

Lands Department’s handling of a case of Government land occupation Investigation Report

On 2 September 2020, the complainant complained to this Office against the Lands Department (“LandsD”).

The Complaint

2. Since December 2018, the complainant had repeatedly complained to a District Lands Office under LandsD about unlawful occupation of Government land in the New Territories. However, the District Lands Office concerned (“DLO”) had not taken any land control action.

3. According to DLO, it could not enter the occupied Government land for inspection and taking enforcement action, as part of it was surrounded by private lands. The complainant was dissatisfied with such explanation and held that he had provided DLO with aerial photographs and evidence, and there were also satellite images on the internet showing the conditions of the occupied Government land. However, DLO had not taken any enforcement action for years.

Our Findings

Relevant Legislation

4. Pursuant to section 6 of the Land (Miscellaneous Provisions) Ordinance (“the Ordinance”), if Government land is unlawfully occupied, LandsD may post a statutory notice^{Note}, requiring cessation of occupation of the land before a specified date. If the occupier fails to comply with the statutory notice, LandsD may remove from the land anything thereon and take possession of any property or structure on it.

Sequence of Events

5. On 10 December 2018, the complainant lodged a complaint via 1823 about unlawful occupation of Government land near a hillside in the New Territories. While the west of the occupied Government land adjoined private lands, there were hills to the east of the land.

^{Note} Section 6 of the Land (Miscellaneous Provisions) Ordinance stipulates that the notice may be posted in one or more places —
(a) on or near the land; or
(b) on any property or structure on the land.

6. On 28 January 2019, DLO conducted a site inspection, but was unable to enter the occupied Government land as it was surrounded by private lands. Later in February, March and May 2019, DLO posted statutory notices pursuant to the Ordinance at different spots near the land to require cessation of the unlawful occupation. In the interim, DLO managed to enter and clear the southern part of the Government land in April through a private land and set up a notice board to warn the public against unlawful occupation of Government land.

7. As the other parts of the Government land, surrounded by other private lands, were still inaccessible, DLO posted notices at the entrances of these lands in May, July and August 2019 and March, September and November 2020, requesting the landowners to contact it. Besides, DLO requested the people working there to hand the notices to the relevant landowners or persons-in-charge. However, DLO had never heard from any of them.

8. In November 2020, DLO attempted to enter the northern part of the Government land via the southern part which had come under its control (see **para. 6**). However, owing to the significant difference in level between the Government land and the adjacent lands, DLO staff were unable to enter those parts of the Government land.

9. In January 2021, DLO opened a track to attempt to enter the Government land from the hillside nearest to the north of the land. On 26 January, DLO staff managed to enter the Government land from its north via the track. That part of the land was fenced off. Pursuant to the Ordinance, DLO posted a statutory notice on the fence requiring cessation of occupation of the Government land before 3 February.

10. On 5 February 2021, DLO, with the assistance from a District Survey and Mapping Office, used a drone to ascertain how the Government land was being used. On 8 February, DLO removed the fence mentioned in the preceding paragraph and entered the northern part of the Government land to record the unauthorised structures.

Response from LandsD

11. Based on the available information, this case of unlawful occupation of Government land might involve several occupiers. After receiving the complainant's report, LandsD had taken a number of land control actions and cleared part of the occupied Government land (see **paras. 6 and 10**). LandsD has been proactively taking actions to clear the remaining parts in stages according to the actual situation.

12. With hills to its east and in the absence of any track, the occupied Government land was only accessible via the adjoining private lands. Though newly granted leases have a lease term requiring private landowners to allow Government staff and their representatives to enter their private lands for inspection within reasonable time, the leases, commonly known as “Block Crown Leases”, granted for the private lands involved do not have any lease term requiring the owners to allow entry of Government staff or to pass through their lands to enter other lands. Generally speaking, DLO has no power to compel the landowners to allow Government staff to access their lands in order to proceed to other places for taking enforcement action.

13. From experience, DLO would have to request the owners or occupiers of private lands to allow its staff to pass through their lands to the adjoining Government land for investigation. In this case, the landowners or occupiers concerned did not respond to DLO’s request. DLO staff had repeatedly visited the private lands concerned and attempted to gain entry, but in vain. Subsequently, they had to open a track at the northern part of the Government land so that they could circumvent the adjoining private lands and enter the Government land from the hillside (see **para. 9**).

14. In most cases, the landowners would allow DLO staff to pass through their private lands. Since it is rare that enforcement actions are affected due to Government land being surrounded by private lands, LandsD has not issued any guidelines for handling such situation. Besides, as the nature, obstacles, environment and complexity vary from case to case, it is difficult to draw up a set of uniform or general guidelines applicable to all cases. Where necessary and appropriate, DLO would make reference to the aerial photographs taken in different years or request the Survey and Mapping Office concerned to help with its inspections by using drones.

Our Observations and Comments

15. This is a blatant case of unlawful occupation as aerial photographs taken of the Government land show that an extensive area was suspectedly occupied. We appreciate that since the Government land was surrounded by private lands, DLO had difficulties taking enforcement action. That said, DLO took no further action after its third site visit in August 2019 when it merely posted notices to request the landowners concerned to contact it. Not until March 2020 when the complainant enquired about the case progress after the lapse of over six months, did DLO post notices again.

