

Town Planning Appeal No. 16 of
2006

IN THE MATTER of the
Town Planning Ordinance (Cap.
131)

and

IN THE MATTER of an Appeal
under Section 17B by
Mr. Poon Ka Lok

Date of Hearing : 26th March 2007

Date of Decision: 22nd May 2007

Appeal Board : Ms Sylvia Siu Wing - yee (Chairman)

Professor Chau Kwong –wing (Member)

Ms Carmen Chan Ka-man (Member)

Mr. Richard Ho Kam-wing (Member)

Dr. Hung Wing-tat (Member)

In attendance: Ms Christine Pang (Secretary)

Representation: The Appellant was represented by Mr. Kwok Chi-man

**The Respondent was represented by Miss Vickie Man ,
Government Counsel**

DECISION

Background

1. This appeal arises from the Appellant's planning application No. A/YL-ST/301 lodged with the Town Planning Board ("TPB") on 19.01.2006.
2. The Appellant applied under section 16 of the Town Planning Ordinance (Cap.131) for approval to use the application site ("the Site") as a Temporary Public Vehicle Park (Private Cars and Lorries) for 3 years. On 17.03.2006, the Rural and New Town Planning Committee ("RNTPC") rejected the application. Thereafter, the Appellant revised his application which was also rejected by TPB at the review hearing on 11.08.2006.

The Site

3. The Site is:-
 - (i) situated in Lots 246 RP, 247, 248, 249, 250 S.B RP (Part), 276 S.B RP, 277 S.B RP (Part), 279 S.B RP (Part), 286, 287 (Part), 288, 289, 290, 291, 292, 293 and 294 (Part) in D.D. 99, Lok Ma Chau Road, San Tin, Yuen Long, New Territories;
 - (ii) zoned "Green Belt" ("GB")(98%) and "Village Type Development" ("V")(2%) on the draft San Tin Outline Zoning Plan No S/YL-ST/7;
 - (iii) at the junction of the one-way Chau Tau West Road and Lok Ma Chau Road. There is a level difference between the site and the two roads, therefore no vehicular access point can be provided from these roads;
 - (iv) north of Chau Tau West Road;

- (v) previously comprised ponds but were later filled without planning permission;
- (vi) currently a piece of unused land with a small plant nursery at the northwest part;
- (vii) outside the proposed Lok Ma Chau Road widening works associated with the Spur Line rail project; and
- (viii) within the Wetland Buffer Area (WBA).

The Planning Intention

- 4. The Planning Intention of the “GB” zone is primarily for defining the limits of urban and sub-urban development areas by natural features and to contain urban sprawl as well as to provide passive recreational outlets. There is a general presumption against development within the zone.
- 5. The Planning Intention of “V” zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. A selective range of uses including commercial, community and recreational uses may be permitted within this zone on application to the TPB on the basis that these uses would serve the need of the villagers and would not adversely affect the character of these villages.

The Application

- 6. The Appellant originally sought approval to use the Site as a temporary public vehicle park (private cars and lorries) for 3 year. Permission of the TPB is

7. On 17.03.2006, the RNTPC rejected the application. Thereafter, the Appellant revised his application in terms of the types (for private cars, taxis, light vehicles and motorbikes only, with lorry parking deleted) and number of vehicles allowed (reduced from 100 to 40), duration of use (reduce effective period from three years to one year), layout and landscape design. Pun UK Tsuen Villagers' need for the application has also been reflected. At the review hearing on 11.08.2006, the TPB rejected the revised application.

8. At the appeal hearing on 26.03.2007:
 - (i) the Appellant was absent but was represented by Mr. Kwok Chi-man who made submissions on behalf of the Appellant;

 - (ii) Mr. Kwok did not call any witness; and

 - (iii) Ms Vickie Man represented the Respondent and called one witness : Mr. Anthony C Y LEE, Senior Town Planner/North of the Tuen Mun and Yuen Long District Planning Office (DPO) of the Planning Department, who testified on all aspects of the application including but not limited to the Site and its surroundings, zoning, background of the subject application, reasons for rejection, planning intention, planning considerations, similar applications and responses to the Appellant's grounds of appeal.

Reasons for Rejection

9. Having heard submissions by both parties and considered all the documents pertaining to the application, including the supplemental documents submitted

I. Development not in line with Planning Intention

- (i) The Outline Zoning Plan (“OZP”) in force at the time of the application and the review was OZP No. S/YL-ST/7 and the current one is OZP No. S/YL-ST/8. Such zoning remains the same in both OZPs.
- (ii) Although the Appellant’s right to apply for temporary public vehicle park permission has never been questioned, he is not entitled to a planning permission as of right :- in respect of temporary use, the Notes expressly require an applicant to apply to the TPB for permission. The fact that “public vehicle park (excluding container vehicle)” is a Column 2 use does not necessarily mean (expressly or impliedly) that such use complies with the planning intention.
- (iii) Such planning intention provides conceptual guidance to town planning and that the use as a public vehicle park must be considered in the context of a general presumption against development within this zone.
- (iv) Para.9.6.1 of the Explanatory Statement of draft San Tin OZP No.S/YL-ST/7 stipulates that:-

