartially carry out appropriate enforcement action in accordance with BO and the prevailing enforcement policy against any UBWs found, and will not be particularly stringent or lenient in its enforcement action because the owner is a senior Government official or community celebrity.

Statistics on UBWs cases involving senior Government officials and community celebrities handled by BD in accordance with the established practice based on BD’s record as at 28 February 2015 are tabulated below -

| Number of Cases | | 1 | 2 | 3 | 4 | 5 | 6 | Total |
|-----------------------------------|---|----|--|--|---------------------------|-----------------------------|-------------------------------------|----------------------|
| | | CE | Secretaries of Bureaux/ Officials under accountability system | Permanent Secretaries and Heads of Departments | Executive Council members | Legislative Council members | Influential people in the community | |
| i | Reports received | 3 | 13 | 2 | 6 | 25 | 1 | 47 ⁽¹⁾ |
| ii | Reports handled | 3 | 13 | 2 | 6 | 25 | 1 | 47 ⁽¹⁾ |
| iii | Cases with investigations completed | 3 | 13 | 2 | 6 | 25 | 1 | 47 ⁽¹⁾ |
| Breakdown on item i above: | | | | | | | | |
| iv | Cases where the reported UBWs were not found during BD's inspection | 1 | 2 | 1 | 0 | 4 ⁽²⁾ | 0 | 8 |
| | Cases where the owner of the property or the director of the company owning the property were subsequently found not to be the senior Government official or community celebrity concerned | 0 | 3 | 0 | 0 | 12 ⁽²⁾ | 0 | 15 |
| v | Cases where the owner of the property or the director of the company owning the property were confirmed to be the senior Government official or community celebrity concerned and the reported UBWs were ascertained to exist after BD's inspection | 2 | 8 | 1 | 6 | 11 | 1 | 26 ⁽³⁾ |
| BD's follow up actions:- | | | | | | | | |
| vi | Cases with advisory letters issued (among cases in item v above) | 2 | 3 | 1 | 4 | 4 | 1 | 14 ⁽⁴⁾⁽⁵⁾ |
| vii | Cases with statutory warning notices issued (among cases in item v above) | 0 | 2 | 0 | 0 | 2 | 0 | 4 |
| viii | Cases with statutory removal orders issued (among cases in item v above) | 0 | 1 | 0 | 2 | 4 | 1 | 7 ⁽⁶⁾ |

| Number of Cases | | | 1 | 2 | 3 | 4 | 5 | 6 | Total |
|-----------------|---|----------------------|----|--|--|---------------------------|-----------------------------|-------------------------------------|-------|
| | | | CE | Secretaries of Bureaux/ Officials under accountability | Permanent Secretaries and Heads of Departments | Executive Council members | Legislative Council members | Influential people in the community | |
| ix | Non-compliance since the expiry of statutory removal orders (among cases in item v above) | (1-3 months) | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | | (4-6 months) | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | | (7-9 months) | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | | (10-12 months) | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | | (12 months or above) | 0 | 0 | 0 | 1 ⁽⁷⁾ | 0 | 1 ⁽⁸⁾ | 2 |
| x | Prosecutions (among cases in item v above) | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| xi | Convictions (among cases in item v above) | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

Remarks :-

- (1) 3 community celebrities are/were both Executive Council and Legislative Council members. Hence, the actual no. of cases is 47 (i.e. 50 - 3).
- (2) In 2 cases, the owner of the property or the director of the company owning the property was subsequently found not to be the senior Government official or community celebrity concerned and the reported UBWs were not found during BD's inspection.
- (3) 3 community celebrities are/were both Executive Council and Legislative Council members. Hence, the actual no. of cases is 26 (i.e. 29 - 3).
- (4) Under the established procedures, if there are actionable UBWs after inspection, BD will issue an advisory letter to the owner advising him to rectify the irregularities as soon as possible. In a few cases, no advisory letter was issued as, shortly after BD's inspection, the owner had appointed an authorized person to co-ordinate the rectification works. In one case, the subject building was included in a large-scale operation of BD and, in accordance with the established procedures, a statutory order was issued upfront without the issue of an advisory letter.
- (5) 1 community celebrity is/was both Executive Council and Legislative Council member. Hence, the actual no. of advisory letters issued is 14 (i.e. 15 - 1).
- (6) 1 community celebrity is/was both Executive Council and Legislative Council member. Hence, the actual no. of statutory removal orders issued is 7 (i.e. 8 - 1).
- (7) Removal works is in progress.
- (8) The relevant owner has made an appeal to the Appeal Tribunal under the Buildings Ordinance and later applied for judicial review against the decision of the Appeal Tribunal. The legal proceedings are in progress.

Among the 26 cases where the owner of the property or the director of the company owning the property was confirmed to be the senior Government official or community celebrity concerned and the reported UBWs were ascertained to exist after BD's inspection (i.e. item v in the table above), 21 cases have the UBWs removed, validated or classified as "non-actionable" under the prevailing enforcement policy, while the remaining five cases are at various stages of follow-up.

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