

Wednesday June 30 2010

Executive Council holds off on private columbarium policy

Cheung Chi-fai

Health officials have yet to persuade the chief executive's top advisers to endorse a policy to regulate private columbariums in the face of a proliferation of suspected illegal funeral-urn niches.

The Executive Council did not endorse the proposed policy at its weekly meeting yesterday and is believed to be seeking more information from the Food and Health Bureau before making a decision.

Health officials are leading a task force on the policy and have indicated they plan to propose a licensing system. But the details have yet to be spelt out. The policy is expected to allow a transition period for suspected illegal operators to upgrade their facilities to meet licensing conditions such as fire safety and transport access, and to comply with land lease requirements. The policy will also outline plans to boost niche supply to ease shortages as all public columbariums are almost full. A list of legal operators might also be issued to the public for reference.

Gilbert Leung Kam-ho, executive director of Memorial Park Hong Kong, a private columbarium, supported the introduction of a licensing system.

'It will give clear and transparent information about the operators to the public,' Leung said. He said an earlier proposal for a voluntary registration system would only create more confusion.

Leung's columbarium is involved in a dispute with the government over a clause in a number of older land leases that say human remains cannot be stored in the sites. Leung said the issue might still have to be settled in court to decide whether ashes are part of remains.

Several members of a concern group on columbariums yesterday also petitioned outside the government headquarters in Central and urged officials to clarify the dispute over human remains.

Friday April 9 2010

No columbarium deals, group says

Cheung Chi-fai

A concern group has urged the government not to make any deals with suspected illegal columbarium operators and instead take action on their land and planning breaches.

The group made the call in response to the Lands Department's announcement that it was ready to consider allowing some operators to formalise their use of properties for columbariums on a case by case basis.

There are at least 12 such facilities across the city and two major operators have said they were in talks with the government on a possible solution - including land lease modifications or premium payments.

It also emerged yesterday that the Buildings Department has issued a demolition order to the owner of a suspected columbarium being built in Lo Wai Village, Tsuen Wan, after the structure was deemed to be in violation of building rules.

But a resident of the village said the construction work, which began early this year, had continued - even after the order was issued at the end of last month.

A spokeswoman for the Buildings Department said the owner risked a maximum fine of HK\$200,000 and one month in jail if prosecuted and convicted of carrying out illegal building work.

The concern group, comprising villagers affected by the facilities, has written to the Lands Department chief, Annie Tam Kam-lan, appealing for land lease rules to be enforced rather than negotiating with operators who have broken the law.

'If these columbarium operators have so flagrantly ignored the provisions of the government lease and established town planning procedures, then we do not see

why the Lands Department should agree to enter into negotiations aimed at permitting columbarium use that is in clear violation of the government lease and town planning regulations,' the group said in the letter.

'We demand that the Lands Department strictly enforce the terms of the government lease and, if necessary, use its ultimate weapon of last resort - reclaim the land.'

The group said it would be an alarming move if the government allowed lease modifications that permitted columbariums on sites restricted to other uses such as aged-care homes or residential use.

If no columbarium is included in the zoning plan, the department should reject any request to modify the lease, the group said.

Nowhere to rest

Shortage of public niches spurs proliferation of private operators

Number of new public urn niches to store ashes supplied by the government this year: 0

Wednesday April 7 2010

'Does this too too solid flesh melt, thaw and resolve itself into a chemical stew?'

Cheung Chi-fai

Is a human being still 'human' after being cremated? It's not a philosophical question but a practical one that niche operators are seriously asking.

'Scientifically, it is possible to argue the answer is no, since you can find virtually no human DNA traces left in the ashes after cremation,' said Gilbert Leung Kam-ho, executive director of Memorial Park Hong Kong, a private columbarium.

The question has attracted attention because of ongoing land-lease disputes between the Lands Department and some private columbarium operators.

Central to the dispute is the definition of human remains - which are specifically barred from being stored on sites governed by older land leases dating back to the 1930s or even earlier.

Lands officials say human remains as defined under the leases do include ashes, but operators argue otherwise, and some have commissioned laboratories to analyse the ashes for them and say the results confirm the ashes are nothing but pure chemicals.

Dr Henry Cheung Kam-yin, a forensic scientist who previously worked at the Government Laboratory agreed that no DNA traces remained after cremation at near 1,000 degrees Celsius. 'You can burn and pour acid on a dead body and leave it rotting for decades. Yet the DNA might still be retrieved successfully. But the high-temperature cremation might just eliminate all the traces left,' he said.

