

LEGCO QUESTION NO. 20 (Written Reply)

Asked by: Hon WONG Sing-chi

Date of meeting: 4 February 2004

Replied by: Secretary for Housing,
Planning and Lands

Question:

A resident in Discovery Bay disclosed in June 2002 that part of the land in North Lantau Country Park had been occupied without authorization by a developer for 20 years. It turned out that the developer concerned had in fact applied to the Government in 1981 for the use of the land under a short term tenancy ("STT"), but records on how the application had been handled at that time could not be retrieved due to the failure of the Lands Department ("LD") to keep the relevant files properly. It was only in mid-2003 that the LD wrote to request the developer concerned to lease the land under a STT. In this connection, will the Government inform this Council:

- (a) whether it has assessed if there was dereliction of duty on the part of LD in handling the STT application made in 1981; if it has, of the assessment results; if not, the reasons for that;
- (b) as according to the reply given by the Secretary for Housing, Planning and Lands to my question raised at the Legislative Council meeting on 14 January this year, cases of unauthorized occupation of government land for commercial uses in the past five years had mostly been handled, yet the Government has taken over 20 years to deal with the above case which involves a major developer and a large piece of land, whether the authorities have assessed if the case has been handled in an unfair manner when compared with those handled in the past five years; if the assessment results indicate that the case has been handled fairly, the justifications for that; and during its 20 years of occupation of the land, the specific period in which the developer occupied the land illegally;

- (c) of the criteria used by LD for determining the amount of rent payable specified in the STT issued to the developer concerned, and whether it will recover from the developer the rents and rates payable for the past 20 years of occupation; if so, of the legal basis for doing so, as well as the respective amounts of rents and rates involved; if not, the reasons for that; and
- (d) how the authorities follow up on the developer's non-acceptance of leasing the land under a STT or relinquishing the use of the land; whether they will consider resuming the land for other uses; if so, of the details; if not, the reasons for that?

Reply :

President,

My reply to the four parts of the question is as follows:

- (a) and (b) The Lands Department (Lands D) was established in 1982 for land administration functions. Before that, land administration matters in the New Territories were handled by the District Offices of the then New Territories Administration.

The Discovery Bay development was implemented through land exchanges and was subject to the formal issue of a complete Government lease then intended to be made at the end of the whole development. The land in question is part of the golf course which was formed by the developer's own private land and the adjacent Government land. The developer of Discovery Bay applied, in 1981, to the then District Office (Islands) for a short-term tenancy (STT) in respect of the part of the golf course straddling Government land.

In 1983, the Administration considered appropriate that the encroachment issue should be dealt with upon the issue of the Government lease at the end of the whole development of Discovery Bay whereupon Government would carry out a survey of the lot boundaries. The developer was informed of the Administration's position. For this reason, the STT

application was not further processed at that time.

In 1996, the developer reactivated its application for the STT. By then it was clear that the Discovery Bay development would not be completed for some years. Lands D, therefore, reconsidered the STT application but decided to reject it in 1998 because the land concerned might be included in the Lantau North Country Park extension.

In 2002, Lands D requested the developer to reinstate the Government land in accordance with the land control practices. In response, the developer requested Lands D to reconsider its STT application. By then, the land concerned was excluded from the boundary of the Lantau North Country Park extension. In view of this, Lands D agreed to process the STT application again. Agreement on the terms of the STT has just been reached with the developer and the STT will be issued shortly. The STT will take retrospective effect from 1982. As such, the question of illegal occupation of Government land by the developer for the past 20 years will not arise.

Lands D has internal guidelines on land control action to be followed by all District Lands Offices. Similar to other land control cases, the handling of the Discovery Bay case was in line with the laid down guidelines taking into account the particular circumstances of the case. Government has handled the STT application in accordance with the land administration practices. In this respect, there is no question of dereliction of duty on the part of Lands D in handling the STT application.

- (c) Lands D has assessed the rental of this STT on a full market value basis which takes into account all available comparable evidence for the relevant use and the particular circumstances of the case such as the location of the site. The rental payable will date back to 1982. Rates have been charged, in accordance with the Rating Ordinance (Cap. 116), on the entire golf course (for both the private lot and Government land) since its initial operation.

STT is a form of contract between Government (as the landlord) and the tenant. The terms of the STTs, including

its level of rental and backdating provision, are negotiated between the landlord and the tenant taking into account relevant factors and the particular circumstances of the case. It is inappropriate to disclose the amount of STT rental and the rates payable by another private party without its consent.

- (d) As the developer has already reached agreement with the Administration on the terms of the STT, the issue of follow-up action in case of its non-acceptance does not arise.

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