

**IN THE TOWN PLANNING APPEAL BOARD**  
**TOWN PLANNING APPEAL NO. 17 OF 2005**

BETWEEN

CHEUNG KWAI CHUEN

*Appellant*

-v-

TOWN PLANNING BOARD

*Respondent*

Date of hearing : 24 July, 2006

Date of Decision : 28 August 2006

Composition of the Appeal Board:

Chairman: Mr Ronny Wong Fook-hum, SC, JP

Member: Mr Chau Kwai-cheong  
Mr Hui Kam-shing  
Ms Helen Kwan Po-jen  
Professor Fong Wang-fun

**DECISION**

**The Site**

1. This is an appeal against the decision of the Town Planning Board of 3<sup>rd</sup> June, 2005 whereby the Board rejected on review the Appellant's application for permission to use a site ["the Site"] in Tong Hang, Fanling for temporary open storage of construction materials for a period of 3 years.
2. The Site comprises Lot T128(part), Lot 2806RP (part), Lot 2807RP and adjoining Government land in D.D. 51 in Tong Hang, Fanling. It is of a total area of 1,533 m<sup>2</sup> of which 1,473 m<sup>2</sup> is held under lease for use as agricultural land whilst 60 m<sup>2</sup> is Government land.

3. The Appellant first acquired an interest in the Site on 5<sup>th</sup> February, 1990. The Site was part of the area zoned “Unspecified Use” in DPA/NE-LYT/1 of 12<sup>th</sup> July, 1991. The Site fell within an area zoned “Agriculture” on the draft Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan [“OZP”] No. S/NE-LYT-1 gazetted on 1<sup>st</sup> July, 1994. Zoning of the Site remains unchanged in successive versions of the OZP. The latest version of the OZP is S/NE-LYT/11 gazetted on 24<sup>th</sup> February, 2006. The Site is still within the “Agriculture” zone. The planning intention of the “Agriculture” zone is primarily to retain and safeguard good agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.
4. The Site is accessible from a local road off Jockey Club Road and the road leading to the Site passes through Tong Hang Village. There are some domestic structures to the north and east of the Site. To its immediate south is Lot 2808RP [“Lot 2808”]. This was used for open storage of used television and computer. To the west of the Site and across the access road is a vegetated slope. The village settlement of Tong Hang is about 100m to the south-west of the Site.
5. On 20<sup>th</sup> April, 2001, the Appellant was granted permission in application A/NE-LYT/219 to erect a New Territories Exempted House on a plot of land which abuts the northern end of the Site. The Appellant drew our attention to correspondence which he exchanged with the Planning Department in February, 2003 in relation to drainage proposals and Geotechnical Planning Review Report which he submitted in connection with the grant of that permission.
6. According to aerial photos dated 3<sup>rd</sup> July, 2003 and 5<sup>th</sup> March, 2004, there was dense vegetation on the Site. An aerial photo of 10<sup>th</sup> February, 2006 shows substantial clearance of that vegetation.

### **The previous application**

7. The Appellant first made an application for planning permission on 6<sup>th</sup> July, 2004. That application site was of an area of 1,670 m<sup>2</sup>. That application was rejected on 27<sup>th</sup> August, 2004.

### **The course of the current application**

8. The Appellant lodged his current application on 18<sup>th</sup> October, 2004. This was considered by the Rural and New Town Planning Committee [“RNTPC”] on 17<sup>th</sup> December, 2004. Various Government departments expressed their views in relation to the application :
  - (a) The Agriculture, Fisheries and Conservation Department, the Lands Department, the Highways Department, the Drainage Services

Department and the Water Supplies Department have no objection in principle to the application.

