

Shanties in the Skyline

Addressing Unauthorized Building Works in Hong Kong

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During the last two decades of the twentieth century, over 100,000 Hong Kong residents lived in wood and metal structures illegally built on top of residential buildings. Though erecting and selling these makeshift homes was officially forbidden, they were more or less freely bought, sold, and rented on the open market. (See Appendix for images of these dwellings.) This problem persisted even though the Hong Kong Housing Department guaranteed public housing to all permanent residents. The inexpensive rooftop huts appealed to newcomers from mainland China who did not qualify for this benefit and to poor residents who preferred to stay close to the City center rather than live in exurban public housing and pay for a daily train commute.

These structures were just one part of a growing problem of “unauthorized building works” or UBWs. They included residential improvisations—such as flower boxes, sleeping and storage balconies, and air conditioner covers—as well as commercial building violations such as extensions on storefront canopies to create additional street-level retail or dining space. By 1999, there were an estimated 800,000 UBWs in Hong Kong.

CM Leung, head of the Hong Kong Buildings Department (“Department”), was responsible for dealing with this widespread and persistent public problem. The sheer number of structures alone was daunting, but it was increasingly clear that responding to the UBWs was not simply a matter of enforcing building codes: it was an urgent public safety issue. Several high-profile incidents in the preceding years had highlighted the critical nature of the situation. A concrete canopy attached to a restaurant in a popular tourist area had collapsed in 1994, killing one and injuring more than a dozen. More recently, a ten-year-old boy had died inside a rooftop shanty when a fire broke out. Unauthorized building was directly responsible for twenty deaths and nearly 200 injuries in the 1990s and played a role in dozens of other deaths and hundreds of additional injuries. Falling concrete killed one or two people on average each year. This state of affairs had led the director of the Hong Kong Concrete Repair Association to publicly call Hong Kong one of the most dangerous cities in the world.

Dimensions of the Problem

In principle, Hong Kong had a relatively straightforward system in place for reviewing and approving new construction and modifications to older buildings and sanctioning those who ignored legal processes. Anyone planning renovations, additions, or new construction was required to submit a

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formal “building/structural” plan to the Department’s Development Division, with exceptions for small external additions not affecting the structure of buildings. Two divisions within the Department, which was itself under the purview of the Planning and Lands Bureau, had primary responsibility for enforcing building regulations: the Control and Enforcement Division, whose inspectors were tasked with finding and rooting out UBWs, and the Buildings Specialists Division, whose inspectors ensured new construction was up to code and visited existing buildings to ensure proper maintenance. Each of these divisions had thirty teams of inspectors with responsibilities in one of six geographic areas. Together the teams made up almost a third of the Department’s workforce.

By the time Leung took the reins at the Department, the Control and Enforcement Division was demolishing roughly 3,000 UBWs each year, most of which were identified through citizen complaints and requests from Fire Services, Electrical Services, and the Home Affairs Department (which comprised local councils from each district in the City). Keeping up with the demand for inspections and enforcement, however, proved impossible. One study suggested that at the current rate of enforcement, it would take 130 years to remove all UBWs, assuming no more were built. Roughly 4,500 of the City’s oldest (and cheapest) residential buildings were six-story concrete structures with a single staircase, and over 12,000 illegal dwellings sat atop them, effectively blocking access to the rooftops. This was a serious safety issue; when fires broke out on the lower floors of these buildings, which lacked fire escapes, the roof was often the only place to go.

The government’s interest in enforcing building regulations was not just about safety, however. It was also financial. The bulk of Hong Kong’s revenues came from property taxes. New construction and improvements on properties incurred a “premium”—essentially a tax paid in advance that reflected the increase in value to the property expected as a result of the building project. This upfront cost, however, made building new housing or converting industrial sites into new housing prohibitively expensive for most and kept housing scarce near the City center. While the Housing Authority had over half a million units and counting around the City and housed more than half of the territory’s six million people, the lack of affordable housing downtown made the rooftop shanties particularly attractive. Though property owners could not legally sell them, they could sell the rooftop space at a higher price “with a wink and a nod” when it had a structure on it. Tax officials then used these transactions as the basis for setting tax rates, which some owners took as tacit approval for the illegal construction on their properties.

