

Lands Department's continual renewal of a short-term tenancy of a Government Land for dangerous goods storage

Investigation Report

On 18 October 2020, the complainant complained to this Office against the Lands Department ("LandsD").

The Complaint

2. The complainant had been waiting many years for a site ("the Site") in the New Territories to be put up for open tender so that he could bid the Site for his use. However, LandsD had allowed the existing tenant to continuously renew the short-term tenancy ("the said STT") for the Site for 38 years for operating a dangerous goods godown.

3. Dissatisfied, the complainant complained against LandsD for giving unreasonable favour to the existing tenant, thereby restricting normal competition for using the Site.

Our Findings

Background of the Site

4. Due to a shortage of land for dangerous goods godown facilities in a district in the New Territories ("the District"), the then Regional Commissioner concerned requested a site for dangerous goods storage in the District on a short-term tenancy ("STT") basis in 1980.

5. In response to a discussion in the then Industrial Land Sub-Committee, the Site was let out in 1982 by way of an STT under the Abbreviated Tender System for temporary dangerous goods store purposes with an initial term of 2 years certain and thereafter quarterly. The said STT commenced in 1982 and has been running as a periodic tenancy since 1984 with its rent reviewed triennially.

6. The Site is currently zoned "Government, Institution or Community" ("G/IC") on the Outline Zoning Plan ("the OZP"). Since the said STT commenced before the first publication of the draft Development Permission Area Plan, dangerous

goods storage on the Site is an existing use under the Town Planning Ordinance. Hence, continuation of such a use does not contravene the OZP and no permission from the Town Planning Board (“TPB”) is required.

LandsD’s Guidelines on Renewal of STTs

7. According to LandsD’s relevant guidelines, if a site will be available for a further term of 3 years or more upon expiry of the initial term, the site should be re-tendered.

8. The guidelines were revised in November 1991 adding that *special circumstances* may exist such that it would be beneficial to permit an existing tenant to remain in occupation subject to a review of the rent. Such cases should be referred to the Land Administration Meeting (“LAM”) for prior approval. The guidelines were further revised in May 2003 making the Chairman of the District Lands Conference (“DLC”), i.e. the Regional Assistant Director of LandsD, the approving authority.

9. There is no elaboration in the guidelines on what constitutes *special circumstances*. In response to our inquiry, LandsD said that generally speaking, factors like impact on government revenue, value for money of the administration costs that will incur if a new tenant is to be found, consequences of holding a tender exercise, implementation programme on the long-term use of the site, town planning issues, requirements of other government departments or individual merits of the site may constitute special circumstances.

LandsD’s Renewal of the Said STT of the Site

10. This Office has examined LandsD’s work records in respect of its renewal of the said STT of the Site over the years. The sequence of major events is as follows:

- (1) The said STT commenced on 1 April 1982. Upon expiry of its initial 2-year term, the District Lands Office concerned (“DLO”) reviewed the rent and permitted the existing tenant to remain in occupation. From 1984 to 1993, DLO renewed the said STT quarterly, with the rent for the Site reviewed triennially.

- (2) In 1993, DLO noted that there was no permanent development proposal for the Site and the Site should be re-tendered according to the relevant guidelines (see **paras. 7 and 8**). However, it was decided to let the Site to the existing tenant at a revised rent for a further period of 3 years because it was expected that when the Site was put up for tender with its use being dangerous goods storage, strong local objection might be attracted. For the same reason, DLO continued to let the Site to the same tenant until 2005. From 2005 onwards, approval from the Chairman of DLC was sought for not re-tendering the Site.

- (3) In 2014 and 2018, DLO decided not to re-tender the Site with new considerations, which were:
 - (i) The Planning Department (“PlanD”) held that if the Site was to be re-tendered, “the vacation of the Site would constitute discontinuation of the existing dangerous godown use”. Resumption of the use would need to conform with the requirements under the OZP (see **para. 6**), and so application for temporary planning permission from TPB would be needed. Such applications would be made known to members of the public in the process. Strong objection from the nearby residents was anticipated.

 - (ii) As advised by the Environmental Protection Department, the demolition of the existing dangerous godown buildings would be classified as decommissioning a bulk chemical storage facility under the Environmental Impact Assessment Ordinance. The completion of the whole process was expected to take at least 2 to 3 years and thus the Site would not be immediately available for re-tendering.

LandsD’s Response

11. LandsD is the land authority of the Government. It has to consider the best way to dispose of the sites which are not yet required for permanent development. Its work objectives include ensuring that government land is put into beneficial uses and that revenue for the Government will be generated from what would otherwise be idle land resources.

12. The Chairman of DLC had given approval for not re-tendering the Site on the following grounds:

- (1) Due to the use of the Site, i.e. dangerous goods storage, strong opposition from the public would be anticipated if the Site was to be re-tendered.
- (2) The tenancy had been running smoothly as there was no record of complaints against the Site in the past.
- (3) Long-term use of the Site had been identified.
- (4) If the Site was to be re-tendered for dangerous goods storage, application for temporary planning permission from TPB for resumption of the use of dangerous goods storage was needed and it was highly uncertain that planning permission could be obtained (see **para. 10(3)(i)**).
- (5) The demolition of the existing dangerous goods godown was expected to take 2 to 3 years, thus the Site could not be immediately available for re-tendering (see **para. 10(3)(ii)**).

13. Over the years, the matter of whether to re-tender the Site had been thoroughly considered (see **paras. 10 to 12**). The department strived to balance all relevant considerations over the years before concluding whether to renew the said STT. In essence, the use permitted in the said STT might not be well-received by the surrounding occupants, so there was a risk that re-tendering of the Site would fail. In that case, the Site would be left vacant and the market would be deprived of a site for dangerous goods storage which was in demand.

