

Unauthorized Occupation of Government Land by Green Island Cement Company Limited

2. **MS EMILY LAU** (in Cantonese): *Madam President, it has been reported that the Green Island Cement Company Limited (GIC) has been occupying without authorization a piece of government land in Hung Hom since 1992. In this connection, will the executive authorities inform this Council of:*

- (a) the details of the case and why the company could have occupied government land without authorization for as long as 11 years; and*
- (b) the follow-up actions taken and to be taken by the authorities?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese):
Madam President, my reply to the two parts of the question is as follows:

- (a) The Government granted the Kowloon Marine Lot No. 113 to the GIC for industrial use in 1977. In 1978, the adjacent Kowloon Permanent Pier (KPP) No. 90 was also granted for use in connection with the adjoining industrial lot. The term of both lots is up to 2047. There is no question that the lot concerned has been occupied by the GIC without authorization since 1992.

However, there was a complaint in 1992 against the GIC for breaching the lease condition with the operation of a concrete batching plant at KPP No. 90. The Lands Department (LD) issued warning letters to the grantee in the same year requesting compliance with the lease conditions.

Notwithstanding the above, the LD did not take further action. This was due to resource constraints and the priority in handling cases of breaches of lease conditions, and the fact that there were oil depot, power station, sewage treatment plant and other industrial uses, with few residential developments, in the vicinity of the plant.

The LD had not received any further complaint against the concrete batching plant between 1992 and October 2000. Since 2000, a number of residential developments were completed in Hung Hom (such as Laguna Verde). With the increasing population in the area, the public were concerned with the health impact on residents caused by the concrete batching plant. In November 2000, the LD received a complaint again from a member of the public against the concrete batching plant at KPP No. 90. The major issues of the complaint were about the dust and noise nuisances caused during the process of concrete production.

The environment of the area around the site has changed substantially as compared with 1992. Having consulted the Kowloon City District Management Committee and with its support, the LD decided to take lease enforcement action.

- (b) In June 2002, the LD re-entered the lot under the provisions of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126). The re-entry notice was gazetted on 26 July 2002.

On 27 September 2002, the GIC applied to the Court against the LD's re-entry action on the ground of a breach of the lease conditions, and requested government compensation for the loss incurred by the company. The Government is contesting the GIC's application. The case is pending hearing.

MS EMILY LAU (in Cantonese): *Madam President, according to the Secretary's reply, the GIC has not occupied government land without authorization, but has breached the lease conditions by turning the pier into a concrete batching plant without authorization. Madam President, my question is why was the case not followed up despite that letters had been issued in 1992 when a complaint was received? The Secretary said that no follow-up action was taken due to the priorities of the Department at the time and the fact that there were probably many other sources of pollutants in the vicinity, such as oil depot, power station and sewage treatment plant. I would like to know if the then Director was aware of the situation and whether it was the case that everyone did understand the situation and as there were such priorities, it was decided that no follow-up action be taken, or was dereliction of duty involved? Moreover, Madam President, the Secretary remarked that there were few residential developments there. Does he mean that only a few people were living there? I do not know that there was a time when few people were living in Hung Hom. What was the population then and what is it now?*

PRESIDENT (in Cantonese): You have asked a total of four supplementary questions.

MS EMILY LAU (in Cantonese): *Madam President, they all belong to the same paragraph. Please allow me to ask these questions.*

PRESIDENT (in Cantonese): Indeed, they all belong to the same paragraph. Alright, you have my permission. *(Laughter)*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, the LD certainly has a lot to do in the enforcement of lease conditions. So, the urgency and priorities of work will depend on a diversity of factors. What I have just said is about the factors that had been taken into consideration in this case. Broadly speaking, the Government, in considering enforcement actions, would take into account the following factors: First, the operation of dangerous or obnoxious industries in residential premises or how

obnoxious it is; second, the operation of dangerous or obnoxious industries in existing or new non-industrial premises; third, the operation of industries in other residential premises; fourth, the operation of industries in non-industrial premises; fifth, the misuse of parking lots inside industrial premises; and sixth, the use of industrial premises for commercial or office purpose. Besides, the LD would also consider the views of the District Councils and the District Management Committees before deciding on the priorities of individual cases. These were the criteria adopted by the Government at that time. So, with regard to this specific case, as I have explained earlier, the environment at that time was a factor for consideration. When referring to Hung Hom at that time, I do not mean the outer areas of Hung Hom now, but the more inner parts of it and there was no property development then. So, as I pointed out in the main reply, there were oil depot, power station, sewage treatment plant and other factories in that district. Certainly, as there were so many factories, residents in that district were in a relatively small number. However, I do not have the specific statistics about the number of residents there at that time up my sleeves. If the Member requires such information, I can check the relevant information later (Appendix III). That was the situation back then. So, having considered these factors and given constraints in resource allocation, no further action had been taken and the case had "faded out" under the circumstance. As I have said, it was only in 2000 when a second complaint was received that further follow-up actions were taken.

