

BETWEEN

CHENG CHEUNG FAI, *Appellant*

-v-

THE TOWN PLANNING BOARD,
Respondent

Date of hearing : 19th April, 2004

Date of decision : 28th May, 2004

Panel : Mr. Ronny F.H. Wong S.C., J.P. (Chairman)
Mr. Kenneth Chau Tak Ho
Mr. Lui Ping Keung
Mr. Steve Ng Siu Pang
Mr. Anthony Yeh Gar On

DECISION

This is the Appellant's appeal against the decision of the Town Planning Board ("the Board") as communicated to the Appellant by a letter from the Board dated 26th September, 2003 whereby the Board decided on review not to approve the Appellant's application for planning permission to use Unit 4, G/F, Hang Wai Industrial Centre, 6 Kin Tai Street, Tuen Mun ("the Unit") as a temporary barber shop for a period of 5 years.

2. The Unit has an internal floor area of about 20 m². It is located on the ground floor of Hang Wai Industrial Centre. Hang Wai Industrial Centre consists of three 17 storey factory towers erected over a 3-storey podium. 472 small workshop units can be found on the ground and first floors of the podium. 92 of those units are currently vacant. A carpark is situated on the second floor of the podium.

3. The Unit abuts a long corridor with exits to Pui To Road and Kin Wing Street. The Unit is about 20 m away from the Kin Wing Street exit. The rear of the Unit is a transformer room. A switch room is on its immediate right. The only entrance to the Unit faces a lift lobby for access to a passenger and 2 cargo lifts. A canteen and a vehicle repair workshop can be found on its right. A glassware workshop, a local provision store and cake shop can be found on its left. Across the corridor are shops selling metal hardware, stationery and packaging materials.

4. The Board rejected the Appellant's application on the following grounds :

- (a) 'the proposed barber shop use is not in line with the planning intention of the "Industrial" ("I") zone which is to reserve land primarily for general

industrial uses’;

- (b) ‘the proposed barber shop use is not in line with the relevant Town Planning Board Guidelines for Use/Development within “I” Zone in that there is no genuine need for the proposed use to be located at the application premises’ and
- (c) ‘the proposed barber shop at the application premises is considered not acceptable from fire safety point of view’.

5. At the hearing before us, the Appellant elected to give an unsworn statement in support of his appeal. He made the following points :

- (a) Various trades are being carried on within the Hang Wai Industrial Centre. There is no justification to exclude a barber shop.
- (b) His unit is about 10 to 20 m away from the Kin Wing Street exit. The corridor is wide and all obstructions have recently been removed.
- (c) He himself is not the operator of the barber shop.
- (d) The barber shop has about 20 to 30 customers a day. The customers are mostly workers in Hang Wai Industrial Centre.
- (e) The original fire services installations are still in place. He finds it puzzling why other uses are permitted but not a barber shop.
- (f) Given the high rate of unemployment, every encouragement should be given to those who try to earn a living.

6. The Board called 2 witnesses to give sworn testimony to resist this appeal.

7. According to Mr. Liu Ka Yee (“Mr. Liu”), Senior Divisional Officer of the New Projects Division, Fire Services Department :

- (a) Fire risk inside an industrial building is relatively higher than other types of buildings. Businesses involving non-industrial related activities are considered undesirable for operation within an industrial building as they tend to attract an unreasonably large number of persons who can be exposed to risks which they would neither be aware of nor prepared to face.
- (b) The principal concern of his Department is that provision of direct escape route completely separated from the industrial portion and led to the street is not provided for the Unit.
- (c) The Unit abuts the lift lobby. One can expect a lot of traffic in transporting industrial raw materials including dangerous materials for use of the units

upstairs.

8. The Appellant challenged Mr. Liu on the basis that no unit in Hang Wai Industrial Centre was used for the storage of dangerous goods. Mr. Liu did not have any material in hand to refute the Appellant's suggestion but he pointed out that given the number of units in that Centre, use of dangerous materials was most likely.

9. The Board also called Mr. Chan Wai Shun, Wilson ("Mr. Chan"), Senior Town Planner/West of the Tuen Mun and Yuen Long District Planning Office, Planning Department. According to Mr. Chan :

- (a) The Unit was within the "Industrial" ("I") zone on the then applicable Tuen Mun Outline Zoning Plan No. S/TM/17 ("S/TM/17"). The prevailing Outline Zoning Plan is No. S/TM/19. There is no material change in relation to the Unit.
- (b) The planning intention of the "I" zone is to reserve land primarily for general industrial uses to ensure an adequate supply of industrial floor space. According to the Notes of S/TM/17, 'Retail Shop' is a use listed under Column 2 of the "I" zone that may be permitted with or without conditions on application to the Board.
- (c) Applications are assessed by the Board on the basis of the Town Planning Board Guidelines for Use/Development Within "Industrial" Zone (TPB PG-No. 25A) ("the Guidelines"). Paragraph 6.2 of the Guidelines identified the relevant planning criteria. According to sub-paragraph (a) :

"It should be demonstrated that there is a genuine need for the proposed use and no suitable alternative accommodation can be found in the vicinity. The location and scale of the proposed use should be justified on operation grounds".

- (d) Purpose-designed commercial premises can be found in the nearby Kin Wing Commercial Building. Quite apart from the concerns of the Fire Services Department, the Appellant had not demonstrated that there was a genuine need for the proposed use in the Unit and no suitable alternative accommodation could be found in the vicinity.

10. We accept the evidence of Mr. Chan. This case involves an owner who finds it convenient for his own purposes to let out the Unit for use as a barber shop. The Appellant made no attempt to bring his case within the Guidelines. He did not challenge the nearby presence of Kin Wing Commercial Building. He adduced no evidence to demonstrate that there was no suitable unit in Kin Wing Commercial Building. We are in no way persuaded of the existence of a genuine need to use the Unit as a barber shop.

We are of the view that the Appellant's failure to comply with the Guideline is itself sufficient to reject the application.

11. For these reasons, we confirm the decision of the Board and dismiss the Appellant's appeal.

The Appellant in person

Ms. Jenny Fung (Senior Government Counsel/Department of Justice) for the Respondent