Osbert Chadwick versus the menace to public health

By Arthur McInnis

Does your office harbour disease? Are your workers always off sick? If so, how can the law help? asks Arthur McInnis

It's time for a construction lawyer's take on SARS. I begin by observing that many feel let down by their buildings and the way they appear to have been maintained. Why is this? There are two short answers. First of all we have lost sight of the link between buildings and health. Second, few think about how maintaining buildings actually adds to their value. Let me deal with them in that order.

Health and buildings

How many knew, much less cared before SARS, that the earliest buildings legislation in Hong Kong was intended to protect public health! Way back in 1844, an Ordinance for the Preservation of Order and Cleanliness was passed to deal with dilapidated buildings. In 1856 more muscle was added when the Buildings and Nuisances Ordinance was passed. Today statutory nuisance prosecutions are still likely to be one of the best weapons available to attack the spread of infectious diseases. To work though it requires action.

In the 1850s this task fell to the Surveyor General. He tried but failed. Recognising it had a problem on its hands, the Government of the day's response was to commission an English sanitary engineer to study the root problems and report. His name was Osbert Chadwick. The report bears his name. Chadwick concluded that the persistent insanitary conditions were a menace to public health. He recommended, to no ones' surprise, more building legislation. Two laws were passed though: One was the Public Health Ordinance in 1887; and the other was the Buildings Ordinance in 1889.

The Government assumed that it had the situation covered. It was wrong. Bubonic plague entered Hong Kong from Guangzhou and spread in the 1890s. So, still more legislative clout was needed but this time on the enforcement side. It came in the form of the Closed Houses and Insanitary Dwellings Ordinance in 1894. It dealt resolutely with premises that had in fact already been ordered closed under the 1887 law.

Included in this legislation were many provisions which the Government had, ill advisedly, omitted from both the 1887 and 1889 Ordinances as a result of strong opposition in the Legislative Council and from then property owners. Some clearly viewed public health measures as an unnecessary expense.

For those who still had trouble seeing the link between health, soundly built and properly maintained buildings, the Government made it patently clear when it combined the two earlier laws. The new law, aptly titled the Public Health and Buildings Ordinance, was passed exactly 100 years ago, in 1903. Sadly, given the situation today, it was not to last.

In 1935, the combined law was repealed and two Ordinances were put in its place to control public health and buildings separately. Why? Because of jurisdictional rivalries. You see at that time a report to the then Director of Medical and Sanitary Services said that provisions on design and construction of buildings, which belonged to the Public Works Department, should not be mixed with provisions on cleansing and prevention of disease. It was the Sanitary and Medical Departments who laid claim to these latter two roles. This telltale break saw some of the public health provisions moved over to the new buildings legislation but a hiatus was left. I would surmise that it was at that point that we lost the link between the two. Today, while the Buildings Ordinance still has some of these provisions buried in its regulations, specifically the Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines, few think about them other than during construction. Post-construction true supervision is left primarily to owners themselves and public officers under the Public Health and Municipal Services Ordinance. But, while those public officers have the power to inspect and repair a shopping list of sanitary conveniences; curiously these officers cannot touch the drains without permission from the Building Authority. It may ask too much. In my view it could be solved in a stroke by giving the power to the public officers unconditionally. I understand that it is now being looked at by Legco.

Value and buildings

My second point pertains the failure of many, or so it would appear, to recognise how properly designing and maintaining buildings adds to their value.

Many in the know have come to recognise that a wide range of benefits come from sound design and maintenance. They are a distinct minority. The rest see a much smaller picture. One in which the capital cost of flats or buildings is their only meaningful measure of financial value. The flaw in this is that while capital cost is important it should be just a part of how we value reality. I say this because if we did value it in another way then the current health scare might just not have taken hold as it has. Before saying how let me round out some other measures.

Equally important as capital cost is measuring financial value so too should running, maintenance and operating costs be. By simply adding these to the equation we incentivise our burghers to look after their property. Next, in my books, on what should be taken into account in calculating value, would be indoor environmental quality. This is made up of light, air and sound attributes.

Lastly, to these, I would add spatial quality. This brings in configuration and structure. Brand names aside, putting these altogether would give us a very different formula for determining what is or is not valuable in our vast stock of realty. Then the market can decide.

Summing up what is needed in this respect is a broader more holistic approach to how we value our buildings. One that adds new attributes to financial value, and brings in environmental and spatial quality factors as well. It will not be easy. That said though there are already stirrings that this has been put on the table by the Secretary for Housing, Planning and Lands, Michael Suen Ming-yeung when he suggested that going forward all buildings will be graded on the quality of their maintenance and that a major consultation was being launched. It is a very welcome step and one that will have widespread benefits. So let the public consultation, then public education, then public implementation begin.

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