Asked if the argument on human remains has been stretched too far, Cheung said it was not just scientifically sound but one that involved high stakes. 'It is all about a very lucrative business. Everything does count,' he said.

Dr Chan King-ming, from the department of biochemistry, Chinese University, said the argument on human ashes had gone too far. 'It is hard to think they are not human residue, even though you can't find DNA there,' he said, adding that more efforts should be spent on better city planning for columbariums, rather than on the properties of human ashes.

Wednesday April 7 2010

Deal tipped on illegal columbariums

Cheung Chi-fai

Signs have emerged that land lease disputes between the government and operators of columbariums may be nearing resolution after talks on out-of-court settlements.

The Lands Department says it is ready to consider allowing some operators to formalise their use of properties in rural areas and New Territories new towns that have been converted into columbariums - in some cases, according to the

department, in contravention of the lease.

Operators say they are encouraged by progress in the talks, although at least one is becoming irritated at the time it is taking.

The issue has arisen from the proliferation of private urn niches in the face of a chronic shortage of public niches to store ashes.

Excluding countless niches that have been set up in old residential buildings in urban areas, at least 21 suspected illegal private operators have been identified by the South China Morning Post in new towns, such as Sha Tin, and rural areas.

They have been converted from small houses or deserted post-war apartment blocks, or take the form of outdoor memorial gardens on rural sites, with 3,000 to as many as 30,000 niches offered at prices of up to HK\$200,000 or more.

Twelve sites have been confirmed by the Lands Department to be in breach of land-grant conditions or leases, while a further eight are suspected of such breaches. Only one is on a site where the land lease does not rule out use as a columbarium.

All 170,000 places at eight government-run columbariums have been allotted, with more than 36,000 applicants on a list awaiting allocation under a lottery system.

With 30,000 to 40,000 deaths a year, of which 90 per cent are cremated, and a supply of 80,000 new public niches from the government and the Chinese Permanent Cemeteries not due to be ready before 2012, the shortfall could reach 120,000 in the coming three years.

Officials have said proposals to site 240,000 niches in various districts have been shelved because of local opposition. Private operators say they can offer 100,000.

Although the Lands Department has vowed to bring illegal operators to justice and has publicly called for them to stop selling niches, no legal action has been taken and most operators have ignored its calls.

But two big operators have told the Post they have been in talks or exchanges with the department for months and had hopes of reaching some form of agreement. Two other operators have been pursuing retrospective government approval of their suspected illegal facilities.

The news came as the department said it would study each individual case and take relevant action if breaches were confirmed. But it has also been flexible in allowing alternative solutions.

It said two operators - Mei Shue Hang in Tai Po and Chuk Lam Sim Yuen in Tsuen Wan - were planning to apply for changes in land-use zoning and the like. The Tai Po facility, on a site zoned for non-profit homes for the elderly, was found operating last year, while the Tsuen Wan facility, in a historic temple, has been in the business for some years.

'If a property owner applies to formalise their current situation of land-lease breaches, the department will consult the relevant bureau and department and consider their application on individual merit,' a spokesman for the department said.

Among the 12 confirmed land-lease breaches is Hong Dao Tang in Kwai Chung, a single-storey building big enough to hold 25,000 niches, some of which are being sold for more than HK\$200,000.

The Kwai Chung columbarium, with links to Lai Sun Development chairman Peter Lam Kin-ngok, sits on an outdoor-car-park site formerly occupied by an industrial building. It presents itself as a modern facility equipped with a clean joss-burning chamber, a rooftop garden with free access to the public, and special lighting to improve its appearance.

'We are in talks with the Lands Department, and the progress has been satisfactory. Now we are just fine-tuning small bits of the wording to make it mutually acceptable,' lawyer Albert Hwang, a spokesman for the operator, said.

Hwang hinted that a lease modification was one of the options being considered to resolve what he called a contractual dispute, but he was unsure if an additional land premium would be involved and how long it would take to reach an agreement.

He said the operators were confident the columbarium did not violate planning rules or the land lease but were willing to engage in talks with the department to settle the dispute.

The owner of a private memorial garden on Ma Shi Chau with plans to store urns underground has started talks with the department. The cemetery can hold up to

3,000 urns at an average price of HK\$100,000.

