

Appeal Tribunal

Buildings Ordinance (Chapter 123)

Case No. 326A-2018

Subject : Notice of Appeal dated 11th November, 2018 against Building Authority Order No. VHN/H35/100256/18/NT dated 23rd October, 2018 served under Section 24(1) of the Buildings Ordinance in respect of Ground Floor at Block D2 and Block D3 of the Lotus Hill No. 369 Lin Fa Tei, Pat Heung, Yuen Long, New Territories, Hong Kong.

Appellant : Chow Lok-kan

Respondent : Building Authority

1. By the Order No. VHN/H35/100256/18/NT, the Building Authority (“the BA”), in exercise of its powers under Section 24 of the Buildings Ordinance, Chapter 123, Laws of Hong Kong (“the Ordinance”), ordered the demolition of a structure erected on the ground floor at Block D2 and Block D3 of the Lotus Hill No. 369 Lin Fa Tei, Pat Heung, Yuen Long, New Territories, Hong Kong ("the Property") to the satisfaction of the BA.
- 2 We shall outline the background.
3. On 8th June, 2017, the Buildings Department (“the BD”) received reports of Unauthorized Building Works (“the UBW”) installed at the Property.

4. Inspections carried out by staff of the BD's appointed consultant on 2nd August, 2017 revealed the structure erected on the ground floor was installed on the Property (“the subject UBW”).
5. On 20th June, 2018, Order No. VHN/H35/100146/18NT (“the previous order”) was served under Section 24(1) of the Ordinance on the owner ordering the removal of the subject UBW to the satisfaction of the BA.
6. Since the UBW was owned by co-owners of Block D2 and Block D3 village houses (a total of 6 premises and there is access for each premises to the UBW) including this owner of G/F, Block D3, the previous Order was superseded by Order No. VHN/H35/100256/18/NT (“the subject Order”) which was served on 23rd October, 2018 under Section 24(1) of the Ordinance and under S.46 of the Interpretation and General Clauses Ordinance (Cap.1) on the owners ordering the removal of the subject UBW to the satisfaction of the BA.
7. On 11th November, 2018, a Notice of Appeal was lodged by the Appellant.
8. On 11th November, 2018, the Appellant submitted a Statement of Particulars, contending that:
 - (a) It does not obstruct pedestrians, no wall has been built. It only acts as a shelter from rain.
 - (b) It assists 6 family members including elderly using wheelchair and baby with buggy.

- (c) The area of the structure is only about 10 sq. meters for the 2 blocks and is supported by 4 columns of steel. If the 2 blocks rebuild 2 new separate shelters, the total size will be smaller with a big gap in between and will not shelter so effectively from rain.
 - (d) It has a drainage pipe and rain water runs straight off instead of collecting on the top of the structure.
 - (e) It does not harm other building structures nearby.
 - (f) Around Pat Heung, there are many other houses with similar unauthorized building works. Their structures are of higher risk but do not seem to have any removal order from the BA.
9. The Appellant asked the Buildings Appeal Tribunal (“the Tribunal”) to reconsider all the above reasons and withdraw the demolition order so that the owners of Block D2 and Block D3 can continue to enjoy using this shelter.
10. Upon the application of the BA and in exercise of the power vested in it under Section 49 of the Ordinance, the Tribunal held a preliminary hearing to determine whether good cause had been shown for holding a full hearing of the Appeal.
11. After considering the submissions by Mr. Chow Lok-kan, the Appellant, and that of Mr. Lo Yu Hung, Kenny of the BA, the Tribunal does not consider that good cause has been shown for holding a full hearing and hereby orders the dismissal of the Appeal. Our reasons are as follows.

12. Under Section 2(1) of the Ordinance:

“building works” includes any kind of building construction, site formation works, ground investigation in the scheduled areas, foundation works, repairs, demolition, alteration, addition and every kind of building operation, and includes drainage works;"
13. We agree with Mr. Lo for the BA that the subject UBW fall within the definition of "building works".
14. We note that District Lands officer/Yuen Long informed the BD in its memo dated 27th December, 2017 that no Certificate of Exemption (“CoE”) has been issued to the subject UBW, and no retrospective CoE would be issued for the subject UBW because they are not permitted under the existing lease conditions. According to Section 3,4 and 7 of the Ordinance (Application to the New Territories) Ordinance (Cap. 121) Section 14 is applicable to the subject UBW without CoE.
15. Prior written approval or consent of the BA should be obtained under Section 14(1), unless it was exempted building work under Section 41(3).
16. The Appellant did not argue that the subject UBW are “exempted building work”. In any event, we agree with Mr. Lo for the BA that the subject UBW are not "exempted building work under Section 41(3). See: the guidelines laid down by the Court of Final Appeal in *Marine International Hotels Ltd v. Atlas Ltd (2007) 10 HKCFAR 1* at paragraphs 49-53.

