

IN THE TOWN PLANNING APPEAL BOARD

Town Planning Appeal No. 3 of 2006
Between
Cheong Fat Motor & Parts Co Ltd
And
Town Planning Board

Town Planning Appeal No. 4 of 2006
Between
Tomorrow View Ltd
And
Town Planning Board

Town Planning Appeal No. 6 of 2006
Between
Mr Liu Kim Ming of Sanyo Motors
And
Town Planning Board

Town Planning Appeal No. 8 of 2006
Between
Ms Li Pik Yung of Xinyi Automobile Glass Co Ltd
And
Town Planning Board

Dates of Hearing: 11 and 14 December 2006

Date of Decision: 15 January 2007

Composition of the Board:

Professor M J A Cooray (Chairman)

Ms Helen Kwan Po-jen

Mr Johnny Fee Chung-ming

Mr Willie Lui Pok-shek, JP

Mr Ir Ng Kwok-chun

Decision

1. This Decision concerns four appeals relating to four adjoining appeal sites against refusal of temporary planning permission for open storage uses in a Village Type Development zone in Kam Tin, Yuen Long. We heard the appellants in four separate hearings and, because of the commonality of issues involved, dispose of the appeals in this Decision.
2. In the “Village Type Development” zone in question, open storage use is neither a Column 1 use (an always permitted use) nor a Column 2 use (permitted with planning permission). The Town Planning Board may, however, grant temporary planning permission for a period not exceeding three years for open storage purposes, notwithstanding the fact that open storage is not listed under Column 2 of any specified zone, and in our case in a “Village Type Development” zone. See “Village Type Development” zone under Schedule of Uses and paragraph (11) of the covering Notes of the relevant plan, namely the draft Kam Tin North Outline Zoning Plan No S/YL-KTN/5.
3. “Village Type Development” zones not only reflect existing villages but are also intended to provide land for village expansion and reprovisioning of village houses affected by government projects. It is hoped that these zones will promote orderly small house development, more efficient use of land and better provision of infrastructure services. See paragraph 9.5.1 of the Explanatory Statement of the relevant plan, namely the draft Kam Tin North Outline Zoning Plan No S/YL-KTN/5.
4. The Town Planning Board, as it has designated specific zones for village type development, has earmarked specific zones for open storage uses. Outside such dedicated zones, open storage may still be permitted in appropriate circumstances and the Town Planning Board has adopted a policy in relation to how it exercises its discretion in determining planning applications for open storage uses. The policy was set out in a Town Planning Board guideline which has been revised several times.
5. Town Planning Board Guidelines 13C: “Applications for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance,” which was in force at the time the present planning applications were submitted, sets out the planning policy on assessing applications for open storage uses. The primary planning intention as set out in the Guidelines is to channel open storage and port back-up uses to suitable areas, prevent further uncontrolled

sprawl of these activities and minimize adverse environmental impacts resulting from such uses.

6. Guidelines 13C divides rural areas into four categories and the present appeal sites fall within a Category 4 area. In Category 4 areas planning applications for open storage uses will normally be rejected, the planning intention being to encourage the phasing out of such uses as early as possible. Under this policy a planning application has a chance of success only if there have been previous planning approvals for such use in relation to the application site, there are no objections from government departments and no local objections, and the proposed development does not have any adverse drainage, traffic, visual and environmental impacts on the surrounding areas.
7. With that general introduction, we may also observe that the four appeal sites lie only about hundred metres east of Wing Lung Wai village and that there are no live planning permissions for open storage uses in respect of any of the land lots between the village and the appeal sites (which are all in the “Village Type Development” zone).
8. The four appeal sites together cover about 5,277m² and make up roughly over $\frac{3}{4}$ th of a triangular piece of land bounded by Kam Tin Bypass (which runs in a north western-south eastern way), Kam Tin Road (which runs in an east-west way) and Kong Tai Road (which runs in a north-south way). The rest of this triangular area consists of a strip of fallow agricultural land along the Kam Tin Bypass, a strip of land used for a metal ware workshop running along the Kong Tai Road, and, of particular relevance to this appeal, an area to the north of the appeal sites where three village houses have been constructed and two more have been approved for construction.
9. These four sites operated as a single site until the land was separated into the present four sites in 2003. The first recorded planning application for the undivided site, which was then about 8100m², was made in 1997. That application sought planning permission for open storage of vehicles for a period of 12 months. That application as well as a second application made in 1998 for temporary open storage of vehicles and vehicle parts for 12 months were successful.
10. These two applications were approved for the reason that the application site would be affected by road improvement projects and hence the planning intention of the village type development would not be realized in the near future.
11. During the period between 1999 and 2001 the site appears to have been used for open storage purposes without obtaining planning permission. Thereafter, two applications were made, one in 2001 and the other in 2002, in respect of the undivided site (albeit with a slightly less area) for temporary open storage of vehicles and vehicle parts for a period of three years. This time round they were both rejected for the reason that they failed to comply with the relevant planning policy in force at that time, TPB Guidelines No 13B: “Application for Open Storage and Port Back-up Uses,” which was promulgated in 2001.

