

Town Planning Appeal No. 2 of 2006

Name of Appellant: Tang Kin Sang

Date of Hearing: 28 June, 9 July and 22 October 2007

Date of Delivery of Decision: 28 March 2008

1. This appeal is referred to as the 3rd Appeal in our Decision in Town Planning Appeal No. 19 (the 1st Appeal), and our Decision herein should be read in conjunction with our Decisions in the 1st and the 2nd Appeals. In this Decision, we will adopt the same short hand terminology as defined in our Decision in the 1st Appeal.

2. The land involved in this 3rd Appeal is hereinafter referred to as Site 3. Site 3 consists of Lots 137(part), 138-143, 145, 147(part), 148, 149, 151, 152(part), 153(part), 155(part), 159, 160, 164, 165, 167-171, 172, 175, 176-179, 180RP, 181RP, 182RP, 183RP(part) , 236RP, 237RP, 238RP, 239RP, 240RP, 241RP and 243RP and the adjoining Government land in D.D. 122, Ping Shan, Yuen Long. The total area of this site is about 20,000 square metres of which about 900 square metres are Government land.

3. On 9 June 2005, the appellant, Tang Kin Sang submitted a

planning application (No. A/YL-PS/228) under section 16 of the Town Planning Ordinance to seek planning permission to use Site 3 for container vehicles and lorries parking and ancillary repairing activities for a period of 3 years. It would appear that at the time of the application, Site 3 was already being used for these purposes albeit without any planning permission to do so.

4. The application was rejected by the Rural and New Town Planning Committee (the “Committee”) on 29 July 2005 and the appellant was informed of the decision on 12 August 2005. The grounds for rejecting the application given by the Committee were:

- (a) the application was not in line with the TPB Guidelines No. 13C as the development was not compatible with the surrounding areas which were characterized by residential structures, there was insufficient information to demonstrate that the development would not have adverse drainage, traffic and environmental impact on the surrounding areas, and there were adverse departmental comments and local objections to the application; and
- (b) Since the TPB Guidelines No. 13C were promulgated,

no planning permission had been granted for container vehicle park within the “U” zone. The approval of this planning application would set an undesirable precedent for similar applications in this area. The cumulative effects of approving these similar applications would result in degradation of the environment in this area.

5. On 1 September 2005, the appellant applied to the TPB for a review of the decision of the Committee. On 18 November 2005, the TPB upheld the decision of the Committee. The grounds for rejecting the application were similar to those given by the Committee. However since by then, having regard to the drainage proposals made by the appellant, the Drainage Services Department had indicated that they had no in principle objection to the proposals. The grounds for rejecting the application were slightly modified so as to leave out any reference to drainage impact.

6. On 2 December 2005, the appellant was informed of the decision of the TPB and on 26 January 2006, the appellant filed a notice of appeal against the decision of the TPB.

7. Site 3 also falls within the Ping Shan OZP No. S/YL-PS/11

and is within the “U” zone on that plan. We have already discussed the characteristics of the “U” zone on this OZP in our Decision in the 1st Appeal and the same is not repeated here. Site 3 is also within the Island and we have also made observation on the general description of the activities on the Island and also its immediate vicinity in our Decision in the 1st Appeal. It is notable that while the whole Island was in the “U” zone, the land across Long Tin Road facing Site 3 is zoned for “V” purposes. In term of categories of land use under TPB Guidelines No. 13D, Site 3 is within Category 2. Indeed, the whole of the Island is within Category 2.

8. Site 3 is on the south and south-eastern part of the combined Sites 1, 2 and 3. It has a long frontage abutting Long Tin Road. However, vehicular access to Site 3 could only be obtained through Site 2. The north-western corner of Site 3 is connected with Site 1. While lying to the south of Site 2, in fact, there are quite a few small pieces of land not falling within Sites 1, 2 or 3 along the borders of Sites 2 and 3.

9. Currently, there are container trailers parked in Site 3. They are mainly parked at the northern part of the Site facing Site 2 and being separated from Site 2 by a space for open storage purposes which space does not form any part of Sites 2 or 3. Immediately to the south of this cluster of vehicles and trailers, the land is being used for the storage of

recycling materials. The north-western part of Site 3 is actually facing the small hill separating Sites 1 and 2. This part of Site 3 is currently used for the purpose of storage of construction materials. At the part of the site to the south-west of this open storage area, one can also find a converted container site offices. At the south-eastern corner of Site 3 is a plant nursery. Immediately to the north of this plant nursery, the land is being used for vehicle repairs. There are also 2 other containers used as offices roughly at the middle of the Site. Full details of the users found in Site 3 are set out in exhibit R-7 produced during the hearing.

