

**APPEAL TRIBUNAL (BUILDINGS) – BUILDINGS ORDINANCE (CAP. 123)**

**CASES NUMBERS :**

**801-2010, 803-2010, 804-2010, 806-2010, 810-2010, 811-2010, 817-2010, 818-2010,  
820-2010, 821-2010, 824-2010, 825-2010, 828-2010, 842-2010, 844-2010, 847-2010,  
850-2010, 852-2010, 854-2010, 855-2010, 856-2010, 860-2010, 865-2010, 866-2010,  
868-2010, 870-2010, 874-2010, 875-2010, 877-2010, 879-2010, 880-2010, 882-2010,  
884-2010, 888-2010, 890-2010, 891-2010, 434-2011 & 472-2011**

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**THE MATTERS**

: Unauthorised Building Works (UBWs) at 2/F of House 1 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 3 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 5 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 8 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 38 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 39 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 56 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 57 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 59 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 60 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 63 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 65 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 68 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 85 together

with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 86 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 88 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 92 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 96 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 98 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 100 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 101 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 102 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 106 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 112 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 115 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 119 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 121 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 126 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 128 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 131 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 133 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 135 together with Flat Roof & Part of the Staircase

Appertaining Thereto, 2/F of House 138 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 139 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 152 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 156 together with Flat Roof & Part of the Staircase Appertaining Thereto, 2/F of House 157 together with Flat Roof & Part of the Staircase Appertaining Thereto, Villa Pinada, No.88 Hong Po Road, Tuen Mun, New Territories (“subject Premises”)

ORDER NOS. : UBZ/U30-15/0001/09, UBZ/U30-15/0003/09,  
UBZ/U30-15/0004/09, UBZ/U30-15/0007/09,  
UBZ/U30-18/0002/09, UBZ/U30-18/0003/09,  
UBZ/U30-19/0008/09, UBZ/U30-19/0009/09,  
UBZ/U30-19/0011/09, UBZ/U30-20/0001/09,  
UBZ/U30-20/0004/09, UBZ/U30-20/0005/09,  
UBZ/U30-20/0008/09, UBZ/U30-22/0006/09,  
UBZ/U30-22/0009/09, UBZ/U30-23/0003/09,  
UBZ/U30-23/0006/09, UBZ/U30-23/0008/09,  
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UBZ/U30-27/0008/09, UBZ/U30-27/0011/09,  
UBZ/U30-27/0013/09, UBZ/U30-28/0006/09,  
UBZ/U30-28/0011/09, UBZ/U30-28/0012/09,  
UBZ/U30-22/0016/09, UBZ/U30-22/0015/09  
 (“Subject Orders”)

APPELLANTS : 熊意玲, 楊笑茵, Cheung Shing-fung, Samson &

Lo Jou-chieh, 黃達志, 劉偉昌, 鄧健珍, 黎偉文, Lu Yaowei, Chung Hon-shing, Wong Yuet-ha, Fok Ming-hang & Wong Yuk-ngan, Cheung Ka-chun, 吳子樂, 邱思義, 顏亞真, 梁加信, Shum Ki-yin Newton, 黃嬋女, Chan Ching-ting, Tang Chi-kong Jeremiah, 易乃成, 林偉鴻, 黃賜英, 吳偉雄, 徐萍彩, 江麗鳳, Yan Bo-kau & Ho Kwai-hing, Wong Hing-tai & Yang Chia-hui, Cheung Che-man & Kong Shuk-fong, Ng Sung-hing & Chan Kit-ying, 李嬌, Lam Wai-tak & Ki Ming-yuet, 黃勇慶, Ho Yuen-ting, Sanjiv Pandita, Kok Wai-ting, 蘇偉生, 賴國榮, 陳偉峯, Lee Yuk-chun Roesia, Shum Ki-yin Newton, 陳慧欣

RESPONDENT : Building Authority (“BA”)