MS EMILY LAU (in Cantonese): *Madam President, the Secretary has not explained this clearly. He said that "they" had not taken this into consideration. Did the Director give his permission not to follow up the case despite that letters had been issued?*

PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, I have no major points to add. I mainly wish to say that looking back on this case, I am not sure whether the then Director was personally aware of this case. Nonetheless, this decision was certainly made on behalf of the Department.

MR CHAN KAM-LAM (in Cantonese): *Madam President, it was mentioned in the Secretary's main reply that Hung Hom had a small population in 1992 and so the conditions were acceptable then, but there were great increases in the number of residents in Hung Hom by 2000. In fact, the situation is undesirable because there are now many people there, and the presence of a concrete plant is undesirable. However, re-entering a lot on the ground of a breach of rules or a breach of lease conditions is also a very undesirable way to deal with an industry. I would like to know and will the Secretary tell us whether the Government has negotiated with the relevant company on the removal of the plant, including the relocation of the entire plant elsewhere or the provision of compensation as appropriate?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): *Madam President, as far as I understand it, after receiving the complaint, we have contacted the GIC asking for their immediate compliance with the lease conditions. As I also mentioned in the main reply earlier on, the GIC was granted two sites then, one being an industrial site and the other for pier purposes. The pier is used to provide support services to the industrial site. So, the site originally designated for the construction of a pier is now used for industrial purposes and hence constituting a breach of lease conditions. The Government has negotiated with the GIC asking it to relocate its operation and has sought legal advice on the actions to be taken. Finally, given that the GIC has ignored our warning even after our several rounds of negotiations with it, we therefore resorted to legal actions. As I said in the main reply, in response to the legal actions taken by the Government and upon receipt of the re-entry notice from the Government, the GIC applied to the Court against the Government's action, asking the Government to withdraw its order and make compensation. They certainly have their legal basis, and this case is now pending court proceedings. I do not consider it appropriate for me to disclose the details involving the legal proceedings on this case.*

MR WONG SING-CHI (in Cantonese): *Madam President, the Secretary mentioned in his main reply that a complaint was received in 1992 with regard to this lot, but the LD received no complaint concerning this concrete batching plant between 1992 and 2000 and so, no follow-up action whatsoever had been taken during this period of time. The Secretary also mentioned that the*

Department had allowed the case to "fade out" because no complaint had been received. My question is: According to normal procedures, if a complaint is received and if it is not followed by a second complaint over a long period of time, will the departments simply allow the complaint to "fade out" as easily as in this case? Is there a practice such as this? If not, can the Secretary tell us during the time after the first complaint is received and before a second complaint is received, what procedures should the Department have in place to follow up these complaints and how such cases of breach of rules should be handled?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, I think Mr WONG Sing-chi has made a correct point in his supplementary question. There was indeed negligence on the part of the government departments, for the complaint should not be allowed to "fade out". In fact, we must tell Members one thing, although Members' questions have not touched on this aspect. The Ombudsman has in fact conducted investigations into this case. The Ombudsman also considered that there was mishandling on the part of the Department and has made a series of recommendations on procedural improvements. The Department has accepted all the recommendations. So, although actions are taken only after problems have arisen, I think this serves as a very good reminder to us that we cannot allow these cases to "fade out" continuously and we should more actively follow up these cases.

MR ALBERT HO (in Cantonese): *Madam President, in part (b) of the main reply, it was mentioned that in June 2002, the Government re-entered the lot under the provisions of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126) and the re-entry notice was gazetted. I have read this Ordinance and found that a lot of work should have been completed upon the gazettal of the re-entry notice, including registering the so-called memorial of re-entry in the Land Registry. Under this Ordinance, after such registration in the Lands Registry and the gazettal of the notice, the ownership of the site, including the land and the structures above it, shall belong to the Government. Such being the circumstance, I do not understand how possibly can it not be considered an unlawful occupation of land if the GIC continues to occupy the land and refuses to return it to the Government? If it is an unlawful occupation, why is it stated in the first paragraph of part (a) of the main reply that "there is*

no question that the lot concerned has been occupied by the GIC without authorization"? Is this not completely self-contradictory? It appears that the Secretary is rather uncertain about whether or not to resume the land and dares not affirm the Government's legality in the resumption process. Does it reflect that the Secretary, in handling the entire case, appears to have shown fears for and even bias towards this major consortia of the GIC? Right at the outset, the Government did not handle the complaint and now that the Government has exercised its powers, it seems that the Government does not even dare to affirm the validity of its claim or actions, as it still says that the case is pending court judgement. May I ask the Secretary whether he will amend what he said in part (a) of his reply? Is there a case of unlawful occupation as things now stand?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese):