A person close to the owner said there had been exchanges and meetings over the past few months, some initiated by the department and involving government lawyers, but the owner was getting increasingly impatient about the lengthy process and uncertainties. 'We are prepared to make some concessions to be a responsible operator. But we just can't wait too long while other columbarium operators are scrambling for business now regardless of the land-lease disputes.'

There are fears that some new operators are rushing to start business as soon as they can before the government comes up with a long-overdue policy on private columbariums about the middle of the year.

Measures being considered under the policy might include a voluntary registration system and a boost to the supply of public niches by adapting industrial buildings near cemeteries. There have been suggestions that officials have started a study on the number of niches in private columbariums, triggering speculation that they will freeze illegal development but legitimise existing facilities. This would be similar to what was done in the early 1980s with illegally constructed houses, which were registered and allowed to remain.

But a surveyor assisting the development of one of the private columbariums said the real problem facing officials was niche supply rather than what was written in the land leases.

He said the government had neglected its responsibility to educate the public about columbariums and was too worried about the political trouble in siting such facilities.

'There is an interesting conspiracy theory that the government intended to create a public niche shortage so that the private sector would naturally fill the gap while all the political pressures facing it would be got rid of,' he said.

'Had not the land-lease disputes been exposed, the private sector would have continued to invest in columbariums, and one day a balance of supply and demand might have been reached. But now the whole picture has been changed.'

The surveyor said there was no need to issue a licence to the operators, but there had to be clear guidelines on safe building design for columbariums.

Monday March 29 2010

Officials snub forum to discuss urn niches

Cheung Chi-fai

Government officials yesterday snubbed a public forum on a shortage of urn niches as they passed the buck over who should be in charge.

City Forum, organised by RTHK, was held at a park in Kowloon City and attended by villagers frustrated by urn storage near their homes.

While a lawmaker, a funeral business spokesman, a social worker for the elderly, and a member of a columbarium policy concern group spoke on the issues, government officials refused an invitation to attend.

Tse Chi-fung, the forum's host, said their invitation had been met by a wall of government bureaucracy. 'It has been a very strange experience to us.' He said they contacted the Food and Health Bureau which advised them to ask the Development Bureau.

'The Development Bureau then passed the buck to the Lands Department which referred us to the Food and Environmental Hygiene Department,' Tse said. The food department asked them to contact Chief Secretary Henry Tang Ying-yen but Tse did not say if they did so.

The bureau and departments have been under fire about whether there is a need for legislation, regulatory mechanisms and law enforcement in relation to suspected illegal columbariums. They have also been accused of failing to provide sufficient public niches to meet rising demand, leaving the poorly regulated private sector to fill the gap with facilities in urban residential blocks, village houses or rural sites.

A spokesman for the Food and Health Bureau said it was not a 'policy bureau' on columbariums but a 'policy co-ordinator'. He said the bureau had joined Development Bureau and Home Affairs Bureau in a task force to study increasing the supply of niches and measures to protect consumers who have bought private niches.

Ho Pui-han, a spokesman for the Columbarium Concern Group, said the government had adopted a hands-off approach to columbariums. 'In a nutshell, it can be summarised as the three 'unwillings' and two 'refusals'. The officials are unwilling to legislate, regulate and enforce, as well as refusing to plan and communicate,' he said.

Wednesday March 24 2010

Policy shift on columbariums opens loophole

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Cheung Chi-fai

The Lands Department has quietly introduced a change to the terms of small-house grants that rural leaders say may signal a huge loophole in controls over the development of cremation ash storage facilities in older village houses.

The change, which includes a clear ban on the development of columbariums on small house sites, is believed to have been introduced in 2007 and applies to houses approved after that date.

But the Heung Yee Kuk, the body representing indigenous villagers' interests, says it is not aware of the change and was not consulted. The department refused to explain the measure despite repeated inquiries.

It comes at a time when the government is embroiled in disputes with developers over the burgeoning numbers of columbariums in rural areas, where owners say ashes are not human remains and therefore not subject to bans.

The alteration was spotted two months ago by a village chief who said his research into previous land grant documents suggested the change was introduced in late 2007.

If that is the case, it was made just a few months after the first media report about a suspected illegal columbarium in a group of small houses in Fo Tan where the owners are now in a land-lease dispute with the government.