DATE OF DECISION : 4 November 2013

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## DECISION

### Facts

1. On or about 24 and 25 August 2009, the consultant (“Consultant”) appointed by the Buildings Department (“BD”) inspected and observed the existence of various metal gates/doors (“doors”) erected at the staircase on 1<sup>st</sup> floor or between the 1<sup>st</sup> floor and the 2<sup>nd</sup> floor of the subject buildings. Those doors were considered unauthorised building works (the “doors”, “subject UBWs”).
2. On various days in 2010 and 2011, the Subject Orders were served under section 24(1) of the Buildings Ordinance (Cap. 123) (“BO”) on the owners (viz the Appellants) of the subject Premises ordering the removal of the subject UBWs and reinstatement of the affected parts of the buildings in accordance with the plans approved by the BA.

3. The Appellants opposed to the Subject Orders and submitted their Notices of Appeal on various dates. The Appellants further furnished their reasons opposing the Subject Orders.
4. BA was of the view that no good reason has been shown for holding a full hearing and requested that a preliminary hearing be held to determine the matters.
5. This Tribunal conducted a preliminary full day hearing on 27 August 2013. The Appellants were represented by Ms Shirley Cornelia Hung of Counsel (instructed by Messrs Yuen & Partners). The Respondent was represented by Ms Fanny Fung, Government Counsel.

#### **The Appellants' Submissions**

6. The Appellants' common position is that despite the existence of the doors, the buildings are nonetheless provided with means of escape in accordance with the requirement of regulation 41(1) of the Building (Planning) Regulation (Cap. 123F) ("Regulation 41(1)").
7. It is not in dispute that the buildings are single-staircase buildings with three storeys; the level of the highest floor of each of the buildings is not more than 13m above the ground level.
8. It is submitted that since the buildings do not exceed three storeys and 13m in height, the staircases in the buildings are not required to run continuously from the ground floor up to the roof; and that the roof levels of the buildings are not refuge floors.
9. It is also not in dispute that the doors are built within the area of the premises owned by the respective appellants of the buildings.
10. The Appellants submit that the doors are exempted works under s.41 of the BO.
11. In 2000, when the building plans of Villa Pinada were submitted, s.41(3) of

the BO (version date 1/7/1997) reads as follows:-

*“(3) Building works other than drainage works, ground investigation in the scheduled areas or site formation works not involving the structure of any building may be carried out in any building without application to or approval from the Building Authority: (Amended 44 of 1959 s. 21; 41 of 1982 s. 11; 52 of 1990 s. 8)*

*Provided that nothing in this subsection shall permit any building works to be carried out in contravention of any regulation.”*

12. It was submitted by the Appellants that the doors are exempted works as they do not contravene any rules or regulations made under the BO.
13. The Appellants averred that all the doors allow a clear width of well over 750mm, in accordance with the minimum requirement as stipulated under paragraphs 11.1<sup>1</sup> and 16.3<sup>2</sup> of the Code of Practice for the Provision of Measures of Escape in Case of Fire (the “MoE Code”).
14. The Appellants submitted that in reality, the doors’ swings do not block any escape route for the occupants on 1/F of the buildings. This is possible because the exit route for the occupants of G/F and 1/F does not include the part of the staircase from 1/F to roof. The doors’ swings do not reduce the effective width of the exit route for occupants of 1/F as required under MoE Code.
15. Moreover the doors are located within the privately owned area belonging to the Appellants. The premises on 2/F including the staircase leading up from 1/F to 2/F are the private properties, solely enjoyed by the respective Appellants. Under no circumstances the occupants of G/F and 1/F of the Buildings would have access to those areas. The staircase from 1/F to roof is designed and reserved for the use of the occupants of the 2/F to access to their own roof.

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<sup>1</sup> Para 11.1 of the MoE Code provides that “... The width of each exit route and the total width of all the exit routes should not be less than the width shown in Table 2 according to the capacity and the number of exit route provided.” In these cases, the minimum width of each exit route as stipulated in Table 2 of the MoE Code is 1,050 mm.