14. The use of the Site for dangerous goods storage has its unique historical background (see **paras. 4 and 5**). As regards the issues of identifying the current need for land for dangerous goods storage and the suitability of the Site for such use, LandsD is not the authority to regulate the storage of dangerous goods or the authority to review and identify whether there are needs for such land use. Therefore, allowing the said STT to be renewed with its rent reviewed on the full market basis was in the Government's best interest.

15. In view of the uniqueness of the said STT, as well as the fact that the implementation schedule of the long-term use of the Site is uncertain and that there are planning requirements on the land use under the OZP, LandsD is reviewing the possibility of re-tendering the Site for the existing use, i.e. dangerous goods storage^{Note}. In the meantime, LandsD will further consult relevant bureaux and departments on whether they have any plans to implement the planned G/IC use on both temporary and permanent bases, as well as whether or not there is a need for using the Site for dangerous goods storage purposes on a temporary basis.

16. As regards the complainant's allegation of there being a lack of sites for storage of dangerous goods, which is not the case for storage of liquefied petroleum gas ("LPG"), LandsD pointed out that there were seven STT sites for storage of LPG and eight STT sites (including the Site) for storage of dangerous goods across the territory. The background and rationale for letting the sites for storage of LPG vary from one site to another. In recent years, DLO did not receive any requests from other government departments or bureaux for additional temporary sites for storage of dangerous goods. Interested business entities may find alternative premises in the market if they have such a need.

Our Comments

The Requirements of LandsD's Relevant Guidelines

17. LandsD's guidelines before 1991 state clearly that a site should be re-tendered if it would be available for a further term of 3 years (see **para. 7**). However, DLO had all along permitted the existing tenant to remain in occupation of the Site after expiry of the initial term of the said STT. This obviously contravened the guidelines.

18. In November 1991, the guidelines were revised adding that *special circumstances* may exist such that it would be beneficial to permit an existing tenant to remain in occupation and such cases should be referred to LAM for prior approval (see **para. 8**). Nevertheless, DLO continued to renew the said STT without referring the case to LAM for prior approval, hence contravening the guidelines at that time. Approval from the Chairman of DLC for not re-tendering the Site was only sought

^{Note} The Financial Secretary announced that to support enterprises and employment, re-tendering of STT sites would be suspended until 30 September 2021.

after further revision of the guidelines in May 2003.

LandsD's Decision of Not Re-tendering the Site

19. According to LandsD's relevant guidelines, a site should be re-tendered if it will be available for a further term of 3 years or more unless special circumstances exist. Though the long-term use of the Site has been identified (see **para. 12(3)**), the Site has not yet been required for permanent development. Given that the availability of the Site for short-term use has not been affected by the identification of the long-term use of the Site, the latter is not a reason for not re-tendering the Site. Besides, we have reservation on LandsD's view that no record of complaints against the existing tenant (see **para. 12(2)**) could be regarded as a "special circumstance" justifying not re-tendering the Site.

20. The anticipated difficulties that would come with re-tendering the Site (see **paras. 12(1), (4) and (5)**) are associated with the nature of the use of the Site, i.e. dangerous goods storage. While such difficulties may indeed exist, we consider it necessary for LandsD to review the use of the Site before coming to a decision of not re-tendering it as this is not in line with its own guidelines. In this connection, we have found no records of LandsD's consultation with relevant bureaux and departments for a review of the use of the Site before renewing the said STT over the years.

21. According to its guidelines, even if LandsD considers that the Site should continue to be used for storage of dangerous goods, the Site should still be re-tendered unless special circumstances existed. Regarding LandsD's emphasis on the technical and planning issues of re-tendering the Site and the best interest of renewing it in the prevailing manner, we appreciate its underlying reasoning but LandsD should have taken into account fairness to other interested parties in its decision process of whether or not the Site should be re-tendered. By whatever measure, allowing the same tenant to occupy the Site through continual STT renewals for over 38 years is an act in favour of the existing tenant and unfair to other potential tenants.

22. Furthermore, we note that PlanD has advised LandsD that if the structures/buildings of the existing dangerous goods godown remain at the Site and there is no material change in the structures/buildings, resumption of "Dangerous Goods Godown" use at the Site would not require permission from TPB. It means that demolition of the existing godown giving rise to the Site being not immediately

available and the need to obtain planning permission (see **paras 12(4) and (5)**) are only possible but not definite issues. LandsD, in a bid to overcome these issues, may explore the possibility of keeping the structures/buildings at the Site when it is re-tendered.

23. LandsD emphasises that keeping the Site to be used as a dangerous goods godown can address the problem of shortage of land for dangerous goods godown facility in the District, and in the meantime ensure that the Government will have a steady rental income. Hence, its continual renewal of the said STT was in the Government's best interest. In this connection, we note that LandsD has explained that it is not the authority to review and identify whether there are needs for other uses of the Site (see **para. 14**), and it has not consulted relevant bureaux and departments for reviewing the use of the Site. Such explanations invite questions as to how LandsD came to the conclusion that continual renewal of the said STT was in the Government's best interest as it has not consulted relevant bureaux and government departments and ascertained the need for using the Site for dangerous goods storage purposes on a temporary basis.

24. Based on the observations and analysis in **paragraphs 19 to 23 above**, we consider LandsD to have failed to consistently follow its guidelines and its decisions on renewing the said STT over the past years not thoroughly made. The Ombudsman, therefore, considers this complaint **substantiated**.

25. The Ombudsman notes that LandsD will review the possibility of re-tendering the Site.

Recommendation

26. The Ombudsman recommends that LandsD adhere to its relevant guidelines and give thorough consideration to its future disposal of the Site.

Office of The Ombudsman

May 2021