新丁再現

新界套丁研究報告 2020

Abuse of the Small House Policy : Revisited 2020

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Executive Summary

- **Abuse of the Small House Policy ("SHP") or "tou ding" unabated:** the SHP began under an overall rural housing strategy in the 1970s as an "interim measure", but remained in place for half a century to this day. Reform of the SHP has been slow, while abuse (colloquially "tou ding") is on the rise. ["Tou ding" is an illegal process where developers match ("tou") eligible villagers ("ding") onto corresponding land lots to build Small Houses.] "Tou ding" has suspectedly led to the second-hand small houses and Small House Villas mushrooming all over the New Territories, causing a series of legal, environmental, regulatory, and developmental issues.

- **Updates to "Small House Villas database":** since publishing our research report on SHP abuses in 2017, some incidents arose and brought "tou ding" issues under the spotlight again: a series of court cases regarding Small House "rights", and an incident somehow linked with the New Territories gentry last year. These incidents, together with government's inaction towards the SHP issues, call for an update to our original database, which are put online (Map: https://bit.ly/308zIBp ; List: https://bit.ly/3drfBEg, both in Chinese) and a thorough analysis of the "tou ding" mechanism.

- **Research result**: in 2017, we found nearly 10,000 Small Houses suspectedly acquired via "tou ding", meaning that for every four Small Houses, one was suspected to be built via illegal means. **In this updated report covering cases from 2018 to March 2020, the figure has increased by 804**. In other words, **one additional Small House was built each day by suspectedly illegal means during the same period, making the total 10,581.** Among all the districts, Yuen Long had the largest increase, with 512 new Small Houses acquired via "tou ding" (64% of the total sum), followed by North (113, 14%) and Tuen Mun (74, 9%). For the distribution by District, please refer to **the list appended below this English Executive Summary**.

  The most severe case is Sai Pin Wai Village in Yuen Long, where 99.1% (120 out of 121) of the Small Houses were found to be abused. The list of 59 villages in which more than 30% of the Small Houses were found to be abused is found in Annex 3 and 4 (Chinese only), or https://bit.ly/2GXesbn (Chinese only).

- **Case studies**: in-depth case analyses of the database results in the following findings:

    - **Syndicate business revealed**: in 2017, a notable figure from a New Territories gentry dismissed our research report then by saying that the Small House Villas were merely "housing clusters" built by and for villagers themselves. However, this report found new Small House Villas at different locations led by the same developer, similarly packaged as suburb housing for re-sale. That these deadlings involve shell companies indicates

sophisticated projects orchestrated by a syndicate. This new finding refutes the figure's claim in 2017.

- **Alleged participation of person(s) related to major developers:** common perception sees "tou ding" as a conspiracy led by small developers comprised of or closely linked to the New Territories gentries. In this research, it was discovered for the first time ever that a person working for a major developer at the time formed a company with gentries, and that company allegedly participated in a Small House Villa development in Yuen Long. This calls for further research to look into the nature and implication of this sort of dealings.

- **"Tou ding recidivist" spotted**: our 2017 report pointed out that there have been at least 40 civil litigations regarding illegal sales of Small House "rights" and purchase agreements. Judgments handed down by the courts confirmed the existence of such secret collaboration seemingly related to "tou ding". With such clear evidence, the relevant authorities did not seem to have pursued the issues further, though. With reference to previous judgements, this report found that certain developers/persons currently engaged in Small House Villas development were also engaged in previous illegal "tou ding" transactions. This finding highlights government's acquiescence to Small House developers.

- **Offshore companies involved**: It is discovered for the first time that there are offshore companies set up in British Virgin Islands ("BVI companies") suspectedly participating in "tou ding". As BVI companies are widely used to conceal information including the identities of their board of directors, it is extremely hard to acquire information about developers behind the Small House Villas developments. It is a tactic used by some developers to keep their syndicate businesses out of the authorities' radar.