Madam President, I will not withdraw my reply, for this question draws a line at 1992 as the starting point. As I already explained, this site belonged to the GIC in 1992 and so, there is no question of unlawful occupation, for the land was granted to the GIC then and the right in land was also in its hands. It was only in 2002 that the Government resumed that lot and as the lot can since be considered government land, their occupation is therefore unlawful. But this may not be so in reality as this case is pending hearing and so, follow-up work is possible only when the result of the proceedings and a court judgement are available. That is why I was very careful in my reply to this part of the question and I said, "there is no question that the lot concerned has been occupied by the GIC without authorization since 1992". There is no question of unauthorized occupation since 1992. It is because between 1992 and 2002, the land still belonged to the GIC, only that the company had used the land for purposes in breach of the lease conditions, and I have already explained this earlier. But this is entirely different from unlawful occupation of government land.

MR ALBERT HO (in Cantonese): *Madam President, I think the Secretary has failed to see clearly the crux of the question. He said "since 1992" and that actually includes today.....*

PRESIDENT (in Cantonese): Mr Albert HO, this is the Question Time. I must remind you again that if you wish to express your personal opinions, you will have the opportunity to move a motion to that effect.

MR ALBERT HO (in Cantonese): *Yes, Madam President. In fact, he has not answered my supplementary question. That is, as at today, is this lot being occupied unlawfully? I am talking about today. I wish to ask the Secretary this: Insofar as the Government's position is concerned, does it think that the GIC is occupying this lot unlawfully today? The question is just this simple. Thank you, Madam President.*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, had Mr Albert Ho asked his follow-up question this way in the first place, I certainly would not have answered it in the way as I did earlier. *(Laughter)*

MR ALBERT HO (in Cantonese): *He still has not answered my question. The Secretary still has not answered as to whether that company is occupying this lot unlawfully today.*

PRESIDENT (in Cantonese): Mr Albert HO, as other Members may also notice, if your supplementary question is too long, the Secretary will not be able to make out where your focus is. Mr Albert HO, are you asking whether there is a case of unlawful occupation today in your supplementary question that you have repeatedly asked?

Secretary, do you have anything to add?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, I have nothing to add, because I have already given an answer. However, I will repeat it for I fear that members of the public may think that I am evading this question and therefore do not give a reply.

The Government re-entered the lot in 2002, but legal proceedings are still in progress. In the proceedings, the GIC argued against a breach of lease conditions on its part and so it is asking the Court to pass a judgement that it has not breached the conditions, and it is also asking for government compensation. The proceedings are in progress and for this reason, we will put this case aside for the time being.

PRESIDENT (in Cantonese): We have spent over 18 minutes on this question. Although there are still many Members waiting to ask their questions, this question shall end here because obviously, this question will not be sorted out within this very short span of time allocated to it in this Question Time. So, Members please follow it up through other channels.

Appendix III**WRITTEN ANSWER****Written answer by the Secretary for Housing, Planning and Lands to Ms Emily LAU's supplementary question to Question 2**

As regards the relevant population figures at the Green Island Cement's concrete batching plant (the plant) at Lot KPP No. 90 in Hung Hom, Lot KPP No. 90 is located at the waterfront of Hok Yuen area in Hung Hom. According to the censuses conducted by the Census and Statistics Department in 1991 and 2001, the population of Hok Yuen area was about 11 200 and 18 300 respectively.

In early 1990s, the plant at Lot KPP No. 90 was surrounded by a sewage treatment plant to the north, industrial premises to the west, and a power station and oil depot to the south. There was no residential development within the 30 hectares of land surrounding the plant. At that time, the nearest residential development to the plant was Sunshine Plaza at Bailey Street which was 300 m away. Laguna Verde was redeveloped from sites previously occupied by the power station and oil depot to the south of the plant. Residents started to move into Laguna Verde when the development was completed in 2000.