

IN THE TOWN PLANNING APPEAL BOARD

TOWN PLANNING APPEAL No. 23 of 2006

Between

Tang Yu-yeung and Tang Wai-cheung                      Appellants

And

Town Planning Board    Respondent

Date of Hearing: 5 September 2007

Date of Decision: 29 October 2007

Composition of the Appeal Board:

Professor Anthony M J Cooray (Chairman)  
Ms Helen Kwan Po-jen  
Mr Louis Pong Wai-yan  
Mr Philip Siu Kam-shing  
Dr Tang Bo-sin

1. This appeal is from the rejection of a planning application for temporary planning permission. The appellants had applied for temporary planning permission for a period of 3 years for the open storage of recyclable card boards, compressed plastic bottles, steel wires and wooden panels. The Rural and New Town Planning Committee (RNTPC) rejected the application and on review the Town Planning Board (TPB) affirmed the rejection on 13 October 2006 on the following grounds:

- a. the development is not in line with the planning intention of the "Recreation" zone, which is intended primarily for recreational development for the use of the general public. There is no strong justification in the submission to merit for a departure from such planning intention, even on a temporary basis; and

- b. the development is not in line with the TPB Guidelines No. 13D for Application for Open Storage and Port Back-up Uses in that there are major adverse comments from government departments and there is insufficient information in the submission to demonstrate that the development would not have adverse environmental and traffic impacts on the surrounding areas.
2. The appeal site, which covers about 5,780m<sup>2</sup>, consists of Lot No 495, part of Lot No 496 and adjoining Government land in Ha Tsuen, Yuen Long. At the time of planning application, the appeal site was situated in a "Recreation" ("REC") zone on the draft Ha Tsuen Outline Zoning Plan. The draft plan has since become an approved plan, but the relevant zoning remains unaffected. Site inspections carried out on 17 August 2007 showed that the site was partly vacant and partly used for open storage of construction materials and machinery without planning permission.
  3. There have been 5 previous planning applications relating to the site. The first 3 applications were for temporary use of the land for open storage of construction materials and machinery. They were all approved for a period of 12 months by the RNTPC in June 1998, August 1999 and November 1999.
  4. The next two applications were submitted after the adoption of TPB Guidelines No. 13B in 2001. The first of these applications was made by the same applicant who had obtained planning permission in November 1999. It was rejected by the RNTPC and on review by the TPB on the grounds that the applicant had failed to comply with the approval conditions in the previously approved planning application and that there was insufficient information to address adverse environmental impacts created by the proposed land-use.
  5. The last (fifth) application was for open storage of recycling materials for a period of 3 years. The application site was much smaller in size, 1,090m<sup>2</sup>, when compared to the application site of the previous application, 21,500m<sup>2</sup>. This application was rejected by the RNTPC in July 2005 on the grounds that the site was located at a relatively undisturbed area; and that the development was not in line with the TPB Guidelines No. 13C in that the applicant failed to provide sufficient information to

demonstrate that the development would not have adverse traffic, environmental and drainage impacts on the surrounding areas.

6. At the time the present application was considered by the RNTPC, there were 66 applications for temporary open storage/port back-up uses in the “REC” zone in question. 32 of those applications were approved by the RNTPC, or on review by the TPB, on the grounds that the proposed uses were not incompatible with the surrounding areas. The rest of the applications were rejected because of the applicants’ failure to demonstrate that there would not be adverse environmental/traffic/drainage impacts.
7. According to the respondent, there have been 16 similar applications since the rejection of the present planning application. 9 of them were approved because there were previous successful planning applications and the proposed uses were not incompatible with the surrounding uses in the area. Thus, they satisfied the requirements of TPB Guidelines No. 13D, which was the 2005 revised version. 6 applications were rejected mainly on the ground that the developments were not in line with that guidelines. The remaining application had not yet been considered by the RNTPC (a deferral having been granted) as at the time of this present appeal hearing.
8. The appellants drew our attention to minutes of the 353<sup>rd</sup> RNTPC meeting held on 13 July 2007 where three applications for temporary open storage in the same “REC” zone were considered and approved by the RNTPC. (Apparently, only one of these is indicated in the map submitted to us by the respondent showing planning application approvals/rejections). The first of these applications was for temporary planning permission for 3 years for a logistics centre and open storage of containers. The second application was for temporary planning permission for 3 years for open storage of fiberglass products with workshop. The third application was for renewal of temporary planning permission for open storage of used electrical appliances and metal ware for a period of 3 years. All three applications related to sites surrounded by open storage uses close to San Wai Road. In not objecting to these applications, the Planning Department had observed that there was no known programme for the “REC” zone and that the grant of temporary planning permission would not frustrate

the planning intention of the zone. When the Committee was considering the second planning application, the Secretary had said that the area surrounding San Wai Road, which is extensively used for open storage uses, would be supported by adequate transport infrastructure and was suitable to be rezoned for open storage uses. The Secretary stated that a plan amendment would be gazetted in due course to rezone that area.