The village chief, who did not want to be named, said the change had huge

implications.

'It has confirmed that thousands of small houses built after 1972 can be converted into columbariums,' he said, adding that if lands officials had wholeheartedly believed ashes were human remains, the change would have been totally unnecessary.

The small-house policy, under which male indigenous New Territories villagers have the right to build a three-storey house on a 700 square foot space, was introduced in 1972.

A Heung Yee Kuk member said the change appeared to reinforce the belief that the former terms were toothless in controlling columbarium development.

The original clause stated: 'No grave shall be made on the lot, nor shall any human remains whether in earthenware jars or otherwise be interred therein or deposited thereon.'

It has been modified to: 'No grave or columbarium shall be made on the lot, nor shall any human remains or animal remains whether in earthenware jar, cinerary urns or otherwise be interred or deposited thereon.'

More than 35,000 small houses have been built since 1972.

The original clause was almost identical with one of the conditions imposed on New Territories land sales as early as 1934 - well before cremation began to be formally practised in the 1960s.

It is at the root of the problem of unauthorised columbarium development in rural areas and new towns because of confusion over the interpretation of human remains.

The Lands Department says human ashes are human remains and therefore the old lease and land grant conditions did not allow columbarium development. But the columbarium operators say human remains do not include ashes.

'It is something we want to settle as soon as possible and we are confident that justice is on our side,' said Gilbert Leung Kam-ho, executive director of Sai Lam Temple and columbarium in Sha Tin.

Adding to the confusion is the fact that the Public Health and Municipal Services

Ordinance clearly states human remains do not include ashes.

While the change has been welcomed by villagers fighting unwanted development of columbarium near their homes, it raises fears that it acknowledges a loophole that allows urn storage in older small houses.

'It now begs the question as to what happens to the rest of the houses approved before 2007. Will they be allowed to erect columbariums?' asked Rico Yau Fuk-loi, a resident Tsui Keng Lo Wai in Sheung Shui where villagers are opposing such a development.

At least five small houses approved before 2008 are being converted into a columbarium. Yau said the lands officials should make the new terms retrospective to solve the problems left unattended by the department in the past.

Lam Kwok-cheong, a lawyer and a member of Heung Yee Kuk, said the kuk had been left in the dark over the change which amounted to an admission by the Lands Department that the old clause was toothless.

'They might have found the old clause failing to sufficiently regulate the development and therefore modified it to make it clearer,' he said.

But Lam maintained that the intention of the small-house policy was to give indigenous villages better homes, though the land grant had always allowed non-industrial uses.

The Lands Department refused to explain the change or reveal when it was introduced.

'The land-grant conditions for small houses have always prohibited the use of the lot for graves or columbariums,' it said in a statement.

Friday February 5 2010

Urn niche buyers fretting over the legality of their purchases

Amy Nip

People who bought urn niches are ringing the Consumer Council because they are uncertain if the niches are legal. Complaints to the council against funeral services rose from just nine in 2008 to 31 cases last year, including 29 related to urn niches. More than HK\$1.3 million was involved.

The council's chief executive, Connie Lau Yin-hing, said some people began to doubt if the niches they bought were legal after the government said a temple taking in urns had violated land lease terms. Lau demanded that the government give consumers a clear explanation. 'There is a high demand for urn niches. I hope the government will clarify the land lease problem as soon as possible,' she said.

The Lands Department sent the Sai Lam Temple in Sha Tin a letter in November, ordering it to stop taking in new urns and saying the storage of urns there was against land lease terms.

A key factor in the legality of the trade is the definition of 'human remains'. While Lands Department officials say human ashes are human remains, the Food and Environmental Hygiene Department says they are not.

The Food and Health Bureau has set up a task force, which includes the Development Bureau, the Home Affairs Bureau, the Lands Department, the Planning Department and the Food and Environmental Hygiene Department, to co-ordinate work on the supply of columbarium niches and the operation of private columbarium niches. A food bureau spokeswoman said yesterday: 'They will continue to handle cases falling within their respective portfolios and work in close liaison.' The bureau was also considering setting up a voluntary columbarium registration system, she added.

Lau said other complainants had questioned the 'first-come-first-served' approach for the sale of urn niches, and excessive charges. Ching Chung Sian Yuan columbarium in Tuen Mun was criticised in September for changing the sale of niches from a first-come-first-served basis to allocating them by lottery.