16. Moreover, though the landowners concerned had never responded to its notices, DLO was continuing with its apparently ineffectual attempts to reach them by posting notices routinely at the scene (see **para. 7**). As a matter of fact, people who unlawfully occupy Government lands are mostly owners of the nearby private lands. As DLO had

received no responses despite its repeated notices mounted at conspicuous locations near the entrances of the private lands concerned, its expectation to be proactively reached by relevant persons through posting notices at the scene continuously (including on roadside lamp posts) was unrealistic.

17. We have examined the site photographs taken by DLO and found signs showing various company names at different spots (including the entrances) of the private lands surrounding the Government land. Those companies might be the landowners or occupiers of the private lands. LandsD explained to us that DLO had contacted one of them in December 2020, but the person-in-charge claimed to be out of town and was therefore unable to offer assistance.

18. As early as December 2018, LandsD had received the complainant's complaint. However, LandsD had dragged its feet after failing to reach the owners of the private lands concerned. Before we commenced our investigation in November 2020, DLO had not made much effort to locate the related parties through other channels. For example, it had not approached the persons-in-charge of the companies, the names of which could be seen on the spot. Nor had it tried to enter the Government land by other means.

19. By the time DLO attempted to enter the Government land in November 2020 and January 2021 respectively through the southern part under its control, and the track at the hillside to the north of the land (see **paras. 8 and 9**), two years had been lapsed (counting from the date when DLO received the complaint). In our view, DLO should have explored other feasible ways earlier instead of merely relying on the owners of the private lands concerned to contact it and offer assistance. The delay could then have been avoided.

20. In any event, DLO had managed to enter the Government land via the hillside and started clearing the remaining part of it (see **para. 10**). We urge LandsD to take land control action in respect of the remaining parts of the land and consider instituting prosecution against the parties concerned based on the evidence gathered.

21. In view of the above, we consider this complaint **substantiated**.

LandsD's Response to Our Comments

22. In response to our comments in **paragraph 16**, LandsD pointed out that the Government land was in a remote location and the operators there might have changed over time. Hence, it was necessary for DLO to post notices repeatedly at the scene so that the new operators could be alerted to contact DLO. Moreover, DLO would post

notices every time at different spots other than the main entrances of the private lands concerned, and the efforts had not been entirely futile. For instance, in February 2019, one of the companies at the scene contacted DLO, and DLO staff entered the company's site in August for inspection. Nevertheless, the company was not adjacent to the occupied Government land, and therefore DLO could not enter the land via the company's site.

23. As regards our comments in **paragraph 19**, LandsD pointed out that the hillside track to the north of the Government land was originally an area covered with wild grass and densely-grown trees. After assessing the potential dangers including very steep slopes and the presence of venomous snakes and stray dogs, DLO firstly did not consider opening a track the best option because it had to ensure the safety of its staff and contractors. Nevertheless, after trying different ways in vain, DLO finally decided to open a track leading to the part of the Government land near the hillside so that it could take land control action. Moreover, due to the pandemic, LandsD had implemented a number of special work arrangements since 25 January 2020, which caused unforeseeable delays to the case.

Our Further Comments

24. We appreciate that the areas around the Government land had a complex environment and that there might be potential dangers in opening a track at the hillside. Hence, it was reasonable for DLO to try other ways for taking land control action first. We do not entirely disapprove of DLO's posting notices at the scene for requesting the people concerned to contact it.

25. Nevertheless, DLO had repeatedly posted notices and the people concerned did not contact it. Even if DLO found it necessary to post notices continuously, we consider that it should have promptly explored other feasible ways to enter the Government land, instead of simply waiting for the people concerned to give response. Although DLO had already cleared the southern part of the Government land (see **para. 6**) in April 2019, it was not until November 2020 that DLO tried to enter the Government land via that area (which was unsuccessful) (see **para.8**). Meanwhile, DLO did not consider using other ways to take land control action.

26. We appreciate that DLO had put in place special work arrangements several times since January 2020, and so its work progress was affected. However, it is clear from the above that DLO's failure to take prompt land control action was mainly due to its failure to attempt other means to enter the Government land earlier.

Conclusion

27. In view of the above, we maintained our conclusion in **paragraph 21** that this complaint was substantiated.

Recommendations

28. LandsD has explained that in most cases owners of private lands would allow DLO staff to pass through their lands so that the latter could proceed to the adjacent Government land (see **para. 14**). However, in case the landowners concerned could not be reached or they do not cooperate, LandsD would not be able to take land control action against occupation of Government land promptly, especially in cases like this one, which involved “Block Crown Leases” (see **para. 12**).

29. We understand that every case has its own merits. They may not be successfully handled by following a uniform set of operation guidelines. Therefore, we recommend that LandsD learn from this case and make necessary amendments to its existing work guidelines. For example, requiring its staff to seek instructions from their seniors promptly when they come across difficulties in taking enforcement action against occupation of Government land that is surrounded by private lands, so as to avoid impacting on the progress and effectiveness of enforcement action under the conditions as this case unfolds.

Office of The Ombudsman

March 2021