<sup>2</sup> Para 16.3 of the MoE Code provides that “Every door opening on to a landing between flights of a staircase should not at any point of its swing, reduce the effective radius of the landing to less than the width of the staircase”.

16. Further the Appellants averred that according to paragraph 8.2 of the MoE Code:-

*“Every exit route should lead directly to a street or to an open area at ground level having unobstructed access not less in width than the total required width of exit routes discharging into such an area to a street. Such access to a street should not be closed with doors or gates unless such doors or gates are capable of being readily from inside without the use of key(s) and in the direction of exit.”*

17. The Appellants therefore submitted that the 1/F occupants of the Buildings all enjoy exit routes which lead directly to the street level – that is to say in each case the downward staircase running from 1/F to ground floor, in accordance with paragraph 8.2 of the MoE Code. Such escape route is not blocked by any of the doors. Also the door openings have not, at any point of their swing, reduced the width of the exit routes for the 1/F at the landing.
18. From the perspective of the occupants of 2/F, paragraph 8.2 of the MoE Code is also complied with as the exit doors in question leading to street level are all capable of being readily opened from inside without the use of keys and they are opened in the direction of exit.
19. Counsel for the Appellants has helpfully provided the Tribunal with a sketch with measurements in respect of House No.112, which is attached to this decision as “Attachment A”. Further Counsel for the Appellants has submitted two extracted pages viz pages 20 and 21 from the 2011 Code of Practice for Fire Safety in Building to illustrate their proposed interpretation of “exit route”. The two pages are attached as “Attachment B”.

### **The Respondent’s Submissions**

20. The Respondent averred that the BA served the Subject Orders on the Appellants on the ground that these metal gates/doors, being unauthorised building works, have contravened Regulation 41(1) due to non-compliance with paragraphs 11.1 and 16.3 of the MoE Code.

21. Paragraph 11.1 of the MoE Code provides that "... The width of each exit route and the total width of all the exit routes should not be less than the width shown in Table 2 according to the capacity and the number of exit route provided." In these cases, the minimum width of each exit route as stipulated in Table 2 of the MoE Code is 1,050mm.
22. Paragraph 16.3 of the MoE Code provides that "Every door opening on to a landing between flights of a staircase should not at any point of its swing, reduce the effective radius of the landing to less than the width of the staircase. It is the Respondent's case that the metal gate/door has reduced the exit route to less than the minimum requirement of 1,050mm as set out in paragraph 11.1 of the MoE Code.
23. Further, the doors being outward swinging doors located on the landing of 1/F have reduced the effective radius of the landing to less than the width of the staircases. They would obstruct the exit routes of occupants on 2/F to descend from the subject premises to ground level and outside of the buildings in case of fire or emergency. Hence, the doors are in breach of paragraphs 11.1 and 16.3 of the MoE Code, and hence have contravened Regulation 41(1).
24. The Respondent stated:-

*"The MOE in the subject building is the only MOE. With the metal gate/door erected, the MOE for the occupants at 2/F is clearly obstructed. One has to have foresight that in the event of fire, the staircase could be filled with smoke and visibility would be severely reduced. Occupants would escape in panic condition and the landing on 1/F would serve an important function of letting the occupants know that they reach a landing and should be prepared for the next flight of stairs. The Appellants' argument that there are usually only 2 residents on 2/F is also unsustainable as one has to take into consideration that there can be visitors to the premises at any time. The existence of the metal gate/door (notwithstanding it could be opened without keys) would surely be an obstruction, and could in fact pose a real hazard to occupants."*
25. At the hearing, the Respondent's representative conceded that the doors could be construed as exempted work but for the breach of the condition in the proviso ("Concession").

### **Clarifications**

26. At the hearing, the Appellants clarified through their counsel that they would no longer mount any arguments based on (i) Article 29 of the Basic Law on “arbitrary or unlawful search of, or intrusion into, a resident’s home or other premises, nor on (ii) that they should be entitled to the same exemption enjoyed by village houses/small houses, pinpointing to Article 22 of The Hong Kong Bill of Rights.
27. The Tribunal commended counsel for the Appellants for the clarifications and for not arguing on points that are unmeritorious.

