

## CASE SUMMARY

Complaint against the Regional Services Department (RSD) for having made serious mistakes in its planning, design and construction of a restaurant site at a new park

In December 1996, the complainant had successfully bid a tender for the operation of a general restaurant (GR) at a newly constructed park managed by the RSD for a period of three years, i.e. from 1 January 1997 to 31 December 1999. When he visited the site in mid-December 1996, he found that the place was fraught with building defects and problems, which included inadequate power supply, poor ventilation and defective design of the kitchen.

2. The complainant immediately reported such defects to the RSD . But six months had elapsed and yet the RSD had failed to rectify them. He was aggrieved that the RSD, instead of trying its best to assist him by rectifying the reported defects, had chosen to take enforcement action against him for operating a restaurant without a licence.

3. The park project was planned in 1990 by the Territory Development Department and was subsequently taken up by the Architectural Services Department (Arch S D) as the RSD' s works agent. It consisted of two sections. The GR was part of the Phase 2 works. This Phase was substantially completed on 13 May 1996 and handed over to the RSD on 7 June 1996. However, as there were certain outstanding items to be completed, the restaurant block and the children' s play area were not handed over to the RSD. A minor works item was created to complete, amongst other things, all the licensing requirements for the restaurant, with the target date for completion set for November 1996.

4. However, the rectification works of the restaurant block could not be completed before the restaurant came into operation. Even though the complainant, by his own means, had effected most of the rectification

works, yet the place as a whole was still not in compliance with the GR licensing conditions, because of some outstanding repair/improvement works. The restaurant was opened to the public on 31 January 1997, operating without a licence.

5. Reminders were sent by the RSD on 8 March, 27 March and 18 April 1997 respectively to the complainant, reminding him of the need to apply for a GR Licence, but to no avail. Hence, three prosecutions were initiated against the complainant for operating a restaurant without a licence. The complainant finally submitted his application for a GR Licence and a Provisional Licence on 19 May 1997. With the Arch S D completing all the outstanding works on 15 August 1997, all licensing requirements were found complied with and a Provisional Licence was then issued.

6. This Office observes that the difficulty in complying with the GR licensing requirements thus causing delay in the complainant's application is likely to be the result of the following factors -

(a) Deficiency in the design of the restaurant

- (i) The *cooking bench* provided in the kitchen was for bulk cooking of a single item. This was found unsuitable for the restaurant's operation and had to be dismantled and replaced by an alternative installation.
- (ii) From the electricity requirements (in Watts) submitted by the restaurant operator, the *power supply* of 60 Amp 3 phases was grossly inadequate. In view of the overloading problem, the RSD had agreed in May 1997 to upgrade the power supply to 150 Amp 3 phases. The extra works were completed on 20 August 1997.
- (iii) The RSD had not discovered that the *staff toilet*, was wrongly placed inside the kitchen, in its planning stage. The toilet had to be eventually converted into a store room.

(iv) The indoor seating area was installed with *sealed windows* which did not allow the flow of fresh air.

(b) Delay in rectification works.

The rectification works was supposed to be completed by November 1996. However, progress was unsatisfactory, resulting in the need to carry out such works even after the restaurant came into operation.

(c) RSD' s misunderstanding on the handing over of the park

The RSD viewed the minor works project as a defect rectification project only and wrongly assumed that the restaurant block was already ready for operation by the complainant.

(d) Premature handing over of the premises to the restaurant operator

The RSD had ignored Arch S D' s advice by signing the contract with the complainant and allowing him to take possession of the premises before rectification works had been completed.

(e) Unco-operative attitude of the operator

The complainant had refused to allow the building contractor to carry out the rectification works during his business hours. Nor did he allow the building contractor to use the electricity supply from the premises to hook up the propulsion fan, which was installed to satisfy GR licensing requirements. Moreover, he did not submit his application for the GR licence until May 1997, although he had commenced operation of the restaurant since January 1997.

7. On the basis of the above deliberations, this Office considers that the RSD, with complete understanding of the GR licensing conditions, should have instructed its works agent, i.e. the Arch S D, to plan, design and

build the restaurant block in accordance with relevant licensing requirement. When non-compliance was identified, the RSD should have requested the Arch S D to arrange for the necessary rectification works to be conducted and waited for its completion. But instead, the RSD hurriedly allowed the restaurant operator to enter the premises and start his own fitting out works. In fact, the RSD had the option under para 8(a) of the Notes for Tenderers to postpone the commencement of the contract for up to four months. If this had been done, most of all the building defects would have been rectified before the complainant took up the premises to commence his business.

## CONCLUSION

8. All points considered, The Ombudsman concludes that the complaint is substantiated.

## RECOMMENDATIONS

9. In the light of this case, the Director of Regional Services (D of RS) is recommended to consider reviewing the hand-over procedures of the RSD premises to tenderers, including restaurant operators, to prevent recurrence of similar problems in the future.

## RESPONSE FROM THE RSD

10. The D of RS has not raised any disagreement to both the conclusion and the recommendations of this report.

FINAL REMARKS

11. The Ombudsman is pleased to know that the D of RS has already adopted a new set of guidelines for letting-out RSD' s catering outlets to prevent recurrence of similar problems in the future.

12. This Office also notes that GR licence had been granted to the operator on 17 November 1997.

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Office of The Ombudsman

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