

IN THE TOWN PLANNING APPEAL BOARD

Town Planning Appeal No. 22 of 2005

BETWEEN

FAIRWISE LIMITED

Appellant

and

THE TOWN PLANNING BOARD

Respondent

Appeal Board : Mr. Patrick FUNG Pak-tung, SC (Chairman)

Mr. Kenneth CHAU Tak-ho (Member)

Mr. KAM Man-Kit (Member)

Ms. LAM Yuet-ming (Member)

Mr. Kevin LAW Chi-shing (Member)

In Attendance : Miss Christine PANG (Secretary)

Representation : Mr. LAM Chiu-shing, authorized representative for the
Appellant

Miss Jess CHAN (Government Counsel, Dept of Justice)
for the Respondent

Date of Hearing : 9th November 2006

Date of Decision : 23 January 2007

DECISION

1. This is an appeal by Fairwise Limited (“the Appellant”) against a decision of the Town Planning Board (“the TPB”) to reject its

application for permission to use certain pieces of land in the New Territories for the purpose of running “a centre for Outreach Training” for a period of 3 years (“the Application”). The facts appear below.

The Basic Facts

2. The pieces of land in question are known as Lots 1303 (Part), 1305 (Part), 1308 (Part), 1311 (Part), 1317 (Part), 1318 (Part), 1319 (Part), 1320 (Part) and Adjoining Government Land in DD 107, Kam Tin, Yuen Long, New Territories (“the Land”).
3. The Appellant is not the owner of the Land. It belongs to a certain Tong of the Tang Clan. The Land was granted to the lessee under the Block Government Lease for use as agricultural land.
4. The Land has an area of about 6,000 sq. m. (including 2,143 sq. m. of Government land).
5. The Land is within the area covered by the approved Kam Tin North Outline Zoning Plan No. S/YL-KTN/4 (“the OZP”). The area covered by the OZP is mostly zoned as “Conservation Area” (“CA”) (about 86%) with a small part zoned as “Agriculture” (“AGR”) (about 14%).
6. The Application dated 10th March 2005 was lodged by the Appellant under section 16 of the Town Planning Ordinance Cap. 131 (“the Ordinance”). In Attachment I attached to the application form, the Appellant stated that the Sam Kwan Outward Bound Centre was established in 1996. It is quite clear that the Land had been used for the purpose of providing military training and as a venue for wargames.
7. On 13th May 2005, the TPB refused the Application.
8. On 31st May 2005, the Appellant lodged an application for review of the decision of the TPB to refuse the Application under section 17 of the Ordinance (“the Review Application”).
9. By a letter dated 2nd September 2005, the TPB informed the Appellant

that the Review Application was refused for the following reasons : -

- “(a) the development is not in line with the planning intention of both the “Conservation Area” (“CA”) and “Agriculture” (“AGR”) zones which are to retain the existing natural characteristics of the area and to retain and safeguard good agricultural land for agricultural purposes respectively. No strong justification has been given in the submission for a departure from the planning intention, even on a temporary basis;*
- (b) the development is not compatible with the surrounding rural character with scattered village houses, pigsties and the Lam Tsuen Country Park;*
- (c) there is insufficient information with regard to the operation of the outward bound training centre including the boundary of war game activities;*
- (d) there is no information in the submission to demonstrate that the development would not generate adverse drainage and traffic impacts on the surrounding areas; and*
- (e) the approval of the application would set an undesirable precedent for other similar recreational uses to proliferate into the “CA” and “AGR” zones. The cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.”*

10. By a Notice of Appeal dated 31st October 2005, the Appellant lodged the present appeal to this Appeal Board to section 17B (1) of the Ordinance.

The Previous Application

11. It transpired that there was already a previous similar application by the Appellant in respect of the Land.

12. By an application dated 19th June 2003, the Appellant applied to the TPB pursuant to section 16 of the Ordinance for permission to use the Land

as a “Wargame Centre” (“the Previous Application”). Attached to that application was an attachment which is exactly the same as Attachment I to the application form for the Application.