### **Findings and Decision**

28. The Appellants’ submissions may be broken down into three main arguments:-
  - a. *In reality* there was no blockage of escape route (see paragraphs 14 to 18 above) (“First Ground”);
  - b. There was sufficient width of “Exit Door” (see paragraph 13 above); (“Second Ground”) and
  - c. The doors were “Exempted Work” (see paragraphs 10 to 12 above) (“Third Ground”).
29. In respect of the First Ground, there was no dispute between the Appellants and the Respondent that the roof in each of the buildings is not a refuge floor and the roofs of the buildings are not means of escape, by reason that the buildings are all less than 4 storeys and do not exceed 13 meters. Hence it was agreed at the hearing that the escape route for occupants on 1/F or G/F should be going downstairs, not upstairs to the roof. From that perspective, the Appellants argued that there is no obstruction to the occupants in case of fire. From that perspective, it might be said that despite the existence of the doors, paragraph 8.2 of the MoE Code has been complied with.
30. Counsel for the Appellants suggested that by looking at the various

components in Attachment A, the occupants of the 1/F could take the downward staircase and escape to the ground level in case of a fire. The door at the landing does not *in reality* obstruct the occupants of the 1/F in so doing. Likewise the occupants on the 2/F could take the downward staircase, pass through the door and proceed to the ground level in case of a fire.

31. In terms of paragraph 16.3 of the MoE Code, as the door would only swing towards the wall, not towards the 1/F unit exit door, *in reality* the effective radius would be what has been shown by the dotted line on Attachment A, which does not interfere with the occupants of the 1/F from progressing to the ground level through the downward staircase.
32. The Respondent put forward another interpretation of paragraph 16.3 of the MoE Code. Attachment C was submitted to show “the effective radius” should be that in Yellow, which represents a half circle and not just a quarter of a circle as shown by the Appellants in Attachment B.
33. If the interpretation of “the effective radius” in paragraph 16.3 of the MoE Code is the determinant factor of the Tribunal’s decision, the Respondent might correctly submit that there is a good cause for the Tribunal to hold a full hearing of these Appeals.
34. However, the Tribunal cannot see how the difference in interpretation would have any effect in the current situation. The Chairman of the Tribunal had asked the parties to comment on a hypothetical situation where in the confusion of a fire when there is a lot of smoke in the staircase at the 1/F landing, some occupants exiting from the 1/F might be overcome by fear and fell unconsciously in front of the door. Or in the moment of panic, the occupants of the 1/F abandon all their belongings at the landing in front of the door in order to quickly exit to the ground level. In both cases, the effective radius of the door is contravened (whether or not it will be half a circle or a quarter of a circle), blocked by the unconscious people and/or abandoned belongings, or the door is simply jammed and cannot be opened. In that scenario one could easily see the fire escape route will be blocked and calamity may happen to the occupants of the 2/F.
35. At the hearing, the Respondent agreed the above observation might be

possible. Counsel for the Appellants did not suggest that observation was unreasonable.

36. In respect of the Second Ground, counsel for the Appellants suggested that in the buildings all the “exit routes” were at least 1,050 mm and all the “exit doors” were at least 750 mm in width. The question the Tribunal was asked to decide was whether “exit doors”<sup>3</sup> could be constructed along an “exit route”. Attachment B seems to suggest an “exit route”<sup>4</sup> could go from floor to floor; in which case, one could imagine there might be more than one “exit door” in that “exit route”.
37. If the interpretation of “exit door” and “exit route” in Table 2 of paragraph 11.1 of the MoE Code is the determinant factor of the Tribunal’s decision, then again the Respondent might correctly submit that there is a good cause for the Tribunal to hold a full hearing of these Appeals.
38. In respect of the Third Ground, as stated in paragraph 25 above, the Respondent made the Concession at the hearing that the doors might be construed as “Exempted Work” subject to the Proviso of that section.
39. The core submission of the Respondent is two-fold:-
  - (a) The doors are “building work” as defined by Section 2 of the BO. As the work has not been authorised, the doors are unauthorised building work in contravention of section 14(1) of the BO;
  - (b) The doors may block the means of escape, in contravention of Regulation 41(1).
40. In *Mariner International Hotels Ltd v Atlas Ltd* [2007] HKLRD 413, Bokhary PJ as he then was accepted the submission that while the legislation is to be construed purposively, the exemption of the legislation has to be construed narrowly in a manner consistent with the statutory scheme of which it forms a