17. As the subject UBW is not exempted works under Section 41(3), Section 41(3B) and Section 41(3C) of the Ordinance, approval and consent under Section 14(1) of the Ordinance are required.
18. It is common ground that no approval or consent had been sought by the Appellant, and thus no approval or consent had been given by the BA in respect of the subject UBW.
19. Apart from adopting the Statement of Particulars, the Appellant argued that the subject UBW is only about 10 sq. meters for the two buildings and is shared for 6 premises. The area of the structure should be divided by the 6 premises, therefore, the area of structure should be allowed.
20. The Appellant alleged that he did not know the proper procedures to apply to build such structure. We agree that before carrying out building works, the appellant should seek professional advice to comply with the law. As no approval and consent have been given to the subject UBW under Section 14(1) of the Ordinance, they are unauthorized.
21. We also agree that no obstruction to public, the need for weather protection, affecting the family members, size of unauthorized building works not large, providing drainage system and no harm on nearby building structure etc. are not justified reasons to contravene the Ordinance. The owner has the responsibility to maintain the premises in a safe and sound condition and free from unauthorized building works. The Appellant should seek professional advice or other alternatives to comply with the law.

22. The Appellant complains that there are many other similar UBW nearby and the BD should not take priority actions to the subject UBW. We agree that the phenomenon of wide-spread existence of similar unauthorized building works nearby only shows the need for more efforts to be made by the BA to tackle the problem but it cannot be any valid ground of appeal against an order issued by the BA precisely for the purpose of tackling this problem.
23. We are of the view that there are no merits in the Appellant's grounds both advanced in the Statement of Particulars and by Mr. Chow in his oral representation.
24. The subject UBW does not exist in the latest approved plans before occupation of the Property. No approval or consent under Section 14(l) of the Ordinance have been given for the carrying out of the subject UBW.
25. It follows that the subject UBW are unauthorized.
26. According to paragraph 4(i) and 4(iii) of EBD Manual Part II Section 6 Instruction No.6 regarding “New UBWs”, the UBWs are classified as “New Works” for the purpose of ranking priority for enforcement and they fall under the actionable item of the BA's prevailing enforcement policy.
27. We agree with the BA that all the subject UBW are actionable items under the prevailing policy.
28. We are satisfied that no good cause has been shown for holding a full hearing of the Appeal and dismiss the Appeal accordingly.

29. We will hear the parties' claims on costs. Any application for costs and submissions in support thereof should be made in writing within 21 days from the date of this Order. Submissions in opposition/reply, if any, should be made within 14 days thereafter.

Dated the 2nd day of September, 2020.

[Signed]
(Ms. Cherry S.Y. HUI)
Chairman, Appeal Tribunal

[Signed]
(Mr. Au Yeung Pak Hung)
Member, Appeal Tribunal

[Signed]
(Sr Yuen Chung Hou)
Member, Appeal Tribunal

[Signed]
(Ir Dr. Lee Wai Ming)
Member, Appeal Tribunal

**APPEAL TRIBUNAL
BUILDINGS ORDINANCE [Chapter 123]**

CASE NO.	:	326A-2018
BUILDING AUTHORITY'S ORDER NO.	:	VHN/H35/100256/18/NT
SUBJECT ADDRESS	:	GROUND FLOOR AND GARDEN , FIRST FLOOR INCLUDING THE BALCONY APPURTENANT THERETO, SECOND FLOOR INCLUDING THE BALCONY APPURTENANT THERETO AND THE ROOF BLOCK D2, GROUND FLOOR AND GARDEN, FIRST FLOOR INCLUDING THE BALCONY APPURTENANT THERETO, SECOND FLOOR INC
APPELLANT	:	Chow Lok-kan (周樂勤)
RESPONDENT	:	Building Authority
DATE OF THIS ORDER	:	18 February 2021

ORDER FOR COSTS

The above appeal has been dismissed with costs. Upon reading the letter of the Respondent dated 15 September 2020 and no response is received from the Appellant regarding the Respondent's costs order application, it is ordered that the Appellant do pay to the Respondent the costs of this appeal in the amount of \$5,793.00.

[Signed]

Ms. HUI Shuk Yee, Cherry
Chairman, Appeal Tribunal

[Signed]

Sr YUEN Chung Hou
Member, Appeal Tribunal

[Signed]

Ir Dr. LEE Wai Ming
Member, Appeal Tribunal

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APPELLANT	:	Lee Chi-kuen (李子權)
RESPONDENT	:	Building Authority
DATE OF THIS ORDER	:	17 June 2021

CORRIGENDUM

Upon this corrigendum the Appeal Tribunal hereby clarify that in the Appeal Tribunal's Order for Costs dated 18 February 2021–

- The subject address should read-
“GROUND FLOOR AND GARDEN , FIRST FLOOR INCLUDING THE BALCONY APPURTENANT THERETO, SECOND FLOOR INCLUDING THE BALCONY APPURTENANT THERETO AND THE ROOF BLOCK D2, GROUND FLOOR AND GARDEN, FIRST FLOOR INCLUDING THE BALCONY APPURTENANT THERETO AND SECOND FLOOR INCLUDING THE BALCONY APPURTENANT THERETO AND THE ROOF BLOCK D3 OF THE LOTUS HILL NO. 369 LIN FA TEI PAT HEUNG YUEN LONG NEW TERRITORIES”
- The amount of cost of this appeal that the Appellant do pay to the Respondents should be **\$5,354.00.** (emphasis added)

[Signed]

Ms. HUI Shuk Yee, Cherry
Chairman, Appeal Tribunal

[Signed]

Sr YUEN Chung Hou
Member, Appeal Tribunal

[Signed]

Ir Dr. LEE Wai Ming
Member, Appeal Tribunal