13. The Previous Application was rejected by the TPB. By a letter dated 19th September 2003, the TPB notified the Appellant of the rejection and set out the reasons as follows : -

- “(a) the development is not in line with the planning intention of both the “Conservation Area” (“CA”) zone which is to retain the existing natural characteristics of the area and the “Agriculture” (“AGR”) zone which is to retain and safeguard good agricultural land for agricultural purposes. No strong justification has been given in the submission for a departure from the planning intention even on a temporary basis;*
- (b) the development is not compatible with the surrounding rural character with scattered village houses, pigsties and the Lam Tsuen Country Park;*
- (c) there is no detailed information on the boundary of war game activities, the types of gun and bullet used and the associated safety rules and regulations. The potential impacts of the development cannot be properly assessed;*
- (d) there is no information in the submission to demonstrate that the development would not generate adverse environmental, drainage and traffic impacts on the surrounding areas and would have adequate fire services installation for fire fighting; and*
- (e) approval of the application would set an undesirable precedent for other similar recreational uses to proliferate into the “CA” and “AGR” zones. The cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.”*

It will be noted that the reasons of the TPB for rejecting the Previous Application are substantially the same as those for rejecting the Review Application.

14. There was apparently no application for review of the Previous Application pursuant to section 17 of the Ordinance.

The Prosecution

15. In the attachments to both the application forms for the Previous Application and the Application, the Appellant revealed that it had been prosecuted for unlawful use of the Land. It said, however, that the magistrate who heard the criminal case was sympathetic and suggested that it should make an application to Government to enable it to use the Land without breaching the law.

The Case Of The Appellant

16. A Mr. Lam Chiu Shing, a director of the Appellant, and a Mr. Sze Yat Ming, a shareholder of the Appellant, gave evidence for the Appellant.
17. In summary, the evidence of those two witnesses is to the following effect : -
 - (i) The Appellant operates a wargame centre on the Land on a commercial basis.
 - (ii) Most of the activities of the clients of the Appellant take place over weekends and public holidays when they would carry out military training and conduct wargames in groups of 20 – 30 people, with the total number of people taking part being between 250 – 300.
 - (iii) They would use air-guns which would not need to be licensed.
 - (iv) They do not create any disturbance.
 - (v) They in fact help to improve and sanitize the Land and the surrounding environment by carrying out pest control.
 - (vi) They have no reason to cut down any vegetation, especially trees.

- (vii) The activities and training organized by them are very popular amongst citizens. They have tried applying to various Government departments for assistance to facilitate their activities but with no success.

The Case Of The TPB

- 18. One Mr. Ng Siu Chun, a Senior Government Town Planner, gave evidence on behalf of the TPB. He carefully took the Tribunal through the various plans and photographs and explained about the environment of the area in question.

Our Finding

- 19. Having considered all the evidence and submissions on behalf of the parties, we find the following : -
 - (i) The Application, the Review Application and the present appeal are in substance merely repetition of the Previous Application.
 - (ii) Up to now, the Appellant has never addressed any of the concerns expressed by the TPB when it rejected the Previous Application. What the Appellant should have done was to provide the information on the various aspects which the TPB said was lacking at that stage before making the Application in 2005.
 - (iii) In all the circumstances, on the evidence before us, the activities carried on by the Appellant on the Land are not in line with the planning intention of both the CA and the AGR zones and are not compatible with the surrounding rural character in the vicinity and the Lam Tsuen Country Park.
 - (iv) This part of the New Territories is very popular with trail-walkers, especially over weekends and on public holidays. We cannot believe that the wargame activities will not cause any disturbance to the large number of trail-walkers.
 - (v) In all the circumstances, the reasons by the TPB for rejecting

the Review Application as set out in its letter dated 2nd September 2005 cannot be faulted.

Conclusion

20. We therefore dismiss the appeal of the Appellant.

21. We should add that we feel some degree of sympathy for the Appellant in that it has not been able to obtain any assistance from Government. It may be that the Appellant and similar operators can look for places closer to the border with the Mainland which would be suitable for wargame activities to be carried out. Nevertheless, by all these applications to the TPB and the present appeal, the Appellant has already gained a lot of time during which it has continued to carry out the activities on the Land.