

Summary of Investigation Report

Complaint against Transport Department, Lands Department and Home Affairs Department about Unlawful Occupation of Government Land

The Complaint

The area at the entrance of Village A was a piece of unleased Government land (“the Site”). For many years, the Site had been unlawfully occupied for different purposes such as car parking, hawking, making flower beds, erecting drying racks and installing metal posts. The complainant noticed that the Transport Department (“TD”) had carried out improvement works on the Site, which would in effect encourage illegal parking. Moreover, the Lands Department (“Lands D”), which was responsible for the control and management of the Site, had failed to properly handle the issue; while the Home Affairs Department (“HAD”) had done nothing to follow up the issue at district level.

Our Findings

The Site

2. The Site was managed by Lands D and had no immediate designated use. Unfenced and accessible to the public, the Site had several access points for pedestrians, while vehicles at the Site could take the concrete ramp at one of the access points and enter the carriageway across a footpath. There was no record about when and by whom this vehicle access point was built. Since the 1980s, illegal parking activities had appeared on the Site.

Background

3. The Site was designated as Local Open Space on the layout plan for the area. Between 1991 and 1993, the then Regional Council had consulted HAD (then known as the City and New Territories Administration) and Lands D on the timetable for conversion of the Site into recreation and open space (“the conversion works”). According to the opinions collected from Village A by HAD and Lands D, the villagers strongly opposed to the conversion works on the ground of inadequate parking spaces. After negotiation, the villagers accepted the conversion project but urged the Government to provide parking spaces on the Site for their use.

4. In late 1993, HAD was aware that the village expansion scheme near Village A would be implemented and dozens of additional parking spaces would then be available. Therefore, HAD suggested that the conversion works be commenced after implementation of the expansion scheme. HAD advised that the villagers’ opinions

(i.e. the conversion works should include provision of parking spaces for them) should be taken into account if Government considered it necessary to carry out the conversion works before completion of the village expansion scheme.

5. Subsequently, Government decided to conduct a comprehensive review of the New Territories Small House Policy. As village expansion schemes formed an integral part of such policy and the policy review was still underway without any timeframe for completion, the village expansion schemes for all districts were suspended and the conversion project of the Site was thus shelved. The Site was put on the list of sites subject to land control actions¹ by Lands D and there were no other interim uses. Unlawful occupation of the Site continued.

6. In 2010, TD, Lands D and HAD received complaints about the Site being unlawfully occupied for different purposes.

Response from Lands D

7. Illegal parking and hawking were problems of a transient nature. If Lands D relied on the Land (Miscellaneous Provisions) Ordinance (“the Ordinance”) for taking enforcement action, it should give the occupant a statutory notice of not less than 24 hours. The local District Lands Office could take enforcement action only if the vehicles or hawker stalls remained on the Site after the expiry of notice. Therefore, Lands D did not find it effective to handle such cases under the Ordinance and it would refer cases involving illegal parking and itinerant hawking to the Police and the Food and Environmental Hygiene Department (“FEHD”) respectively. Meanwhile, given the public safety concern and the historical background of the Site, Lands D also consulted HAD and TD on the problem of illegal parking. After considering the views from the two departments, Lands D decided to maintain the *status quo*.

8. For activities like installing metal posts, the local District Lands Office had initially given “intermediate priority” to taking enforcement action. Later, Lands D received complaints from the public and the media as well as referrals from this Office. In view of the public concern, Lands D escalated the action to “high priority” in early 2012 and put up notices there to order the occupants to remove the metal posts by a deadline².

Response from TD

9. TD was aware of the perennial problem of illegal parking on the Site but considered its main focus to be the safety of road users and that the issues of illegal parking and road safety should be handled separately.

¹ The actions were targeted at the placing of drying racks, making of flower beds, building of low walls and metal posts on the Site.

² During our recent site inspection, there were still metal posts on the Site.

