

Town Planning Appeal No. 5 of 2002

BETWEEN

LAU SUI KIT : Appellant

-v-

The Town Planning Board : Respondent

Dates of hearing : 11th and 12th March 2003

Date of decision : 14th April 2003

Panel : Mr Ronny F.H. Wong S.C. (Chairman)
Mr Kenneth Chau Tak Ho
Ms Helen Kwan Po Jen
Mr Patrick Lau Hing Tat
Mr Herman To Yung Sing

DECISION

Background

The Appellant is an indigenous villager of Tai Po Kau Hui. By an application dated 18th April, 2002, the Appellant applied for permission under section 16 of the Town Planning Ordinance (Cap. 131) [“the Ordinance”] to build a Small House in Lot 167 DRP (Part) in D.D. 23, Wai Ha Village, Tai Po [“the Site”].

2. The Site is located at a hillside and forms part of a large “GB” zone which extends from Tsui Lam in the north to Wong Yue Tan in the south. 80% of the Site falls within the village environs (“VE”) of Wai Ha village. It is separated from the “Village Type Development” (“V”) zone of Wai Ha Village by Tung Tsz Road and a natural stream course.

3. The Site falls within an area which is the subject of 3 requests for rezoning of the same from “GB” zone to “V” zone. The first request was submitted by the village representative (“VR”) of Wai Ha Village. That application was rejected by the Rural and New Town Planning Committee (“the Committee”) on 28th August, 1998. The second and third requests were submitted by the VR of Wai Ha Village and three Tai Po District Council Members respectively. The second and third requests were considered by the Committee on 15th June, 2001. Both requests were rejected for reasons that the

“GB” zoning for the area was appropriate and the approval of the rezoning requests would set undesirable precedents.

4. The Appellant first acquired the Site for \$600,000 by an instrument dated 28th April, 2000. According to a land search produced the Town Planning Board, the Appellant disposed of the Site for like consideration in favour of a Mr. Lee Chee Sing by an instrument dated 5th March, 2002. The Appellant lodged his section 16 application on 18th April, 2002. The Site was then zoned “GB” on the Draft Tai Po Outline Zoning Plan (“OZP”) No. S/TP/15. The Appellant’s application was considered by the Committee on 14th June, 2002. By letter dated 28th June, 2002, the Town Planning Board rejected the Appellant’s application. On 5th July, 2002, Draft Tai Po OZP No. S/TP/16 was exhibited. The “GB” zoning of the Site remains unchanged on this current draft OZP. The Appellant applied to the Town Planning Board for a review of its decision on 12th July, 2002. The review was considered by the Town Planning Board on 4th October, 2002. By letter dated 18th October, 2002, the Town Planning board rejected the Appellant’s application on review. The Town Planning Board gave the following reasons :

- (a) “the proposed development is not in line with the planning intention of the “Green Belt” (“GB”) zone which is to define the limits of urban development areas by natural features, to contain urban sprawl, and to provide passive recreational outlets. There is a general presumption against development in the “GB” zone and there is no strong justification in the submission for a departure from the planning intention”; and
- (b) “the approval of the application would set an undesirable precedent for similar developments within the “GB” zone to the west of Tung Tsz Road. The cumulative effect of approving such applications would result in a general degradation of the natural environment”.

5. By notice dated 6th December, 2002, the Appellant appealed against the decision of the Town Planning Board. Shortly prior to the hearing of this appeal, the Appellant submitted a bundle of documents (“the Appellant’s Bundle”) for consideration by this Appeal Board. No attempt was made to serve the Appellant’s Bundle on the Town Planning Board. Included in the Appellant’s Bundle is an assignment dated 8th April, 2002 whereby Mr. Lee Chee Sing allegedly reassigned the Site in favour of the Appellant for \$600,000. According to the search conducted by the Town Planning Board, this latest assignment has not been registered on the Tai Po Land Register. Apart from the statement of a Mr. Chan Yung Sing dated 19th February, 2003, the Appellant gave no indication that evidence would be adduced from any other witness.

Oral testimony before us

6. At the appeal hearing before us, a Mr. Wan Hang Ping [“Mr. Wan”] appeared as the authorised representative of the Appellant. Mr. Wan gave sworn testimony in support of the appeal. Mr. Wan laid considerable emphasis on the traditional right of villagers to build within the village environs. He argued that development within the village environ should not be confined to the eastern side of Tung Tsz Road and the natural stream course. He pointed out that the Site is relatively flat. To demonstrate this point, Mr. Wan presented a video presentation and produced a series of photographs showing the remnants of various banana trees felled with the view to sustain this stance. Mr. Wan submitted that apart from the Planning Department, there is no real objection to the proposed development from any other Government Department. Mr. Wan further submitted that the Site should not be regarded as an integrated part of the Green Belt. In his opinion, the Green Belt should more properly be delineated by reference to the woodland located on the west side of the Site. This would make available an area of about 3,000 sq. m. of land for the erection of additional Small Houses. Mr. Wan challenged the alleged availability of land within the “V” zone for Small House development although he admitted that the Appellant did not make any effort to find out.