9. Those 3 planning approvals that the appellant brought to our notice relate to an area neighbouring San Wai Road, which is already extensively used for open storage uses. Transport infrastructure was adequate and the area was suitable for rezoning from recreation to open storage. It is in this light that one must consider the view expressed by the representative of the Planning Department at the meeting that ‘there was no known development programme for the “Recreation” zone and a temporary approval of three years would not frustrate the planning intention of this zone’.
10. By way of contrast, the present appeal site is situated away from and to the west of San Wai Road and in a “relatively undisturbed environment with greenery”. The respondent submitted that the TPB would not normally approve applications for temporary open storage in the areas to the west of San Wai Road and went on to state that no similar application had been approved in that area since the adoption of TPB Guidelines No. 13B in 2001 and that there were no special circumstances warranting different treatment of the present application.
11. Not only has the TPB rejected the two previous applications relating to the appeal site (made after the promulgation of the relevant TPB Guidelines in 2001), the Director of Planning has taken enforcement action against unauthorized uses of the appeal site. As a result of serving an enforcement notice, the northern part of the site was cleared in June 2005. Currently, active enforcement action is being taken in relation to northern, eastern and southern parts of the appeal site. Suspected unauthorized use at the eastern part of the site appears to have ceased. Further enforcement action is being considered.
12. It appears to us that the TPB and the Planning Department have drawn a clear distinction between the relatively green area in which the appeal site is situated and

the heavily degraded areas on either side of San Wai Road. The Planning authorities have consistently discouraged open storage use in the former area, which is in a relatively rural or green setting, by refusing planning permission and by taking enforcement action. On the other hand, the TPB has not only granted temporary planning permission for open storage in the areas near San Wai Road but is planning to rezone that area to open storage.

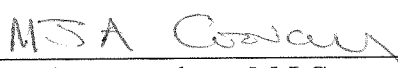
13. In considering applications for temporary permission for open storage and port back-up uses, the TPB is guided by its Guidelines, the most recent version being TPB Guidelines No. 13D promulgated on 2 November 2005. Under the Guidelines, about three quarters of the appeal site fall within Category 3 and the rest falls within Category 2.
14. In Category 3 areas, planning applications for temporary open storage uses are normally not favourably considered. However, where the application relates to a site with previous planning approvals, sympathetic consideration may be given if the applicant has made a genuine effort to comply with planning conditions and has included in the current application sufficient information to demonstrate that the proposed land-use will not cause adverse impacts, be they environmental, traffic, drainage, visual or landscaping. Where there are adverse comments from relevant government departments or local objections, planning permission will not be granted unless such concerns or objections can be addressed by complying with planning conditions.
15. The appeal site had received no planning approvals since the promulgation of TPB Guidelines No. 13B in 2001. Therefore, the present application fails to engage the exception to the policy of non-approval in Category 3 areas. Moreover, there are outstanding objections from the Director of Environmental Protection and the Commissioner of Police relating to noise pollution and traffic generation, although the traffic and drainage impact assessments are acceptable to the Commissioner for Transport and the Director of Drainage Services.
16. In Category 2 areas, temporary permission for open storage uses may be granted provided that any adverse comments from government departments and/or local


objections can be met by compliance with planning conditions. The applicant is required to submit information to demonstrate that the proposed uses would not cause any adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas.


17. In rejecting the present application, the TPB considered that the appellants had not submitted sufficient information to satisfy the Director of Environmental Protection and the Commissioner of Police that there would not be adverse environmental and traffic impacts. The views held by these two authorities remain unchanged at the appeal stage.

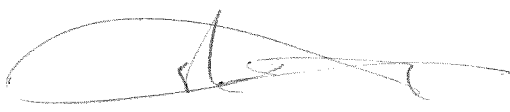
18. Under these circumstances, we cannot see how the decision of the TPB can be successfully impugned. The TPB has consistently rejected planning applications for open storage in the relatively green area west to the San Wai Road, while tolerating similar uses in the already degraded area surrounding the San Wai Road where the traffic infrastructure is adequate to support such uses. The appellants have not demonstrated any compelling reason why an exception should be made in respect of the present application by granting temporary planning permission.


19. We dismiss the appeal without any order for costs.

  
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Professor Anthony M-J Cooray

  
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