

IN THE TOWN PLANNING APPEAL BOARD

Town Planning Appeal No13 of 2004

Between

Mr Tang Tat-sung (deceased)

And

Town Planning Board

Date of Hearing: 7 December 2005

Date of Decision: 7 Decmeber 2005

Composition of the Appeal Board:

Professor M J A Cooray (Chairman)

Ms Lister Cheung Lai-ping

Ms Lam Yuet-ming

Mr Thomas Ling Chi-kong

Dr Paul Yung Pui-yip

DECISION

1. In February 2004, Mr Tang Tat-sung applied for planning permission to use his land for temporary open storage of construction materials and machinery.
2. At the time the planning application was made, the site was in an undetermined zone and remains so. Of relevance to the present application is the Town

Planning Guideline No 13C “Application for Open Storage and Port Back-up Uses under section 16 of the Town Planning Ordinance”, which classifies rural land into four categories of land each with a different set of planning criteria.

3. The site is within a category 2 area. In category 2 areas open storage and port back-up uses may be permitted on a temporary basis provided that the proposed uses would not have adverse impacts—drainage, traffic, visual and environmental—on the surrounding areas.
4. Paragraph 2.26 provides that if there had been previous planning approvals in respect of the site and there is no evidence that the applicants had made any genuine effort to comply with planning conditions, planning permission may be refused, or a shorter period may be allowed to comply with planning conditions, notwithstanding that other criteria set out in the guidelines are complied with. Mr Tang Tat-sung had been successful in five previous planning applications for the site, but all those permissions were revoked for non-compliance with planning conditions.
5. The main reason for refusing planning permission in the present case was the applicant’s failure to establish that the proposed development would not cause adverse drainage and visual impacts on the surrounding areas. The applicant’s landscape and drainage proposals were not acceptable to the relevant departments. Mr Tang Tat-sung appealed against the rejection of the present planning application, contending that he had complied with the drainage and landscape conditions. He stated that it was because of his ill-health and old age that he failed to inform the relevant authorities of such compliance.
6. Sadly, while the appeal was pending Mr Tang Tat-sung died and his widow intimated to the Secretary of the Town Planning Appeal Board her intention to

continue to pursue the appeal before us. Mr Tang Tat-sung had appointed his brother Mr Tang Kam-wan to be his representative. Mr Tang Kam-wan appeared before us.

7. The Town Planning Board raised a preliminary objection on the ground that there is no legal provision for the applicant's widow to continue to pursue the appeal. The argument was as follows: Sections 16, 17 and 17B clearly state that only an applicant for planning permission, who is aggrieved by the decision of the Town Planning Board—either because his application was rejected or his application was approved subject to conditions which he is not happy with—may apply to the Town Planning Board for a review of the original decision, and may appeal therefrom to the Town Planning Appeal Board.
8. Counsel for the Town Planning Board drew assistance from English Town Planning legislation and case law. While mindful of the fact that our Town Planning Ordinance is not on all fours with the English counterpart, we find his reference to English law useful.
9. The relevant parts of section 78 of the Town and Country Planning Act 1990 provide as follows:

“78(1) Where a local planning authority—

(a) refuse an application for planning permission or grant it subject to conditions;

(b) . . .

(c) . . .

the applicant may by notice appeal to the Secretary of State”

10. Another section of the Act, namely s288 enables any person aggrieved by a planning permission decision to make a statutory application to the High Court challenging the decision on some limited legal grounds. A person aggrieved for the purpose of this section includes a wider category of persons than the applicant for planning permission.
11. A comparison of these two sections shows clearly that the only person who can appeal against a planning decision is the applicant for planning permission, whereas not only the applicant but a wider class of persons aggrieved by a planning decision (for instance a neighbour of the planning site who is unhappy with the decision to grant planning permission) may apply for statutory review.
12. Our Town Planning Ordinance does not confer any right on anyone other than the applicant to challenge a planning decision by way of appeal, or by way of a statutory application, or otherwise.
13. The issue before us is whether the right of appeal against a planning decision could, on the death of the applicant, devolve on the heir of the applicant. We accepted the argument that since a planning application is made on a personal basis (the applicant need not be the owner of the land) the application ceases to exist when the applicant dies.
14. We note that a rejection of the appeal does not prevent the family of the deceased applicant from making a new planning application.
15. In our view the preliminary objection must succeed and accordingly we dismiss the appeal.

16. We urge the relevant authorities to help the family of the deceased applicant, if they decide to make a planning application, by explaining to them the requirements that they must fulfill in order to succeed in their application.

17. Application dismissed without any order for costs.