

IN THE TOWN PLANNING APPEAL BOARD  
TOWN PLANNING APPEAL No 24 of 2005

Between

Shing Fung Film Studio Ltd    Appellant

And

Town Planning Board        Respondent

Date of Hearing: 17 May 2006

Date of Decision: 17 July 2006

Composition of the Appeal Board:

Professor Anthony M J Cooray (Chairman)

Mr Tsang Man-biu

Dr Eileen Tse Yuen-yee

Mr Wong Chun-wai

Mr Wong Lok-tak

**DECISION**

1. Events leading to the present planning appeal began in 1995 when the appellant, Shing Fung Film Studio, made two planning applications for film studio use of the appeal site, which is mainly in a Recreation Zone. (About 4% of the appeal site extends into a neighbouring Green Belt Zone). In Recreation Zones film studio use is a column 2 use, meaning that such a use is permissible with the approval of the Town Planning Board.
2. The first of those two planning applications was rejected by the Town Planning Board on the grounds that the proposed development was not entirely in line with the planning intention of the zone, that the planning application did not provide sufficient information, and that permitting the proposed development would set an undesirable precedent.
3. The appellant then submitted its second application, Application No A/SK-HC/28, together with detailed proposals to address concerns expressed by the relevant government departments. The Town Planning Board approved the application on 15 December 1995, subject to conditions, for a period of five

years. A further application for planning permission was approved on 16 June 2000, subject to conditions for a period of five years. Both these applications had asked for permanent planning permission.

4. In 2005 the Town Planning Board considered two planning applications made by the appellant. The first application, Application No A/SK-HC/121, was to secure permanent planning permission for the use of the planning site for film studio purposes. The second application, Application number A/SK-HC/118, sought permission to extend the existing planning site to some neighbouring land lots.
5. The Rural and New Town Planning Committee rejected both applications. The applicant applied for review and the Town Planning Board considered the two applications together on 16 September 2005.
6. On review, the Town Planning Board rejected the application for expansion of the planning site but allowed the application for continued use of the existing planning site for film studio purposes. However, the Town Planning Board decided to grant planning permission not permanently but only for a period of three years.
7. The grant of temporary planning permission for three years was subject to a number of planning conditions. They are:
  - a. no outdoor activity should be carried out within the development between 11.00 pm to 7.00 am at any time during the planning approval period;
  - b. the submission of landscape and tree preservation proposals within 6 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 16.3.2006;
  - c. in relation to (b) above, the implementation of the landscape and tree preservation proposals within 9 months from the date of planning approval to the satisfaction of the Director of Planning or of the Town Planning Board by 16.6.2006;
  - d. the submission of vehicular access and traffic arrangement proposals within 6 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 16.3.2006;
  - e. in relation to (d) above, the implementation of vehicular access and traffic arrangement proposals within 9 months from the date of planning approval to the satisfaction of the Commissioner for Transport or of the Town Planning Board by 16.6.2006;
  - f. the submission of drainage proposals within 6 months from the date of planning approval to the satisfaction of the Director of Drainage Services or of the Town Planning Board by 16.3.2006;
  - g. in relation to (f) above, the provision of drainage proposals within 9 months from the date of planning approval to the satisfaction of the

Director of Drainage Services or of the Town Planning Board by 16.6.2006;