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<sup>3</sup> “exit door” means a door from a storey, flat, or room, which gives access from such storey, flat or room on to an exit route.

<sup>4</sup> “exit route” means a route by which persons in any storey of a building may reach a place of safety outside the building and may include rooms, door-ways, corridors, staircases, areas for refuge in refuge floors or other means of passage not being a revolving door, lift or escalator.

part.

41. Clearly the Proviso of section 41(3) of the BO that “nothing in this subsection shall permit any building works to be carried out in contravention of any regulation” if construed narrowly must be a “condition” of that section, in addition to non-contravention of the other necessary requirements, in order to constitute an exemption.
42. As observed by Hon Andrew Cheung J (as he then was) at paragraph 16 in *Building Authority v Appeal Tribunal (Building)* HCAL 47/2009, the requirement under Regulation 41 is very general, however, the BA has published the MoE Code which provides guidance on compliance with requirements for means of escape for buildings.
43. The MoE Code was based on experience; it has been put in practice for many years. While it may not have the effect of law by itself, it will not be reasonable for this Tribunal to question the veracity of the guidelines and the foundation underpinning the guidelines in the absence of evidence.
44. This Tribunal also noted that the Appellants in the present Appeals did not suggest for any moment that the MoE Code should not be followed.
45. This Tribunal agrees with the requirement laid down in paragraph 16.3 of the MoE Code in that every door opening on to a landing between flights of a staircase should not at any point of its swing, reduce the effective radius of the landing to less than the width of the staircase.
46. Despite different interpretations might be assigned to what is meant by “the effective radius” in paragraph 16.3 of the MoE Code, it is clear to the Tribunal that the doors in question would have contravened the effective radius in both interpretations, respectively propounded by the Respondent and the Appellants.
47. After hearing the oral submission of the Counsel for the Appellants and representative for the Respondent, and upon carefully reviewing the written submissions submitted by both parties, this Tribunal finds:-

- (a) The doors are unauthorised building works (“UBWs”). In issuing the Subject Orders, the BO has acted fairly, reasonably and in accordance with the law;
- (b) The doors as UBWs may affect the means of escape during a fire hazard, it therefore falls within the category of UBWs where a high priority for immediate enforcement action is justified. This Tribunal therefore should not exercise its discretion in amending or cancelling the Subject Orders; and
- (c) Based on the above reasons, this Tribunal has determined that no good cause has been shown for holding a full hearing. The Appeals are dismissed and the Appellants shall pay for the costs of the preliminary hearing.

**[SIGNED]**

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SIT Kien-ping, Peter  
Tribunal Chairman  
Appeal Tribunal (Buildings)

**[SIGNED]**

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CHO Wing-cheong Peter  
Tribunal Member  
Appeal Tribunal (Buildings)

