

MAJOR AMENDMENTS TO THE ENFORCEMENT PROVISIONS UNDER THE TOWN PLANNING (AMENDMENT) ORDINANCE 2004

Introduction

- ◆ The purpose of this pamphlet is to provide a summary of the major amendments to the enforcement provisions under the Town Planning (Amendment) Ordinance 2004.
- ◆ This pamphlet is intended for reference only and should not be regarded as a formal interpretation of the law.
- ◆ In order to have a full understanding of the enforcement provisions under the Town Planning Ordinance, Cap.131 (the Ordinance), you may refer to another pamphlet on "Enforcement of Unauthorized Developments in the Rural New Territories" published by the Planning Department in June 2005.

Power to Enter Land or Premises for Investigation

- ◆ Under section 22 of the Ordinance, except for domestic premises where prior agreement of the occupier or a warrant from a magistrate is required, the Planning Authority (the Authority) may, without warrant or notice but at a reasonable time, enter or pass through any land and premises on it for the purposes of :
 - (a) ascertaining whether there is or was unauthorized development or any matters that constitute or constituted an unauthorized development;
 - (b) posting a notice under section 23; and
 - (c) verifying that an unauthorized development has been discontinued or any step has been taken or land has been reinstated as required.
- ◆ The new provision enables the Authority to enter or pass through any land and premises on it (except domestic premises) to conduct general site inspections.

Notice to Require Provision of Information

- ◆ A new provision to issue Notice to Require Provision of Information is also included in the Ordinance. Where the Authority has reasonable grounds to believe that any person has any relevant information which the Authority may require for exercising its powers, the Authority may serve a notice under section 22(7) of the Ordinance on the person and require him to provide the information within a specified period.
- ◆ Failure to comply with the requirements of the Notice to Require Provision of Information or in compliance of such notice, any person providing false information or knowingly omits any particular material, the penalty is a maximum fine of \$100,000.

- ◆ The new provision would provide a useful tool for the Authority to collect relevant information for the purposes of ascertaining the unauthorized development and identifying the land owner, occupier and person responsible for the unauthorized development.

Issuing of an Enforcement Notice

- ◆ Where, in the opinion of the Authority, there is or was an unauthorized development, the Authority may issue an Enforcement Notice to the land owner, occupier or any other person responsible for the unauthorized development under section 23(1) of the Ordinance. The Enforcement Notice would require that the unauthorized development be discontinued within a specified period.
- ◆ Under the new provision, the Authority may refer to the aerial photographs certified by the Lands Department; the relevant statutory plans exhibited under the Ordinance; and any other relevant information in forming an opinion as to whether there is or was an unauthorized development or whether any matters constitute or constituted an unauthorized development.
- ◆ Under the Enforcement Notice, the land owner, occupier or any other person responsible for the unauthorized development will be required to discontinue the unauthorized development within a specified period. The submission of a planning application in respect of the unauthorized development is not a reasonable step to comply with the Enforcement Notice.

Issuing of a Reinstatement Notice

- ◆ Where an Enforcement Notice has been served in relation to the unauthorized development, the Authority may issue a Reinstatement Notice under section 23(3) or 23(4) of the Ordinance.
- ◆ A Reinstatement Notice would require the person(s) concerned to reinstate the land to the condition it was in immediately before the first publication of the Development Permission Area (DPA) Plan or the Interim Development Permission Area (IDPA) Plan (if there was any) or to such other condition, more favourable to the person concerned, as the Authority considers satisfactory.
- ◆ Even if a planning application has been submitted for the unauthorized development, the Authority may (as it considers appropriate) still issue a Reinstatement Notice without waiting for the final decision on the application.

New Statutory Defence

- ◆ Under section 23(9) of the Ordinance, it is a defence to a prosecution under section 23(6) of the Ordinance if the defendant proves that :
 - (a) the unauthorized development in fact was not a development;
 - (b) he took all reasonable steps in the circumstances to comply with the notice;
 - (c) the unauthorized development was, in fact, an existing use or, in the case of land within an IDPA, was in existence immediately before the first publication in the Gazette of the notice of the relevant IDPA plan;
 - (d) the unauthorized development in fact is permitted under the plan of the DPA or under the plan of an IDPA; or
 - (e) the unauthorized development in fact was a development for which permission had been granted under section 16 of the Ordinance.
- ◆ Under the new provision, a defendant who is prosecuted for non-compliance with a notice issued under section 23 of the Ordinance is provided with a new statutory defence under section 23(9)(a) of the Ordinance. The defendant may produce evidence to the court to prove that the unauthorized development in fact was not a development.

Information and Enquiries

Any enquiry of this pamphlet may be addressed to the Planning Enquiry Counters of the Planning Department.

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