- h. the submission of detailed proposals to ensure no pollution would occur to the water gathering grounds within 6 months from the date of planning approval to the satisfaction of the Director of Water Supplies or of the Town planning Board by 16.3.2006;
  - i. in relation to (h) above, the provision of detailed proposals to ensure no pollution would occur to the water gathering grounds within 9 months from the date of planning approval to the satisfaction of the Director of Water Supplies or of the Town Planning Board by 16.6.2006;
  - j. if the above planning condition (a) was not complied with at any time during the approval period, the approval hereby given should cease to have effect and should be revoked immediately without further notice; and
  - k. if any of the above planning conditions (b), (c), (d), (e), (f), (g), (h) or (i) was not complied with by the specified date, the approval hereby given should cease to have effect and should on the same date be revoked without further notice.
8. The appellant appeals against the decision of the Town Planning Board on review and requests us to grant him permanent planning permission and to remove the condition that outdoor activities should not be carried out in the night between 11.00 pm and 7.00 am.
9. In refusing to grant permanent planning permission and in imposing the planning conditions the Town Planning Board was concerned mainly about the following matters:
- a. Traffic situation: The access road is not suitable for the type of vehicles likely to be used in relation to the film studio use. The applicant had not provided sufficient information on how it could address traffic concerns. The Transport Department had reservations therefore on permitting the studio use of the land to be permitted on a permanent basis.
  - b. Environmental nuisance: The likely use of pyrotechnic special effects and outdoor shooting would create environmental nuisance to nearby residents, especially if outdoor filming activities took place late night. The Environmental Protection Department was of the view that the applicant had not established how such nuisances could be avoided or mitigated.
  - c. Risk of water contamination: The subject site falls within the upper indirect water gathering ground and is less than 30m from a nearby stream course. There was insufficient information to demonstrate that the use of the land would not result in water contamination.
10. The Town Planning Board, on review, had given sympathetic consideration to the application recognizing the need to promote local film industry, in view of the difficulties faced by local film studios. The Board members were, however,

concerned about the possibility of abuse of planning permission for activities other than filming which would become a nuisance to the neighbourhood. In consideration of the objections to a grant of planning permission because of the traffic and water contamination concerns, and in order to keep the use of the land under scrutiny, the Board decided to grant temporary planning permission for three years, prohibiting outdoor activities from 11.00 pm to 7.00 am.

11. It was emphatically stated before us on behalf of the relevant government departments that the appellant had failed to satisfy them that it was able to sufficiently address traffic and water contamination concerns for permanent use of the land for the proposed use.
12. We fully appreciate that the local film industry must be given encouragement and support, but there are important planning considerations which militate against granting permanent and unconditional planning permission. The appellant has embarked on a deserving activity but has failed to adequately address those planning considerations. Access to the site is substandard and the appellant has not satisfied the relevant authority that serious traffic concerns can be overcome in order to support the permanent use of the site for the proposed use. The site is so located that the proposed use of it poses a threat to water safety and the appellant has not shown convincingly how water contamination concerns can be effectively addressed. We therefore agree with the Town Planning Board that planning permission must be granted only for a limited period of three years.
13. As regards noise nuisance, it appears that filming activities after 11.00 pm are rare and that noise nuisance is caused not so much by filming activities but by other unauthorized recreational activities. It also appears that the site is so located that noise emanating from there can spread to a much wider area than its immediate neighbourhood. Given these facts, the respondent submitted that the grant of temporary planning permission, together with a restriction of operational hours from 7.00 am to 11.00 pm, ensured that relevant authorities could monitor activities on the planning site in order to minimize abuse of planning permission. It should be noted that if the planning condition relating to the non-operational hours (11.00 pm to 7.00 am) is not complied with at any time during the approval period, the approval shall cease to have effect and shall be revoked immediately without further notice (see planning condition (j)).
14. As regards the limitation on permitted hours of operation, we appreciate that the appellant seems to have taken some measures to prevent recurrence of unauthorized recreational activities on the site, although certain unauthorized structures on the site were removed only as recently as in May 2006. Since outdoor filming activities on the planning site are infrequent (less than 10 a year) and night time filming activities are rare (not more than 3 last year) and the previous activities complained of were other recreational activities such as

karaoke parties, we are of the view that a condition relating to times of operation is a reasonable one.

15. We affirm the Town Planning Board's decision to grant temporary planning permission subject to all the conditions attached to it. The applicant is free to make a fresh planning permission application when it is able to address the concerns expressed by the Town Planning Board.
16. The appeal is dismissed without any order for costs.