“... However, limited developments may be permitted with or without conditions on application to the Board, and each application will be considered on its individual merits taking into account the relevant Town Planning Board Guidelines.”
- (v) TPB Guidelines No. 10 (TPB PG-No. 10) “Town Planning Board Guidelines for Application for Development within Green Belt Zone under Section 16 of the Town Planning Ordinance”, reiterates the

planning intention of the “GB” zone and sets out the main planning criteria. Apart from the general presumption against development (other than redevelopment) in a “GB” zone, the applicant would need to demonstrate the acceptability of the application having regard to the relevant planning criteria under the TPB Guidelines.

II. Adverse Impact on Drainage

The Drainage Services Department ("DSD") had made known to the Appellant that further information was required to support the Appellant's drainage proposal. At the appeal hearing on 26.03.2007, the Appellant's representative raised the possibility of imposing a planning condition to address the drainage problem should the application be approved, yet the Appellant failed to submit a satisfactory drainage proposal for DSD's reconsideration.

III. Adverse Impact on Traffic

- (i) Both the Commissioner for Transport and the Commissioner of Police were concerned that Lok Ma Chau Road is operating near capacity and that additional traffic affecting the operation of the Lok Ma Chau Spur Line Public Transport Interchange scheduled for operation in mid 2007 cannot be tolerated.
- (ii) The Appellant agreed to reduce the number of parking spaces from 100 to 40 and leave a considerable amount of land out of the 5,600 m² vacant.
- (iii) When asked by the Appeal Board whether the Planning Department could keep track of the actual number of vehicles parked on site or monitor the situation should the plan be approved, the answer was negative.

IV. Adverse Impact on Landscape

- (i) The Appellant submitted a revised landscape plan to the TPB on 10.05.2006. Planning Department has considered it but not yet satisfied with it. It was pointed out to the Appeal Board that a vast piece of land east of Lok Ma Chau Road, a knoll north of Chau Tau West Road and land immediately south of Chau Tau West Road are rural in nature and filled with natural vegetation. The Appeal Board agrees that tree planting along the boundary of the Site (as shown in the revised landscape plan) will not compensate the loss of vegetation and change in landscape character.
- (ii) It is worth nothing that since the TPB hearing on 11.08.2006, the Appellant has not made any further submissions or submitted any revised proposals to address the above departmental concerns.

V. Approval of similar applications

- (i) The Appellant's representative pointed out similar applications have been previously submitted in respect of this Site and other sites within the same "GB" zone. Details of each of these applications and reasons for rejection/approval conditions were given by Mr. Lee and we concur that those previously approved applications differ from the present application on various aspects such as geographical location, access arrangements and technical acceptability.
- (ii) Individual merits or exceptional site-specific circumstances may justify planning approval e.g. timing and project limit of Lok Ma Chau Spur Line Project, need for cross-boundary facilities, proximity to strategic transport network, access road being connected to Castle Peak Road rather than Lok Ma Chau Road.

- (iii) We need to point out that although there exists previous approvals, that does not necessarily mean that the present application ought to be approved. Each application should be considered on its own merits with reference to the TPB Guidelines and that each relevant planning consideration should be taken into account before arriving at a decision.
- (iv) TPB clarified in its submission that contrary to the allegation of the Appellant, it is not drawing any dividing line along Chau Tau West Road to differentiate between approved applications in respect of sites south of the line and rejected applications in respect of sites in the north.

VI. Pun Uk Tsuen's Demand for Parking Spaces

- (i) At the review hearing, both the Planning Department and the Appellant's representative addressed the issue of parking demand.
- (ii) The villagers' demand for parking spaces has been considered.
- (iii) It is common ground that public light bus services are available along Lok Ma Chau Road and a number of temporary public car parks are located opposite the Site.
- (iv) From information provided by the Appellant, the need for a local car park was not clearly demonstrated.
- (v) The departmental concerns on the application's technical acceptability and the availability of land within the village for parking purposes were noted.
- (vi) We bear in mind any benefit/detriment to the public at large in arriving at our decision in light of the Notes, the Explanatory Statement of the

OZP as well as TPB Guidelines No.10 and submissions made by the Appellant and the Respondent.

Conclusion

The Appeal Board is not satisfied that exceptional circumstances exist and the proposed planning grounds are not strong enough to outweigh deviation from the planning intention and departmental concerns over the technical aspects and dismiss this appeal.

Ms Sylvia Siu Wing-yee

(Chairman)

Ms Carmen Chan Ka-man

(Member)

Professor Chau Kwong-wing

(Member)

Mr. Richard Ho Kam-wing

(Member)

Dr. Hung Wing-tat

(Member)

Dated this 22nd day of May, 2007.