- (b) The Assistant Commissioner for Transport/New Territories, Transport Department observed that the access road leading to the Site from Jockey Club Road is a sub-standard village track. Whilst some 250m of that access road has already been improved, the remaining 330m section is still a narrow village track less than 4m and without footpath that is not desirable for heavy vehicle use.
  - (c) The Director of Environmental Protection does not support the application as “some domestic structures are located in close vicinity to the application site (less than 20m from the site boundary) and along its access road. The open storage of construction materials under application would involve loading/unloading and material handling within the application site and would induce additional traffic of goods vehicles along the access road, which will also induce noise and/or dust nuisance to the nearby sensitive receivers”.
  - (d) The Planning Department expressed the following reservations : “the subject development is located in a rural village area with a mature woodland adjacent. It is considered incompatible to the surrounding rural village environment. According to aerial photo taken in mid 2003, almost half of the application site formed part of the aforesaid mature woodland. It is likely that the trees within the site were felled without approval from the relevant department as he was not informed of such application. Only a few existing trees were left on site which are required to be preserved. The approval of the current application will set a precedent and attract more applications of similar nature which will further deteriorate the existing rural village landscape and will no doubt have adverse landscape impact and degrade the rural amenity in the area”.
9. The Chairman of the Fanling District Rural Committee, 2 Village Representatives of Tong Hang and 24 North District Council Members were consulted in relation to the application. Only the Chairman, the 2 Village Representatives and 6 Council Members responded. The Village Representatives were divided in their views. 2 Council Members raised objections whilst others had no adverse comment.
10. By letter dated 14<sup>th</sup> January, 2005, the Town Planning Board rejected the Appellant’s application on the following grounds :
- (a) the development under application does not comply with the Town Planning Board Guidelines for “Application for Open Storage and Port

Back-up Uses” in that it is not compatible with the rural village character of the surrounding areas; there is no previous planning approval granted to the application site and no technical assessments/proposals has been submitted to demonstrate that the subject development would not generate adverse traffic, environmental and landscape impacts on the surrounding areas; and

- (b) there is insufficient information in the submission to demonstrate that the development under application would not have adverse traffic and landscape impacts on the surrounding areas and adverse environmental impacts on the nearby sensitive receivers.

A copy of the Guidance Notes [“the Guidance Notes”] on application for permission for temporary open storage and port back-up uses was attached to that letter.

11. By letter dated 20<sup>th</sup> January, 2005, the Appellant applied to the Town Planning Board for a review of its 14<sup>th</sup> January, 2005 decision.
12. Prior to the review by the Town Planning Board on 3<sup>rd</sup> June, 2005, the Appellant submitted drainage proposals prepared by Ho Tin & Associates and proposals for the planting of trees prepared by Kelvin Design Horticulture.
13. The review was heard by the Town Planning Board on 3<sup>rd</sup> June, 2005. By letter dated 17<sup>th</sup> June, 2005, the Town Planning Board rejected the Appellant’s application on the same grounds as outlined in paragraph 10 above. The Appellant challenged that decision by letter dated 8<sup>th</sup> August, 2005.

### **The present appeal**

14. The Appellant placed before us 2 written submissions dated 7<sup>th</sup> July, 2006 and 20<sup>th</sup> July, 2006. The Appellant maintains that :
  - (a) favourable consideration should be given as no adverse view has been expressed by most Government departments.
  - (b) most of the land in the Tong Hang area is being used for open storage. There is therefore no basis to say that the application, if approved, would have adverse environmental and landscape impacts on the surrounding areas.
  - (c) although he did not engage any professional assistance in assessing the environmental and landscape impacts, he is willing to comply with any condition imposed for grant of planning permission. Reliance is placed on the fact that he complied with the conditions imposed on grant of permission to him to erect the New Territories Exempted House.

15. At the hearing of the appeal before us, the Appellant :
- (a) informed us that he purchased the Site as an investment to generate income for his old age. He raised no objection to the zoning of the Site as “Agriculture” as he was poorly educated and was unaware of the gazette zoning.
  - (b) pointed out that planning approvals were given in 5 previous applications, namely A/NE-LYT/124, A/NE-LYT/164, A/NE-LYT/185, A/NE-LYT/211 and A/NE-LYT/271 [“the 5 Applications”] in relation to an area at the beginning of the access road and the plot right next to the Site [Lot 2808] is being used for open storage. The Appellant argued that it is wrong to discriminate against the Site by withholding planning permission.
  - (c) explained that no heavy vehicle is being used for transportation of building materials to and from the Site. No adverse environmental impact is likely to result from the open storage on the Site.
  - (d) admitted that he understood the basis of the previous rejections but opted merely to engage drainage and landscape experts to support the present appeal.