10. In view of the safety concern raised by the public, TD conducted a review about the vehicle access point in mid-2010 and concluded that its design was similar to other ordinary vehicle access points on footway. As long as the pedestrians and drivers paid attention to the traffic condition, there should not be any safety hazards. However, TD found that the design of the ramp was undesirable, which might pose safety hazards to people with mobility impairments (including wheelchair users). As such, TD proposed to implement some improvement measures including levelling of the potholes and uneven road surface while retaining the vehicle access point. In July 2011, TD requested HAD to conduct a public consultation regarding the improvement works. Both the local rural committee chairman and Village A's representative opposed to the works. After liaison and discussions with various parties concerned, TD decided to add anti-skid road surfacing to improve the access point and the project was completed in April 2012.

11. On the potential hazards posed by the undesirable design of the ramp to people with mobility impairments, TD proposed to implement improvement works at another access to the Site. At a District Council meeting in early May 2012, TD reported on the proposed works. No objection was raised at the meeting and the project was completed in the same month.

12. As for the problem of illegal parking, TD considered there to be already adequate parking spaces in the vicinity of the Site. From the perspective of traffic management, there was no need to designate the Site as a fee-charging car park.

Response from HAD

13. Apart from assisting in the liaison between villagers and the departments concerned to enable discussion on the problem of illegal parking on the Site, HAD also gave its advice to those departments. In reply to Lands D's enquiry in June 2010, HAD said that residents nearby would strongly oppose to prohibition of car parking on the Site. Therefore, if TD did not find vehicles entering or leaving the Site to pose any potential hazards to pedestrians, Lands D might consider maintaining the *status quo*. Nevertheless, to resolve the illegal parking problem, Lands D might consider providing additional parking spaces after checking the progress of the village expansion scheme.

14. Since illegal parking had been a perennial problem on the Site and public complaints had been received, HAD subsequently changed its position and advised the departments concerned to take immediate actions. Nevertheless, Lands D must analyse the situation and decide whether to maintain the *status quo* or take appropriate land control measures.

Our Observations and Comments

15. The Site was not located in a remote location. It was in fact less than 200 metres from the local District Lands Office, in between busy roads and village houses

and frequented by pedestrians. Unlawful occupation of the Site would easily give rise to concerns about nuisance, public order and road safety and thus attract complaints.

16. Government had allowed such problems to persist for more than 30 years. The departments concerned had neither taken any enforcement action nor regularised those illegal activities. Improvement works were even carried out at the vehicle access point, which was effectively an encouragement to illegal parking. It had put Government in an embarrassing situation. We considered the complainant's allegation justified and the departments concerned should be held responsible.

17. This complaint was another case to demonstrate that the attitude of some Government departments to focus more on how to evade their responsibility rather than finding solutions to problems.

Lands D

18. As the department responsible for managing the Site, Lands D had not attempted to prevent vehicles and hawkers from entering the Site. It only referred the case to the Police and FEHD for follow-up action. While there might be constraints for Lands D to take enforcement action under the Ordinance, Lands D should not have merely relied on other departments to clamp down on the illegal activities without paying attention to the effectiveness of the departments' follow-up actions. Even though such illegal activities could be handled by other departments, it did not mean that Lands D could stay away from the issue entirely. Rather, when the problems persisted for years after its referral to other departments, Lands D should have sought other solutions. It could not just turn a blind eye to the problems or treat them as other departments' problems.

19. Considering the serious nature of this complaint, Lands D's justification to delay giving higher priority to the case was weak. While it was not unreasonable for Lands D to decide maintaining the *status quo* after taking into account the historical background and strong objections from residents, it should not simply rely on one of the suggestions from HAD without thinking the whole matter through. On the illegal parking issue, although HAD did suggest Lands D maintaining the *status quo* if there was no road safety concern, it also advised that, to resolve the illegal parking problem, Lands D should consider providing additional parking spaces after checking the progress of the village expansion scheme. We found it hardly convincing that Lands D should adopt only the suggestion to maintain the *status quo* after consulting other departments. This would give an impression that Lands D was trying to favour those with vested interest by not taking enforcement and control actions, thereby undermining the public's faith in the law enforcement authorities.