12. According to the TPB Guidelines No 13B: "Application for Open Storage and Port Back-up Uses," the site fell within a "no-go area" where open storage uses were generally discouraged. The two applications failed to satisfy the Guidelines because nearby residential dwellings would be susceptible to adverse nuisances generated by the development and the Director of Environmental Protection did not support the applications. Further, there was no information to demonstrate that suitable alternative sites were not available for open storage uses.
13. In 2003, four separate applications were made in respect of the four planning sites into which the former single site was divided into. They sought temporary permission for open storage for three years and were approved for a shorter period of one year. Four applications made in 2004, in effect seeking renewal of permission for those sites for three years, were again approved for a similar period of 12 months.
14. In granting permission in 2003 and 2004, the Board observed that the sites fell within a Category 4 area under the Town Planning Board Guidelines No 13C of 11.04.2003, which replaced Guidelines No 13B of 2001, and that in accordance with the Guidelines, planning applications for temporary use of land for open storage would normally be rejected. However, for the reason that the planning sites were affected by the Kam Tin Bypass Project work, the Town Planning Board granted planning permissions for a shorter period in order to give time to the applicants to relocate their operations to other suitable locations. These planning permissions expired in 2005.
15. The present four applications were made in July and August 2005, seeking temporary planning permission for three years for open storage uses. All the appeal sites are paved, fenced off and used for open storage. They all front Kam Tin Road to which each site has a separate vehicular access. For ease of reference, we give a short description of the four applications:
 - i. Appeal No 3 of 2006 relates to the westernmost site which has an area of about 1,823m². It concerns a planning application for the use of the site for open storage of vehicles and vehicle parts for a period of three years.
 - ii. Appeal No 6 relates to the site to the east of the first site and covers an area of about 1,224m². It concerns a planning application for the use of the site for open storage of vehicles for a period of three years.
 - iii. Appeal No 4 relates to the third site, which lies along the eastern boundary of site 2 and covers an area of about 1,540m². It concerns an application for the use of the site for open storage of vehicles and vehicle parts for a period of three years.
 - iv. Appeal No 8 of 2006 relates to the easternmost part of the original single planning site and has an area of about 690m².

The planning application is for use of the site for open storage of vehicle glass (including parking and loading/unloading) for a period of three years.

16. The Town Planning Board rejected all four applications for the following reasons:
 - a. the development did not comply with the TPB Guidelines for “Application for Open Storage and Port Back-up Uses” in that residential dwellings which were located to its close proximity would be susceptible to adverse environmental nuisances generated by the development; and
 - b. the continual occupation of the site for temporary open storage use was not in line with the planning intention of the “V” zone which was to designate both existing and recognized villages and areas of land considered suitable for village expansion. There was insufficient information in the submission to demonstrate that relocation to alternative sites could not be made.
17. On appeal, the appellants contended that there was no incompatibility between open storage uses and village type residential developments and that there were no suitable sites to which they could move their businesses.
18. The appellants argued that the proposed use of their sites was not incompatible with the nearby residential sites because:
 - a. the use of their sites did not generate any significant environmental impacts and there were no local complaints; and
 - b. it is a common feature of rural Hong Kong that village developments exist side by side with open storage uses.
19. We do not agree with the appellants that the open storage use is compatible with the neighbouring residential uses. The Director of Environmental Protection has commented that the proposed development would have an adverse environmental impact on the three village houses that have already been constructed to the north of the appeal sites. Approval has been given for two more houses and it is very likely that more applications for small house development will follow. As we noted above in paragraph 7, land lots between Wing Lung Wai village and the appeal sites which are used for open storage uses do not have planning permission. Thus, the way has been paved to realize small house development in the “Village Type Development” zone. It is therefore unsafe to disregard the Director’s view merely because there have been no local complaints. The absence of local objections is a relevant but not a conclusive consideration.
20. We must emphasize that it is undesirable from a planning point of view to encourage, or even to condone, location of open storage uses close to residential areas. It is for the very purpose of discouraging such incompatible

land-uses that the Town Planning Board adopted its policy relating to open storage uses in the rural areas. The planning intention in relation to “Village Type Development” zones is to ensure that village houses are situated in desirable surroundings. See the Explanatory Statement referred to in paragraph 3 above.

21. The appellants argued that they were unable to find suitable alternative sites for relocation. They were given permission in 2003 and 2004 for short periods of 12 months in order to give them time to find alternative sites for relocation. Their present applications, which were made in 2005, were rejected by the Town Planning Board because the appellants failed to provide evidence of genuine efforts to relocate and there was therefore no justification to give them an extension of time to facilitate relocation.
22. We are unable to give the appellants an extension of time because, as before the Town Planning Board, they failed to provide credible evidence of any serious attempt to relocate their business.
23. In our view, the Town Planning Board was right to reject the planning applications in question. Since the appellants were unable to convince us that open storage uses were compatible with village type developments in the “Village Type Development” zone in question or that they had taken genuine efforts to relocate, these appeals too must fail.
24. We dismiss the four appeals without any order for costs.