**The Guidance Notes - Guidelines 13C on Application for Open Storage and Port Back-up Uses**

16. Applications falling within Category 3 areas as defined by those Guidelines would normally not be favourably considered unless the applications are on sites with previous planning approvals. In that connection, sympathetic consideration may be given if the applicants have demonstrated genuine efforts in compliance with approval conditions of the previous planning applications and included in the fresh applications relevant technical assessments/proposals, if required, to demonstrate that the proposed uses would not generate adverse drainage, traffic, visual, landscaping and environmental impacts on the surrounding areas.
17. The Site falls within the Category 3 areas. There is no previous planning approval in relation to it.

**Our analysis**

18. We do not detect any unfairness in treatment stemming from the 5 applications and from the activities on Lot 2808. The 5 applications relate to an area within the “Recreation” zone. Application A/NE-LYT/271 was favourably considered since there were previous planning approvals. As far as Lot 2808 is concerned,

prior to the publication of IDPA/NE-LYT/1 on 17<sup>th</sup> August, 1990, that lot was used for the production of wooden and rattan furniture. Given that prior use, it is doubtful whether enforcement action could be taken against the owner of Lot 2808 in relation to use of the same for the storage of used television and computer.

19. The Site does not enjoy the benefit of any previous application. On the basis of the Guidance Notes, the application would normally not be favourably considered. In the event of Governmental objections on the basis of adverse drainage, traffic, visual, landscaping and environmental impacts, an applicant who does not enjoy the benefit of a previous planning approval would be met with even greater reluctance should the applicant fail to tender any assessments/proposals to refute such Governmental reservations.
20. The fact that there is no opposition from a large number of Government departments is a relevant but not a determinative consideration. The reasons advanced by the departments in opposition have to be carefully considered to see whether there is legitimate concerns arising from the application.
21. The current appeal is still being opposed by 3 Government departments. The Transport Department, the Environmental Protection Department and the Planning Department are of the same views as outlined in paragraphs 8(b) to 8(d) above. The Appellant has not submitted any technical assessment/proposal to refute their contentions.
22. In relation to the traffic issue, the Appellant does not dispute that the stretch of access road of 330m is of less than 4m in width. He asserts that no heavy vehicle would be used for transportation of building materials to and from the Site. Mr. Lau for the Town Planning Board drew our attention to various photographs showing the construction materials and the vehicles travelling near the Site. Whilst the Appellant disputed the use of any container truck, the size of the building materials leaves us unconvinced that no heavy vehicle would be used for their transportation. A long stretch of the access road is no more than 4m wide. In these circumstances, we are not persuaded that the Site is properly served for its intended use. Furthermore, we have not been provided with any information as to the frequency of the journeys. In the absence of such data, it is difficult for us to assess the effect of such journeys on the environment.
23. The Town Planning Board submitted for our consideration a series of photographs showing the residential units in the vicinity. The Appellant said those units are not close to the Site and some of the units are unoccupied. The evidence before us does not suggest that the area is densely populated. There is no universal opposition from the local residents. We are not prepared to attach much weight to the opposition on the basis of impact to the surrounding residents.

24. We do however share the concerns expressed by the Planning Department. The aerial photos show that the Site was a natural extension of the green plantation on its right. The area to the north and north east of Lot 2808 was a continuous stretch of plant and shrubs broken only by the narrow access road. Grant of planning permission would disrupt that continuity and contrary to the planning intention behind the zoning applicable to the Site under the relevant OZP.
25. The Appellant asked what public benefits would be achieved by denying him the planning permission sought. On the basis of the Guidance Notes, we are of the view that the onus is on him to demonstrate what planning gains would ensue from the grant of the planning permission. There is no evidence before us as to whether there is any shortage of space for storage of building materials in the area. Whilst we are sympathetic to the Appellant's grievance arising from the planning plight, we are not persuaded by the materials before us that a case has been made out for relaxation in accordance with the Guidance Notes.
26. For these reasons, we dismiss the appeal.

The Appellant in person  
Mr. Simon Lau for the Respondent