

Footbridge

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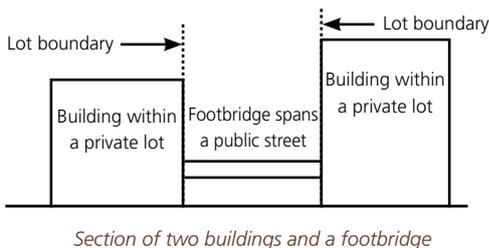
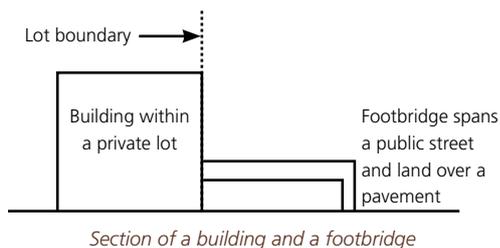
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Introduction

Bridge is included in the definition of a 'building' in Section 2 of the Buildings Ordinance (BO). As a footbridge is a bridge used by pedestrians, it is straightforward to consider a footbridge as a building. In this article, I shall look at a few issues related to private footbridges within the context of the BO.

Footbridges outside lots

A footbridge may span two sites. It may also extend from a building to a plot of land on a street. In these two situations, the footbridges are outside the lots. One may wonder why footbridges, like most civil engineering structures, fall within the ambit of the BO.



Under BO Section 41(1), a building is exempt from the provisions of the BO if it belongs to the government. In determining so, one usually has to make reference to the status of the land on which the building stands. Cases in which the footbridge is situated over a street that is government land would qualify, but there is no record of this kind of street in the Land Registry.

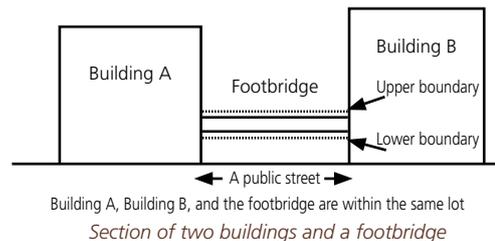
Under a lease, a grantee may be required to construct a footbridge outside the lot. Invariably, the grantee would be required to maintain the footbridge and be responsible for matters arising from it until the government wants it back. Even so, there is usually no lease or tenancy in respect of the land on which the footbridge sits. As such, until its reversion, the footbridge will technically belong to the grantee. Hence, the BO applies to the situation, and formal prior approval and consent from the Building Authority (BA) are required for its construction.

When a footbridge falls within the ambit of the BO, the BA has to issue an occupation permit (OP) before the footbridge can be put to use. Very often, an OP would be issued to include both

the footbridge and the parent building. As the OP touches and is concerned with the land, it would be registered against the title of the lot. As such, the OP would contain the footbridge, which is outside the lot. This may look odd, as the description of the footbridge in the OP invariably reads something like "A footbridge spans Lot X and Lot Y over Road Z". On the other hand, the lot description of the parent building would be something like "within Lot 1234". Obviously, the lot description of the parent building is not suitable for the footbridge, as the latter is not within the lot. I would personally prefer a separate OP to be issued for the footbridge for the sake of clarity. In addition, when the footbridge reverts to the government, a new OP would not be issued for the parent building, as there is no new building (i.e., the OP would contain the footbridge forever). Furthermore, an OP containing the footbridge may give an impression to individual owners of the parent building that they own the footbridge. This is definitely not the case.

Footbridge containing a commercial area

In Hong Kong, there are some footbridges that contain commercial areas, but project over public streets. One may wonder if such footbridges contravene BO s. 31(1) (under which, no building can be erected on, over, under, or upon any portion of any private or public street) and if the commercial area is excluded from the gross floor area (GFA) calculation.



In this case, the footbridge is actually within part of the site. The part of the site occupied by the footbridge is demarcated not only by the usual two-dimension boundary, but also by a space defined by upper and lower limits by way of principal datum. The site is, hence, defined three-dimensionally. Consequently, this part of the site is over a street. Nevertheless, the footbridge is within the site and there is no issue with BO s. 31(1). In addition, the commercial area within the footbridge counts toward the gross floor area calculation. By the way, if part of the footbridge is provided to the public for passage, this part can often be exempt from the GFA calculation. A typical example is the footbridge at Citygate across North Lantau Highway.

I have to stress that the abovementioned example may not be the only way in which a commercial area can exist within a footbridge that projects over a street. There may be other circumstances in which the same can occur. Anyway, reference has to be made to the relevant special conditions in a lease. ■