Policy

A policy set in 1975 was partly responsible for the proliferation of UBWs. This “selective enforcement” policy stated: “For older buildings, enforcement action will only be taken where a significant hazard to life and limb exists or where illegal building works are found to be in progress.” It emphasized that new construction must meet building codes precisely, but it allowed the Department to effectively turn a blind eye to UBWs in older buildings. The Department’s chief assistant secretary explained, “We have had a selective enforcement policy because our resources are obviously not sufficient to clear all the UBWs that we may come across, either from complaints or routine inspections.”¹

By 1988, this policy was producing 500 demolition orders a month, but a Department report acknowledged that “due to the scale of the problem and limited staff resources, the policy objectives

could not be achieved.” A new Unauthorized Building Advisory Committee was formed that year to make recommendations. Among the ideas the committee considered but ultimately rejected were:

- 1) A “*minor works*” permit. The permit would have eliminated the need for an “authorized person” (e.g., an architect) to submit a formal plan for minor changes that were not covered under the exception for non-structural changes (which no one seemed to understand in any case). This proposal also allowed owners to retroactively apply for permits for some existing UBWs. It was rejected due to safety concerns, “practical difficulties,” and perceived “opportunities for malpractice and fraud.”
- 2) A “*padlock policy*.” This policy would have allowed officials to simply shutter premises until confirmed UBWs on site were removed. The committee rejected this idea, fearing that the public would find it extreme and unjust. “It would be quite wrong if an owner were to be deprived of the use of his building, albeit temporarily, for having carried out some minor UBW,” explained one official.
- 3) *Annual certification*. Annual certification would have required owners to hire a “competent person” each year to certify that there were no UBWs on the property. Proponents contended it would boost the value of certified properties, but others argued it would force owners to do work that was the government’s responsibility.
- 4) *Certification on transfer of title*. This proposal would have required owners to have an “authorized person” guarantee there were no UBWs on the property before Hong Kong’s Land Office would transfer ownership, and it included penalties for erroneous or fraudulent certifications. It was rejected as imposing too heavy a burden on small owners and being unfair to law-abiding owners who had no UBWs.

The policy response that ultimately emerged out of the committee’s work was a relatively small modification to the decades-old selective enforcement approach. It established a top-priority category of “imminently dangerous” UBWs that posed “an obvious danger to life and limb” and around which “it is immediately possible that someone will suffer death, injury, or disease.” The next tier of priority for enforcement included dangerous situations that could be brought into building-code compliance with relatively small changes. The Department asserted a new authority to create “immediate demolition teams” that could “demolish, remove, or alter” dangerous UBWs with twenty-four to forty-eight hours’ notice and bill owners for the expense.ⁱ

The 1988 policy also created an explicit category for low-priority cases. Unauthorized works deemed “potentially dangerous” would be “monitored,” but owners were not required to take any action. The upshot of these changes was also detailed in policy documents: “Simply stated, the policy is to divide UBWs into two types requiring only one decision at that moment of time: to act or to defer.” The expectation was that deferral would be the decision in at least 80 percent of cases.

ⁱ Owners could appeal a demolition order within that time period, but the new policy established penalties for “frivolous” appeals.

Policy in Practice

When CM Leung became director of the Department in 1999, he encountered a workforce that felt it had been as effective as it could be over the past decade, given the scale of the problem and the practical difficulties. Inspection teams took one to two deaths from falling concrete a year as a best-case scenario, all things considered. They were not complacent about the dangers UBWs posed—merely stymied by a large number and variety of obstacles to accomplishing their mandate.

First, while selective enforcement reduced the burden on inspectors in principle, the Department still had to respond to every citizen complaint. These totaled 18,000 a year, on average. Once they arrived to investigate, owners would often deny them entry, requiring inspectors to take the extra step of seeking a court order to enter the premises. For every complaint, the visiting team had to produce a written report, a drawing, and a copy of the original building plan for reference. On top of this, there was the day-to-day headache of making site visits in a congested city. Traffic was such that sometimes teams could only get through two inspections a day.

