

Case Summary

Complaint Against the Lands Department (Lands D) and the Agriculture and Fisheries Department (A&FD) for delay in taking enforcement action against unauthorised developments of a recreational resort on government land in a country park in the New Territories

The recreational resort under complaint was located in a country park in the New Territories. It included facilities like a horse-riding school, barbecue sites, a swimming pool, an orchard and a recreational fishing pond.

2. The complainant represented an environmental concern group (the group). In June 1993, the group's attention was drawn to some suspected illegal structures erected in the area when a complaint was made by a member of the public to Lands D concerning an orchard, which had been established on the site since early 1992, and other types of construction activities found to have been undertaken thereafter. It was subsequently confirmed by Lands D that the structures were illegal and that there was also illegal occupation of government land.

3. Despite the fact that the group had conveyed to Lands D and A&FD its concerns on the unauthorised developments on the site since June 1993, the recreational resort continued to expand and no significant action had been taken by the departments against the operators of the unauthorised developments for more than two years. The group therefore wrote to the Secretary for Planning, Environment and Lands (SPEL) in March 1995 to draw his attention to the matter and later lodged a complaint with this Office.

FINDINGS AND OBSERVATIONS

4. After investigation of the complaint, this Office has the following findings and observations -

- (a) Irregularities were first spotted by A&FD in April 1993 and it kept on drawing Lands D's attention to these and further irregularities found thereafter. On each occasion, A&FD urged Lands D to take action on the understanding that Lands D, being the Land Authority, should be responsible

for dealing with the unauthorised developments. On the other hand, Lands D considered that A&FD, being the Country Park Authority (CPA), should be responsible for taking enforcement action against the unauthorised developments which were located within a country park.

- (b) In June 1993, staff of Lands D had intended to post up Crown Land Notices on the initial irregularities but the action was called off when they were confronted with strong objections from the operators of the unauthorised developments.
- (c) Although both departments had since 1993 written to the group on several occasions to inform it of the situation and problems, no significant enforcement action had been taken against the unauthorised developments.
- (d) This Office notes that the delay in taking enforcement action against the unauthorised developments was due to the fact that both A&FD and Lands D had spent a long time disputing with each other on who should be responsible for taking the enforcement action. On the one hand, A&FD contended that as the unauthorised developments were on government land and leased land, Lands D should take action under the Crown Land Ordinance (CLO). On the other hand, Lands D considered that the unauthorised developments were in a country park and that A&FD should initiate action under the Country Parks Ordinance. The contention lingered on from June 1993 through mid-1995, and only ceased after SPEL had stepped in to clarify the respective responsibilities of each department.
- (e) According to advice given by the Attorney General's Chambers (AGC), both A&FD and Lands D were in fact empowered to take appropriate actions in the case. However, in the light of AGC's advice, the Administration decided that it was more appropriate to take enforcement action under the CLO.
- (f) Notwithstanding the fact that A&FD had taken the initiative to seek policy guideline from SPEL on 15 December 1994 and legal advice from AGC on 8 May 1995, there was a delay of more than two years before concrete enforcement action was taken by A&FD and Lands D against the unauthorised developments in the country park. Furthermore, the fact that such large scale unauthorised

developments were allowed to proliferate showed that there had been inadequate monitoring on the ground to prevent both the illegal occupation of government land and the use of leased land for purposes other than those set out in the lease conditions.

CONCLUSION

5. The Ombudsman concludes that this complaint is **substantiated**.

RECOMMENDATIONS

6. The Ombudsman recommends that the Director of Lands and the Director of Agriculture and Fisheries (D of A&F) consider stepping up patrol of government land outside and within the boundary of the subject country park and take early enforcement action against any unauthorised use.

7. The Ombudsman also recommends that the SPEL provides guidelines to set out more clearly the role and responsibility of concerned departments in taking enforcement action against unauthorised use of land inside country parks in the future.

RESPONSE FROM THE CONCERNED BRANCH/DEPARTMENTS

8. Both the SPEL and the D of A&F had accepted The Ombudsman's recommendations. The SPEL was proposing to give the CPA full power to take enforcement action against unauthorised development on government land inside country park by legislative amendment and he would also provide guidelines setting out the role and responsibility of concerned departments.

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