20. If Lands D considered the current usage of the Site tolerable or appropriate, it should consider regularising it so that necessary control action could be taken and reasonable rent collected.

TD

21. We accepted that the primary concern of TD was the safety of road users. However, we did not agree that TD should handle the issues of illegal parking and road safety separately and ignore the fact that illegally parked vehicles were indeed crossing the footpath when entering or leaving the Site.

22. Even though the Site was not a public road and was outside the jurisdiction of TD, TD could still assist in resolving the illegal parking problem. For example, the Department could discuss with Lands D on the possibility of removing the informal vehicle access point or installing railings to prohibit vehicles from crossing the footpath and entering the Site.

23. As illegal parking on the Site had existed for decades, if TD only looked at the availability of parking spaces in the vicinity when assessing whether the Site should be designated as a fee-charging car park, that would neither help the Administration resolve the long-standing problem of unlawful occupation of the Site nor meet the actual demand for parking spaces in the locality. On the other hand, if TD believed that there were adequate parking spaces in the vicinity, it should then refute the suggestion of HAD and support the elimination of illegal parking. TD could also take into account the villagers' strong view about inadequate parking spaces and re-examine the justification and feasibility of providing additional parking spaces so that the problem could be properly resolved.

24. TD did not see the need to provide additional parking spaces on the Site, nor did it assess the vehicle access point as posing any safety concerns. While improving the vehicle access point to facilitate people with mobility impairments might seem reasonable, yet TD had already carried out such improvement works at another access point. So, the anti-skid works at the vehicle access point became self-contradictory and redundant and could be perceived as a measure to benefit the illegal parkers.

HAD

25. In June 2010, HAD assessed the issue of illegal parking and concluded that the villagers would strongly oppose the prohibition of parking on the Site. As a result, it suggested that Lands D should maintain the *status quo* if there was no road safety concern. This had given Lands D a convenient excuse not to take enforcement and control actions. While it was the duty of HAD to reflect villagers' views and expectations, we considered it also HAD's function to balance the views of different parties and find a sensible, reasonable and lawful solution. The then suggestion by HAD was in effect condoning the illegal activities. Nevertheless, HAD had changed its position and suggested Lands D should take immediate action.

Conclusion

26. The Site was originally designated as a Local Open Space. As early as 1993, the departments concerned already intended to implement the plan and the villagers of Village A agreed. The plan was subsequently suspended pending the results of Government's review on the policies on small houses and village expansion. After 20 years, the review was still not yet completed. It had become an excuse for Government to delay action against the illegal activities on the Site. If the departments concerned continued to evade their responsibility and condone the situation and allow the Site to be unlawfully occupied, the problem would only become more deep-rooted. As the Administration was unable to provide a timeframe for the completion of the review, the departments concerned should quickly plan for the temporary and long-term usages of the Site.

27. In view of the above, The Ombudsman considered:

the complaint against Lands D substantiated;

the complaint against TD partially substantiated; and

the complaint against HAD substantiated.

Recommendations

28. The Ombudsman recommended that:

Lands D

- (1) actively liaise and discuss with HAD, TD, the Police and other departments concerned on a long-term solution to the unlawful occupation of the Site; and
- (2) liaise and discuss with other departments concerned on ways to determine the temporary and long-term usages of the Site (such as the originally planned Local Open Space, leased Government land or parking spaces for villagers).

TD

- (3) take a broader perspective in its future discussion with other departments regarding the long-term solution to the unlawful occupation of Government land and consider the opinions from various parties including the feasibility of regularisation of illegal parking.

HAD

- (4) closely follow up the problem of unlawful occupation of the Site and liaise with the departments concerned, local organisations and villagers to seek temporary and permanent solutions for the problem.

29. The Ombudsman is pleased to note that the departments concerned have accepted our recommendations.

**Office of The Ombudsman
January 2013**