10. Immediately outside the north-western boundary of Site 3 and at the foot of the hill, one can find some residential structures which appeared to be still under occupation. Also immediately outside the north-eastern boundary of Site 3, one can also find a number of residential structures which also appeared to be still under occupation. One can also find some residential structures which appeared also to be under occupation just outside the south-eastern corner of the Site. It would appear that all these residential structures only appeared after 17 August 1990 and are therefore not covered by the existing use exemption under the Town Planning Ordinance. In fact, it appears that the use of these structures for residential purposes is also an unauthorized use from the town planning point of view.

11. Our impression during the visit to the Site was that in general Site 3 was less well maintained than Site 2. Like Sites 1 and 2, the ground of Site 3 was paved with asphalt. On the day of our visit, we saw many holes on the ground and the ground was not leveled but with quite a bit of undulating bumps. We bear in mind that there was quite a bit of rain on the days before our visit. However for this site, even giving full allowance for the effect of the rain, we were not impressed by the standard of the maintenance of the ground by the operator of this site at all.

12. Insofar as the views of the local residents are concerned, there were objections raised by 2 District Council members of the Yuen Long District. We do not know if they are the same District Council members who raised the objections to the application in respect of Sites 1 and 2. Suffice is to say that their grounds of opposition were very similar to those raised by the District Councilors in relation to Sites 1 and 2. There was also a verbal objection raised by a village representative of Tong Fong Tsuen on the ground that the applicant has not obtained the consent of a land owner. In this respect, we note that Site 3 is made up of quite a number of pieces of land under different ownership. For the purpose of planning permission, it does not matter whether the applicant is the owner of the land or not. In fact, as we have remarked above, part of Site 3 is Government land.

13. On the other hand, there were also 2 Yuen Long District Councilors supporting the application mainly on the grounds that there was demand for land with permission for use as heavy vehicles and container trailer parks and that the proposed development would actually improve the environment. There were 5 letters from the Chairman of Ping Shan District Rural Committee, Village Representatives of Sheung Cheung Wai, Hang Tau Tsuen and Ha Mei San Tsuen and a resident at Lot 137 of DD 122 supporting the application. In general terms, the grounds for supporting the application are that the condition of Site 3 would be improved if permission is granted for the intended development, and that in view of the multi-ownership of the lands making up Site 3, there is little hope that there could be any other development of the land that would improve the environment. If the land remains undeveloped and unattended, it would create even worse environmental and hygiene problems.

14. On the part of Government Departments, the EPD initially raised the concern over the effect of the noise created by the development on the Site on the residents in the “V” zones to the north of the Site. Recently, the EPD also raised the concern of the noise impact on the residents in the structures immediately abutting the boundary of Site 3. The EPD also raised the concern on the pollution created by the car repair activities, in particular the oil changing and paint spraying. In relation to

the latter, the appellant had not made any proposal to effectively deal with such problem.

15. The Planning Department did not support the application and in fact had vigorously opposed the application on the ground that the development was not in line with the TPB Guidelines No. 13D and that there were adverse departmental comments on the application. The Planning Department also opposed the application on the ground of adverse environmental impacts and that it would give rise to an undesirable precedent if planning permission was granted. Like the other 2 Appeals, the respondent also drew our attention to the fact that there was a history of revocation of planning permissions granted in the past on the ground that the conditions imposed were not complied with.

16. The Appeal Board deliberated on the 3 Appeals on 22 October 2007. We have considered all the evidence and materials placed before us on all these 3 Appeals.

17. We have discussed the issue on the application of TPB Guidelines No. 13D in our Decisions in the 1st and 2nd Appeals and would not repeat the same here. We would not have come to the decision of dismissing this appeal on the ground that the development is not compatible with the surrounding land uses. Nor would we have dismissed

the appeal on the ground that the appellant is not to be trusted as being able and willing to comply with conditions that we may otherwise be minded to impose for the grant of planning permission. However, in respect of this Site 3, even with the mitigation measures suggested by the appellant's experts, we are not satisfied that the development would not cause any unreasonable adverse effect on the residents nearby. In particular, we note that there are quite a number of residential structures immediately to the north-west of Site 3 and also to the north-east and south-east of Site 3. Unlike the position in Site 1, the residents of these structures did not show any support of the application and there are many of them. Also, with particular reference to the car repairing activities, the appellant's experts had not suggested any measure or effective measure to avoid or mitigate any harmful effect of the pollution so caused.

18. In all the circumstances, we consider that the Town Planning Board had come to the correct conclusion and we would dismiss the appeal.

Edward Chan (Chairman)	Au Chi Yuen (Member)	Richard Ho (Member)	Helen Kwan Po-jen (Member)	Kevin Law Chi-shing (Member)
------------------------------	----------------------------	----------------------------	----------------------------------	------------------------------------