- **Village zones extended in villages with abuse cases:** In the past few years, the government has extended the village zones of some villages in response to the alleged shortage of land for Small Houses built for the villagers themselves. Meanwhile, abuse cases of Small House sold to outsiders have been found in those villages. In other words, the government's arrangement has fuelled the abuses by constantly replenishing the supply of eligible village land, in addition to the authorities' inaction.

- **Exemptions of small houses from first-hand property law aggravated abuse:** Small House Villas developers are not required to supply sales brochures to purchasers as they are exempted from the Residential Properties (First-hand Sales) Ordinance ("RPFHSO") (Cap. 621), as long as the development is not regarded as "one single real estate development project". As a result, a great majority of Small House Villas are not regulated even though they obviously constitute "one single real estate development project". The developers are not required to reveal the background of the

development project as stipulated by law, which further obscures the dealings of the illicit business. The government is found to have downplayed the handling of this absurd exemption for Small House during the legislative process, effectively relinquishing the power to curb the abuse of the SHP.

- **Policy recommendations:** In the past 2 years, the problem of "tou ding" has not been properly addressed, **and the government has long adopted a laissez-faire attitude towards "tou ding"**. With reference to our 2017 research report, we now propose the following measures to address the current "tou ding"situation:

    - **Draw up a sanction list of suspected "tou ding" villages**: Cancel all in-progress applications for Small Houses in a village as a deterrent, if over 50% of Small Houses in the village are found to be abuse cases.

    - **Draw up an observing list of suspected "tou ding" villages**: Conduct complete investigations into all in-progress applications for Small Houses in a village, if over 30% but less than 50% of small houses in the village are found to be abuse cases; also, conduct extra land search on the history of transfers of ownership in those land lots to see if developers/companies have further divided the land lots (a telltale sign of abuse cases).

    - **Suspend applications for certificates of compliances and resales of Small Houses**: Immediately suspend the applications for certificates of compliance and resales for further investigations, if a number of Small Houses are under construction or nearing completion, and the scale of a development ranges from a dozen to a few dozens of Small Houses.

- **Put Small House developments under the regulation of first-hand property law**: Repeal the exemption clause for Small Houses under the RPFHSO so that developers should prepare sales brochures, lay out details of the development projects, and disclose the identity of the developers. The Lands Department should conduct a thorough investigation and halt the applications if the development projects show traces of the "tou ding" mechanism.

- **Increase transparency by allowing public access to small house application data**: the Lands Department should make the application data public for public scrutiny. The public can assist in finding out suspected abuse cases and lessen the burden of the Lands Department.

The distribution of Small Houses allegedly acquired via "tou ding" by District

Full-database: https://bit.ly/308zIBp (In map format, Chinese version only)

Number of small houses that were built through suspected "tou ding" mechanism :

Districts (by District Land Offices)	**Rural Committees/ "Heung"**	**No. of "Ding" house built by suspected "tou ding" mechanism in 2017 or before**	**No. of "Ding" house built by suspected "tou ding" mechanism after 2017**	**Total number of "Ding" house built by suspected "tou ding" mechanism**
Yuen Long	Pat Heung Shap Pat Heung San Tin Ping Shan Ha Tsuen Kam Tin	1263 1403 530 1011 304 378	148 134 105 102 23 0	
Subtotal		4889	512	5401
North	Sheung Shui Sha Tau Kok Ta Kwu Ling Fanling	544 104 52 639	46 17 12 38	
Subtotal		1339	113	1452
Tuen Mun	Tuen Mun	1046	74	1120
Tai Po	Tai Po Sai Kung North	1787 125	36 4	
Subtotal		1912	40	1952
Sai Kung	Sai Kung Hang Hau	323 123	31 0	
Subtotal		446	31	477
Islands	Lamma Island	3	19	

	(North) Mui Wo South Lantao Tung Chung Lamma Island (South) Tai O	 12 20 0 0 0	 5 4 3 0 0	
Subtotal		35	31	66
Sha Tin	Sha Tin	87	3	3
Tsuen Wan & Kwai Tsing	Tsuen Wan	23	0	0
Total		9777	**804**	**10581**

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