**[SIGNED]**

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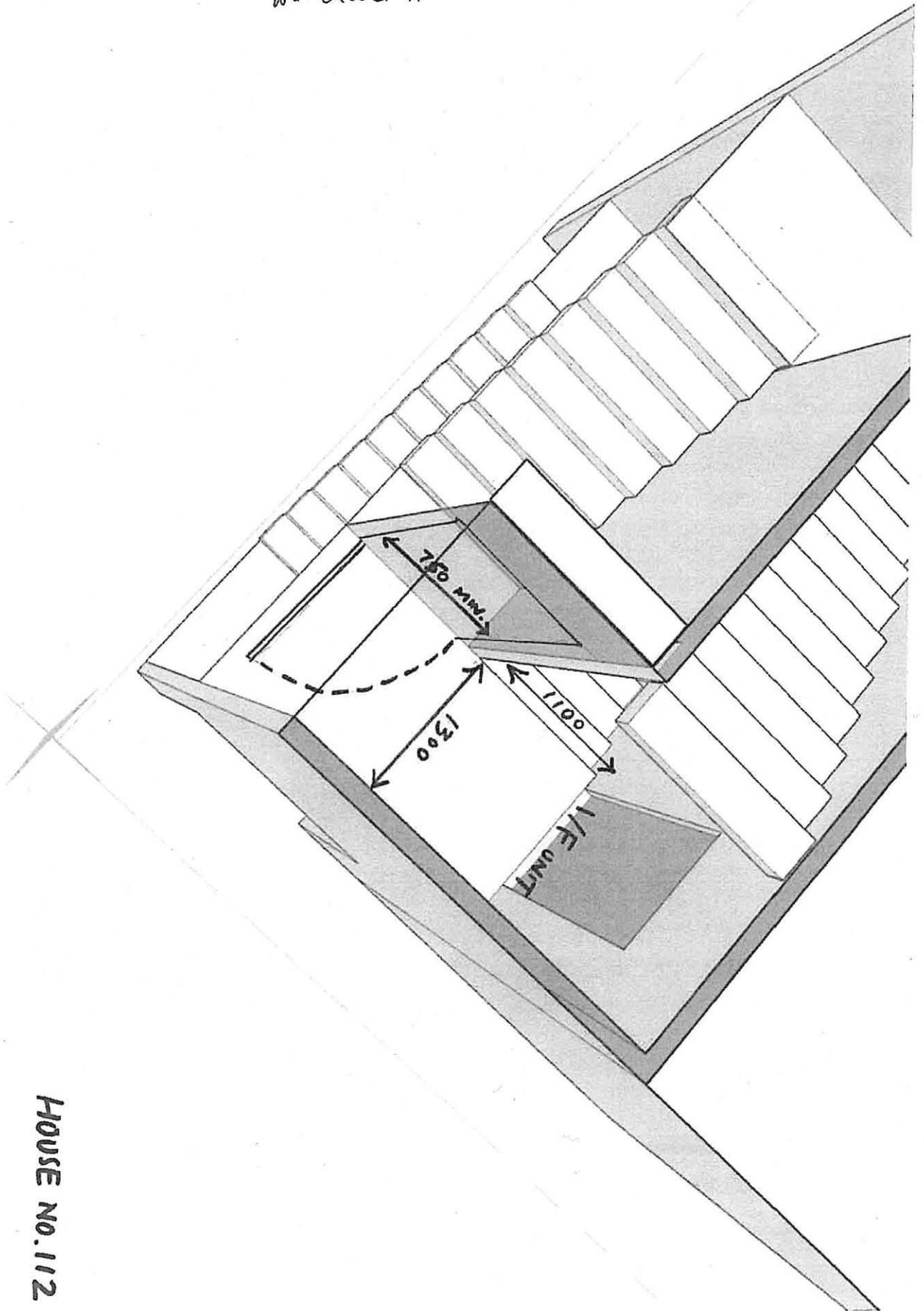
WONG Ching-lok Christopher  
Tribunal Member  
Appeal Tribunal (Buildings)

**[SIGNED]**

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LAU Hat-lan Ellen  
Tribunal Member  
Appeal Tribunal (Buildings)

"Attachment A"

