

CONTROLLING OFFICER'S REPLY

S-DEVB(PL)08

(Question Serial No. S0004)

Head: (91) Lands Department
Subhead (No. & title): (-) Not Specified
Programme: (1) Land Administration
Controlling Officer: Director of Lands (Ms Bernadette LINN)
Director of Bureau: Secretary for Development

Question:

- (1) In the Controlling Officer's reply DEVB(PL)134 regarding the New Territories Small House Policy, the Government said, "We have no plan to keep statistics on this particular aspect, as the timing of removal of restriction on alienation is not relevant to the processing work. It also does not serve as a useful indicator of abuse, given that the restriction on alienation may be lifted upon application any time during the restriction period subject to premium payment." Please inform this Committee of the following:
- a. The same small house, for which an application for removal of alienation restriction (AR) was received, had been granted a free building licence/land by way of land exchange/private treaty grant some years ago. Otherwise it could not have been built and the application for removal of AR been made. Why was the Government unable to advise on the time elapsed between granting free building licences/land by way of land exchange/private treaty grant and the receipt of applications for removal of ARs?
 - b. The Government said that keeping statistics also does not serve as a useful indicator of abuse. Does the Government have other ways to monitor and curb the abuse?
 - c. As there were hundreds of applications for removal of ARs approved in the past few years, please further provide by district the figures on the approved applications for removal of ARs from 2012 to 2016.
 - d. What are the factors and conditions considered by the Government in approving applications for removal of ARs? Generally speaking, under what circumstances will an application be approved and under what circumstances will it be rejected? What were the figures on applications rejected and the ratios in each of the past five years?

- (2) Regarding the Controlling Officer's reply DEVB(PL)134, the Lands Department (Lands D) was asked how many cases of small house applications in a single submission involved more than five small houses in an adjoining location (within 20 metres) there were in the past five years. Please inform this Committee of the number of small house applications received by the Lands D in the past five years, in which the submission including more than five small houses in an adjoining location (within 20 metres) was made by different applicants.

Asked by: Hon LAW Kwun-chung, Nathan

Reply:

- (1) a & b Each small house grant contains an alienation restriction (AR) clause. The owner of a small house has the right to sell his small house provided that he complies with the provision stipulated in the AR clause in his small house grant document. For a small house grant by way of a free building licence, when the licensee transfers ownership of his small house within the five-year AR period after the issue of Certificate of Compliance (CC), he is required to make an application to the Lands Department (Lands D); and if approved, subject to payment of the necessary land premium before selling his small house. A small house licensee is free to transact his small house upon expiry of the five-year AR period of the building licence without the need to make an application to Lands D. No land premium is involved in such a case. If a small house on government land is granted by way of a private treaty grant, the small house grantee is required to make an application to Lands D for removal of the perpetual AR clause in the grant when he, at any time after the issue of CC, transfers ownership of his small house. If the application is approved, he is required to pay the necessary land premium before selling his small house.

Selling a small house in accordance with the AR clause is not an abuse. Furthermore, when buying a property (including a small house) one would normally engage the service of a solicitor to check whether the title of the concerned property is in order. A solicitor would not consider the title of a small house in order unless the vendor has shown that the consent as required by the AR clause has been given by Lands D or the transaction is made after the expiry of the AR period. In this connection, there is no need for Lands D to keep statistics of the time elapsed between the small house granted by way of free building licence, private treaty and land exchange and the receipt of applications for removal of restriction on alienation clause for the purpose of monitoring abuse of the policy intent in respect of AR.

- c. The number of applications for removal of restriction on alienation approved by Lands D in the past five years (2012 to 2016) is set out below:

District \ Year	2012	2013	2014	2015	2016
Islands	4	10	8	11	10
North	51	64	41	42	3
Sai Kung	29	19	40	11	32
Sha Tin	2	9	2	0	0
Tai Po	62	81	99	67	67
Tsuen Wan and Kwai Tsing	0	0	6	2	0
Tuen Mun	68	36	32	29	41
Yuen Long	188	266	349	300	256
Total	404	485	577	462	409

- d. For handling an application for removal of the AR clause after the issue of CC, Lands D will examine whether there is any irregularity which would constitute a breach of small house grant conditions. If no irregularity is found, the application will be approved subject to payment of the necessary land premium. However, if there is an irregularity found, e.g. breach of development conditions, the application will be rejected and lease enforcement action will be taken.

The number and ratio of applications rejected in the past five years (2012 to 2016) are set out below:

Year	Number of applications rejected	Ratio of approved applications to rejected applications
2012	122	404 : 122
2013	64	485 : 64
2014	57	577 : 57
2015	81	462 : 81
2016	73	409 : 73

- (2) Under the Small House Policy, an individual eligible indigenous villager may apply for building his small house on suitable private or government land within the Village Environs (VE) or “Village Type Development” zone which encircles or overlaps with the VE. It is therefore not uncommon for small houses to be situated close to one another. Lands D does not keep statistics or conduct analyses on small house applications involving more than five small houses in adjoining locations.

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