Then there was the problem of determining who bore responsibility for the UBW and for remediating it. In most buildings, each unit was independently owned, and there were very few owners' co-ops or corporations to respond to issues in shared spaces like rooftops and foundations—despite the Home Affairs Department's efforts to encourage the establishment of these entities. At times this meant trying to find a remedy for a dangerous situation with hundreds of individual owners, most of whom had nothing to do with creating the situation and no money to spend on it, regardless. Although the law required the Department to hold the person who created or owned the illegal work liable, identifying that individual sometimes required lengthy investigations.

This was particularly problematic in the case of illegal dwellings on rooftops; the owner of the top-floor apartment often turned out to be the owner of the rooftop, but in many cases was not responsible for building, selling, or renting the structures. Frequently, it was squatters or even organized crime gangs who occupied the rooftops, built huts, and sold or rented them in untraceable cash transactions. In some cases, those living on the roof stole electricity and hot water from the owners of top-floor units. Many of those living in these residential UBWs were immigrants from mainland China who had come to Hong Kong seeking better pay and, in some cases, spent their life savings on their rooftop home. Despite the imminent danger these structures posed to both occupants and residents of the buildings below, many simply refused to evacuate: "It's very common," one official said, "for women, especially, to tell us that if we order them to leave they will jump off the roof." While the Department strove to clear any and all vacant rooftop structures, it was estimated that up to 100,000 people lived in just the share of huts sitting atop the City's single-staircase buildings.

Two additional features of Department policy with regard to responding to citizen complaints also frustrated inspectors. First, in the 80-plus percent of cases where inspectors found no "imminent danger," the mandated action was to issue an "advisory letter," which owners typically took as a passing grade and even used in sales as a de facto certification of the illegal work. "The letter will say that the UBW will be cleared 'in order of priority,'" one official explained, "I can tell you that this is a lie . . . The owners understand this and will say, 'This is clear . . . [T]hey will never come back.'" Second,

quite often inspectors from the Buildings Specialists Division and the Control and Enforcement Division saw issues on site visits that fell under the purview of the other division and had no authority to address them during the visit. Instead, they referred the issue to their colleagues, who then made redundant trips to those locations.

Finally, a program established in the mid-1990s to provide low-cost financing to owners willing to make legal improvements to their buildings and remove UBWs had failed to live up to its promise. The Building Safety Improvement Loan Fund, capitalized at \$HK500 million, had only issued \$HK500,000 in loans over five years. According to CM Leung, this was a simple matter of red tape. “[T]he scheme was very tedious and [it was] difficult to get ahold of a loan from us. Because the department asks for perfection. ...[We] want you to satisfy requirements from A to Z ... And given the low level of motivation among owners in the first place, they give up halfway through, or less than halfway through.”

Task Force

In December 1999, on the heels of multiple news stories chronicling tragic deaths and injuries involving UBWs, the Planning and Lands Bureau announced the creation of a special Building Safety Task Force. It was headed by Helen Yu, a former director of the Department, and included representatives from Buildings, Housing, and the office of Home Affairs (which encompassed the territory’s District Councils). This development came as a relief to Leung, who had been loath to make any moves that might add to owners’ expenses; the effects of the 1997 Asian economic crisis, which had caused a steep drop in property values, still lingered in Hong Kong.

The task force had a mandate to “tackle unauthorized building works” as part of a larger effort to establish a new “culture of building care.” Its members had a variety of priorities and perspectives on what should be done. The District Councils, for example, had long been advocates for the formation of owners’ corporations in multi-unit buildings. The Hong Kong Financial Secretary, a high-ranking official, hoped to come up with a regulatory scheme that would provide economic incentives for limiting UBWs, with enforcement approaches that “use the market.” Some of the recommendations of the 1988 Advisory Commission were reconsidered.

For his part, though, Leung was focused on boosting his department’s enforcement activities: “The Buildings Department always said it had too few resources in order to do anything about the situation. My intention was to put the problem right in the forefront of the minds of the public and never, never to be seen by the public as using the reason of not having sufficient resources as an excuse for inaction.”

Appendix Unauthorized Rooftop Dwellings

Source: https://commons.wikimedia.org/wiki/File:Hong_Kong_rooftop_vc.jpg

Endnotes

¹ All persons and documents quoted in this case from “Law Enforcement and Unauthorized Building Works: Illegal Structures and The Hong Kong Buildings Department” by Howard Husock (Cambridge, MA: The President and Fellows of Harvard College, 2001).