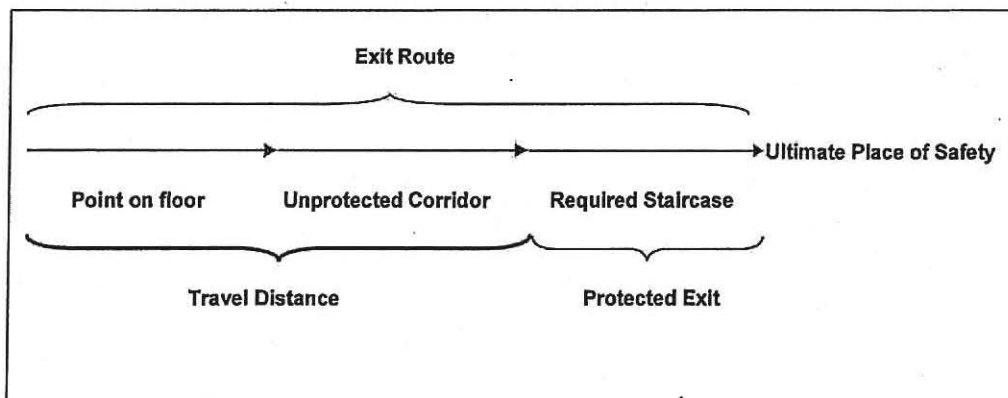
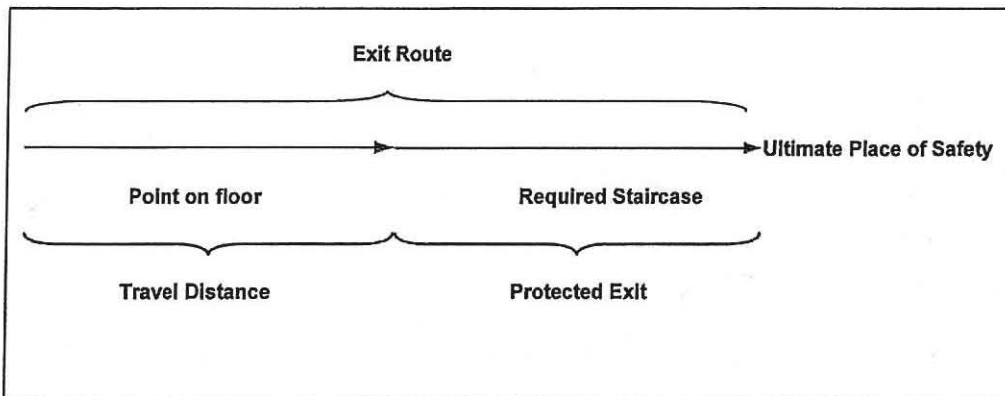
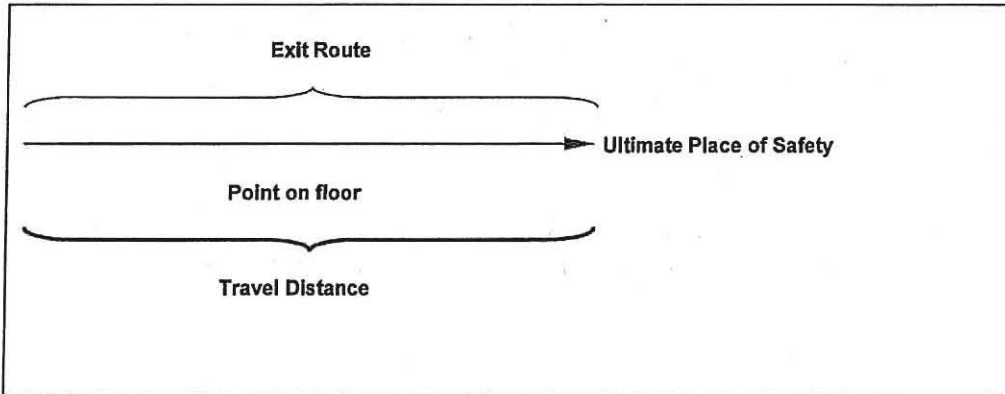


