

Short Course on Application of Building (Planning) Regulations

Date : October 2015

Presented by: Terry K Y NG MSc MRICS MHKIS MCIQB

Notes on related sections of the Buildings Ordinance

Section 2 Interpretation

- building
- external wall, not necessary exposed to elements
- new building, more than half of the volume is rebuilt; beyond original building envelop, horizontal & vertical extension
- street

Section 14

- title, DMC
- prior approval and consent,

Section 16

- (1)(d) contravention of B.O. or any other enactment; statutory objection and not advisory only
- (1)(g) the neighbourhood has to be defined; what to preserve
- (3A) BA may refuse to give consent if a period exceeding 2 years has elapsed since approval of the prescribed plan

Section 21 BA may refuse to issue a TOP or OP if

- (6)(a) there is contravention of B.O.; defect

- (6)(c) lift not yet installed

Section 25 Change in use of buildings,

- a notice and not an application for approval

- prohibit or discontinue the use

Section 39 Application of new regulations

- not applicable when work already commenced or consent already given

Section 41 Exemptions

- Exempted building/building work in BO s. 41, the exemption is owner related and not building related, change in ownership may render the exemption ineffective

- BO s. 41(3) stipulates that in to qualify for exemption, the work has to be not involving the structure of the building. The ensuing question is what it means by not involving the structure of the building. To answer this query, one has to make reference to the Mariner case decided by the Court of Final Appeal of the HKSAR (Ref : FACV No. 3 of 2006). It was held that the concept of involving the structure of the building is not limited to holding the building up and building works added to a building involve its structure if they serve a structural function or are capable for some reason of affecting the integrity of the structure. Undoubtedly this case provides useful guidelines to facilitate decision. Nevertheless in reality, very often it still entails certain subjective but not measurable professional judgment.

- the meaning of (3D), not a condition precedent

Section 42 BA's power of exemption

- special circumstances

- not applicable to BO s 14