

TOWN PLANNING APPEAL NO. 13 OF 2003

Between

CHOI MUN KEUNG  
CHOI TIP KEUNG  
CHOI SAI KEUNG  
CHOI FUNG KEUNG : Appellants

-v-

Town Planning Board : Respondent

Dates of hearing : 10<sup>th</sup> and 12<sup>th</sup> February, 2004

Date of decision : 9<sup>th</sup> March 2004

Panel : Mr Ronny F.H. Wong S.C. (Chairman)  
Mr Richard Chan Kam Lam  
Mr Christopher Chan Yiu Chong  
Prof. Fong Wang Fun  
Mr Mak Ip Sing

**DECISION**

This is the Appellants' appeal against the refusal of the Town Planning Board ["the Board"] to grant them permission to erect 4 New Territories Exempted Houses ["Small Houses"] in Lots 695A to 695F in DD84 ["the Lots"] in Sheung Shan Kai Wat Village in Ta Twu Ling.

2. The Lots are within the "Agriculture" zone in the draft Ping Che and Ta Kwu Ling Outline Zoning Plan No. S/NE-TKL/6. They cover an area of about 561 m<sup>2</sup> and form part of a large piece of fallow agricultural land. They fall within the "village environs" of the Sheung Shan Kai Wat Village and are separated from the village proper by a belt of mature trees.

3. The draft Ping Che and Ta Kwu Ling Outline Zoning Plan was approved by the Chief Executive in Council on 20<sup>th</sup> May, 2003 and re-numbered as S/NE-TKL/7. The Lots remain within the "Agriculture" zone in this latest outline zoning plan. About 40.64 ha. of land have been zoned for "Village Type Development" ["V"] in that plan.

4. By its letter dated 2<sup>nd</sup> May, 2003, the Town Planning Board rejected the Appellants' application for the following reasons :

- (a) The proposed Small House developments do not comply with the interim criteria for assessing planning application for New Territories Exempted House/Small House development as the land available within the "Village Type Development" zone of Sheung Shan Kai Wat Village can meet future Small House demand;
- (b) The use under application is not in line with the planning intention of the "Agriculture" zone which is to retain and safeguard agricultural land, farms and fish ponds, and to encourage farming activities and protect the arable land; and
- (c) The approval of the application would set an undesirable precedent for other similar applications.

5. The "Interim Criteria for Consideration of Application for NTEH/Small House Development in the New Territories" ["Interim Criteria"] was first endorsed by the Rural and Town Planning Committee on 24<sup>th</sup> November, 2000. The Appellants submitted their applications on 31<sup>st</sup> October, 2002. The applicable Interim Criteria provided as follows :

- (a) Sympathetic consideration may be given if the application site is located within the village 'environs' ('VE') of a recognized village and there is a general shortage of land in meeting the demand for Small House development in the 'Village Type Development' ('V') zone of the village; and
- (b) The proposed development should not frustrate the planning intention of the particular zone in which the application site is located.

***Is there a general shortage of land in meeting the demand for Small House development in the 'V' zone of Sheung Shan Kai Wat Village ?***

6. The Board called Mr. Timothy Siu Kee Yuen ["Mr. Yuen"], a Senior Land Executive of the Lands Department. According to Mr. Yuen, Sheung Shan Kai Wat Village is among the villages where applications for Small House

developments are comparatively few. The current records reveal only 7 outstanding applications (including the 4 applications by the Appellants). He made inquiries with Mr. Lam Kam Kwai, the Indigenous Inhabitant Representative of Sheung Shan Kai Wat and was told that the Small House demand in Sheung Shan Kai Wat Village for the next 10 years was only 15. The land available within the 'V' zone of Sheung Shan Kai Wat Village for Small House development is about 2.05 ha. (equivalent to 61 Small House site). There is therefore no general shortage as required by the Interim Criteria.

7. The Appellants challenged the testimony of Mr. Yuen on the basis that Mr. Lam Kam Kwai was merely a representative of Ha Shan Kai Wat and had no knowledge of Sheung Shan Kai Wat. They relied on a list of names ["the List"] compiled by Mr. Choi San Tat, the former village representative of Sheung Shan Kai Wat Village. According to that List, there are a total of 73 male indigenous villagers aged over 18 who are qualified for Small House development under the Small House Policy. Mr Choi San Tat was not called by the Appellants. They called instead a Mr. Lam Chu Keung who was elected village representative in 2003. Mr. Lam Chu Keung confirmed the List as one setting forth indigenous villagers who are eligible to apply for Small House development. When asked for his estimate on the number of likely applicants, Mr. Lam Chu Keung gave an estimate of 8 to 10.

8. We are of the view that there is no credible evidence to challenge the stance of Mr. Yuen. Mr. Lam Chu Keung's evidence serves to confirm the position of the Board that there is sufficient land to meet the demands of those villagers who choose to exercise their rights. The case is therefore not one which calls for sympathetic consideration under the Interim Criteria.

### ***Planning intention***

9. The Lots remained within the "Agriculture" zone in S/NE-TKL/7 approved by the Chief Executive in Council on 20<sup>th</sup> May, 2003. The site and aerial photos placed before us indicate that the Lots form part of a green stretch away from the village proper. Given the lack of any pressing demand, we are of the view that the planning intention in relation to the "Agriculture" zone must prevail.

10. For these reasons, we dismiss the Appellants' appeal.

Mr. Raymond W.C. Hui of Proper Trip Surveyors Ltd. for the Appellants

Mr. Peter T.K. Ip for the Respondent