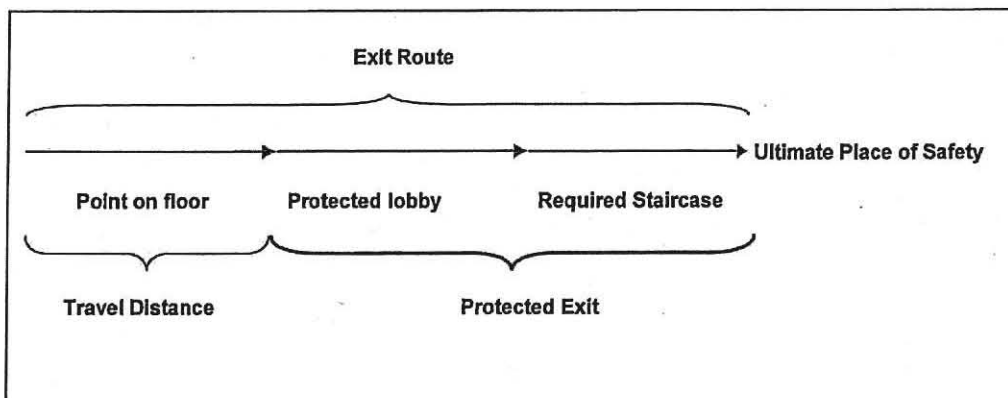
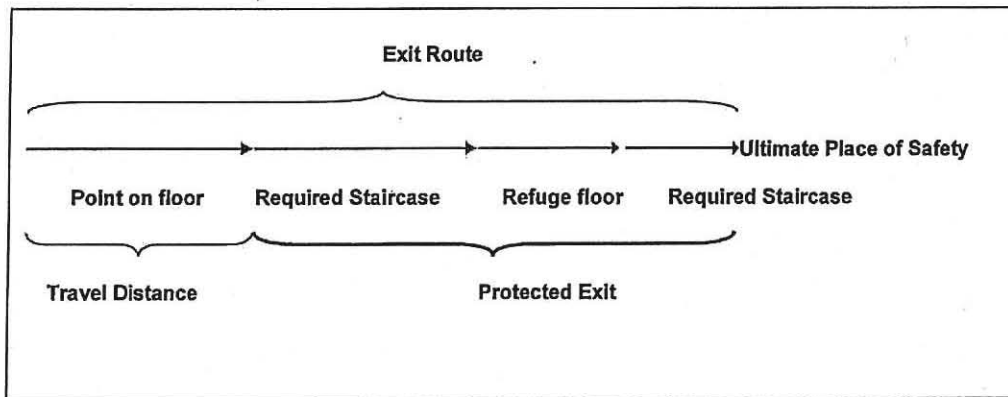
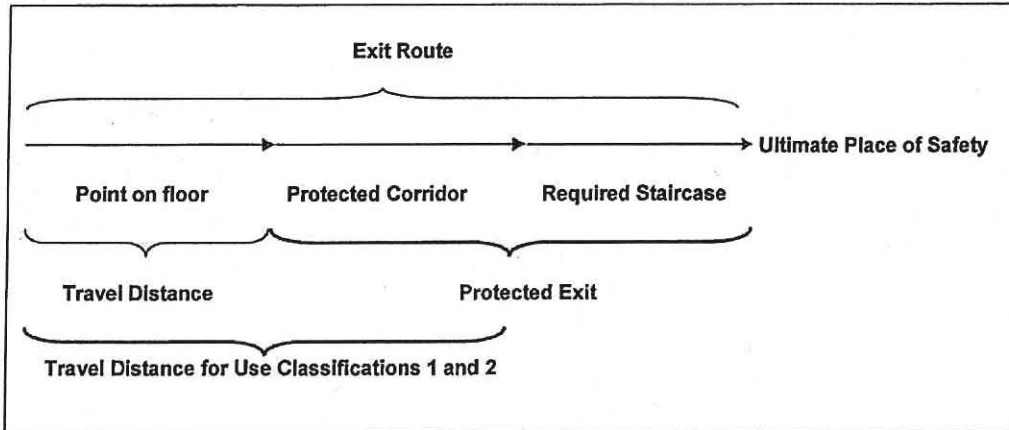
HOUSE NO. 112

"Attachment B"

**Diagram A2: Illustration of Exit Route**

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"Attachment C"

