

Summary of Investigation Report

Complaint against Lands Department for Delay in Taking Lease Enforcement Actions

Details of Complaint

Since 2005, the Owners' Corporation ("OC") of an industrial building had been complaining to the Lands Department ("Lands D") about some units of the building being used for providing funeral services for pets, including cremation, provision of columbarium niches and adornment of the ashes, thus violating the restrictions on land use stipulated in the land lease.

2. In June 2012, OC complained to this Office against the local District Lands Office ("DLO") under Lands D for failing to take effective actions, thereby allowing the problem to persist.

Our Findings

Response from Lands D

Restrictions on Land Use

3. The land lease stipulates that the building can accommodate industrial and/or warehouse uses only. Any owner who uses his premises for purposes other than these breaches the land lease and Lands D may take the following lease enforcement actions:

- to issue a warning letter to the owner and copy it to the Land Registry ("LR") for registration against the title of the property; and
- to vest the property in Government.

Sequence of Events

4. In **March 2004**, DLO received for the first time complaints about some units of the building being used as animal crematoriums. Investigation revealed that 2 units ("Units A and B") were being used for cremating pets and keeping their ashes. According to the legal advice obtained by DLO, such uses violated the restrictions on land use stipulated in the land lease.

5. DLO also consulted the Government departments concerned and was advised that such uses did not violate any laws relating to environmental hygiene, environmental protection or fire safety. As Units A and B had not contravened any

legislation relating to fire safety, the complaints were not regarded as high priority cases under Lands D's internal guidelines. Therefore, it was not necessary for DLO to take immediate lease enforcement action.

6. In **November 2004**, similar public complaints regarding another unit ("Unit C") of the building were received. After a site inspection, DLO found that the unit was used for keeping ashes of pets.

7. In **May 2005**, DLO conducted further inspections and found that Unit A was vacant but Units B and C were still in violation of the restrictions on land use stipulated in the land lease. However, DLO decided not to take lease enforcement action at that stage. It merely:

- issued warning letters to the property owners, stating the actions that Government might take at any time (including vesting the property in Government) if such violation continued; and
- copied the warning letters to the mortgagee banks concerned.

8. In **November 2007**, DLO received a complaint about yet another 2 units of the building. During inspection, DLO confirmed that one ("Unit D") was being used for cremating pets. However, the owner of Unit D refused to let DLO staff take pictures. DLO then sought legal advice to ascertain whether the report by its staff and the information on the website of the pet funeral service provider were adequate to substantiate a case of violation of the land lease. In **February 2008**, DLO issued a warning letter to the owner of Unit D, but did not take further enforcement action.

9. In **May 2008**, DLO received public complaints again about Unit D and also about 2 other units ("Units E and F") being used for funeral services for pets. After investigation, DLO found that Unit D was still being used for cremating pets while Units E and F were being used for keeping ashes of pets and as offices. Later in **June**, DLO issued warning letters to the owners of those 3 units.

10. Between **June 2008 and March 2012**, DLO received numerous similar complaints regarding the building. DLO conducted a number of site inspections and found that in addition to Units D, E and F being used for funeral services for pets, another unit ("Unit G") was also being used for cremating pets. On confirming that the units concerned had violated the restrictions on land use stipulated in the land lease, DLO merely issued warning letters to the property owners. Afterwards, DLO staff made several attempts to inspect those units, but either they were refused entry or nobody answered the door.

11. In **June 2012**, DLO staff were finally admitted to inspect Units D and G. The property owners argued that while the retorts inside the units were for cremating animal bodies, that was an industrial manufacturing process, as the ashes from the cremation would be adorned and turned into mementos; hence no violation of the land lease was involved. Furthermore, the owners of Units E and F did not agree that

keeping ashes of pets and office operation were uses that violated the land lease. DLO then sought legal advice on the new arguments presented by the owners of those 4 units.

Development since Commencement of Our Investigation

12. According to legal advice, the uses of Units E and F had violated the land lease. DLO, therefore, issued warning letters to the property owners. In **December 2012**, as the property owners had not rectified the irregularities, DLO registered the warning letters at LR.

13. As regards Units D and G, DLO acted according to the legal advice to collect facts and evidence. Once it is confirmed that the uses of those units are in violation of the land lease, DLO will take appropriate enforcement actions against their owners including registration of warning letters at LR.

Lands D's Comments

14. Lands D admitted inadequacies on the part of DLO in handling the complaint cases. It had since required DLO to submit reports on complaint cases from time to time for its close monitoring of the progress of lease enforcement actions.

Our Comments

Delay in Taking Substantive Actions

15. DLO had in fact received many complaints on the issue since 2004. Although DLO had launched investigation and sought legal advice, it had not taken any substantive lease enforcement actions except for the issuance of warning letters, which were not legally binding. It was not until after our intervention that it started registering such warning letters at LR, even though that was nothing complicated. As a result of DLO's delay in taking enforcement action, violation of the restrictions on land use had continued for more than 8 years. The number of the culpable units had grown from 2 in the beginning to 4 in the end, with a total of 7 units involved.

16. We considered DLO to have been lax in handling those cases. Even though they were not regarded as cases of high priority, DLO ought to have set a schedule for enforcement actions instead of procrastinating indefinitely. As similar public complaints had been received repeatedly, DLO should have given higher priority to them rather than using low priority as an excuse to delay actions.

Seeking Legal Advice Repeatedly

17. We noticed that during investigation, DLO had twice sought legal advice on the uses of the units concerned for cremating pets and keeping ashes (paragraphs 4 and 8 above). In fact, all the units of the building were bound by the same land lease

conditions and the unauthorised uses identified were similar. It was, therefore, unnecessary for DLO to waste time seeking legal advice time and again. Lands D's explanation for seeking legal advice again as stated in paragraph 8 above sounded sophisticated. DLO had tried to confirm whether the evidence to hand was adequate. One would have thought that it had an intention to take substantive actions such as registration of warning letters at LR. And yet no such enforcement action was taken afterwards. We found DLO self-contradictory.

18. In the light of paragraphs 15-17 above, The Ombudsman considered the **complaint substantiated**.

Recommendations

19. The Ombudsman urged Lands D to expedite further lease enforcement actions on the violation of the land lease by the property owners concerned to deter similar offences.

**Office of The Ombudsman
May 2013**