7. The Town Planning Board called Mr. Lee Shun (“Mr. Lee”), Senior Town Planner with the Planning Department, to give evidence in resisting this appeal. Mr. Lee pointed out that the surrounding areas of the Site are predominantly rural in character and comprise fallow agricultural land covered with some trees and shrubs. To the west of the Site is a natural steep slope covered with mature vegetation and to its south are some pieces of agricultural land under active cultivation. The village houses of Wai Ha Village are all concentrated on the opposite side of Tung Tsz Road to the east of the Site. Mr. Lee is of the view that the proposed Small House is incompatible with the rural environment of its surrounding areas. The cumulative effect of approving similar applications would result in adverse impact on the greenery of the area, and jeopardize the planning intention for the “GB” zone. Mr. Lee pointed out that an incremental approach has been adopted in designating village extension areas to meet the demand for Small House development. In July, 1991, the Town Planning Board designated about 1.69 ha of land for “V” zone of Wai Ha Village. That zone was expanded to about 2.09 ha in July 1994 and further enlarged in August 1999 to about 2.86 ha. Within the “V” zone of Wai Ha Village, there is about 0.81 ha of land (equivalent to about 24 Small House sites) for Small House development.

Relevant Plans and Guidelines

8. The Site is within the “GB” zone in OZP No. S/TP/15 and the draft Tai

Po OZP No. S/TP/16. The planning intention of the “GB” zoning is “to define the limits of urban development areas by natural features such as foothills, lower hill slopes, spurs, isolated knolls, woodland or vegetated land so as to contain urban sprawl as well as to provide recreational outlet. This zoning covers mainly steep hillsides in the peripheral areas which are of limited potential for urban type development and should be retained in their natural state...There is a general presumption against development within this zone. Nevertheless, limited developments may be permitted if they are justified on strong planning grounds. Developments requiring planning permission from the Town Planning Board [“TPB”] will be considered on their individual merits taking into account the relevant TPB Guidelines”.

9. According to Town Planning Board Guidelines No. 10 (“Guidelines 10”) for ‘Application for Development within “Green Belt” zone under section 16 of the Town Planning Ordinance’ :

- (a) there is a general presumption against development in the “GB” zone; and
- (b) applications for new development in “GB” zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds.

10. According to the interim criteria for assessing planning applications for New Territories Exempted House/Small House development in the New Territories (“the Interim Criteria”), the following factors are relevant :

- (a) sympathetic consideration may be given if the application site is located within the ‘VE’ of a recognised village and there is a general shortage of land in meeting the demand for Small House development in the “V” zone of the village;
- (b) the proposed development should not frustrate the planning intention of the particular zone in which the application site is located; and
- (c) the proposed development should be compatible in terms of land use, scale, design and layout, with the surrounding area/development.

Our Decision

11. We have considerable reservations whether this is a genuine application

to fulfill the personal needs of the Appellant for a Small House. The appellant did not give any evidence. We have no information about his personal circumstances. The history of his ownership of the Site is shrouded in complete mystery. No attempt was made to explain why the Appellant should see fit to dispose of the Site on 5th March, 2002 only to regain ownership a month or so later by an unregistered assignment at the same price. Without any advance notice to the Town Planning Board, Mr. Wan stepped into the shoes of the Appellant. Save for the fact that the Appellant appointed him as his ‘authorised representative’, we have no further information on the nature of their relationship.

12. The planning intention in relation to the Site is clear. 3 previous requests for rezoning it from GB to V were rejected. Its GB zoning remains unchanged on the current draft OZP exhibited on 5th July, 2002. 8 similar applications within the same GB zone had previously been rejected.

13. We are not satisfied that there is any exceptional circumstance nor is there any strong planning ground within Guidelines 10 as to warrant our intervention. Tung Tsz Road and the natural stream course have consistently been applied as the limits of development. The proposed development would alter the natural topography of the surrounding areas.

14. We are also not satisfied that the application is within the Interim Criteria. The Appellant made no attempt to locate land within the “V” zone of Wai Ha Village. There is no effective answer to the testimony of Mr. Lee that there is no general shortage of land in meeting the demand for Small House development. To allow this application would set an undesirable precedent. Given the circumstances of this appeal as outlined in paragraph 11 above, we are not persuaded that this is a case which calls for “sympathetic consideration”.

15. For these reasons, we dismiss the Appellant’s appeal.

Mr. Kenneth Woo Pui Ki of Messrs. Kenneth Woo & Co. for the Appellant

Ms. Yasmin Mahomed (Senior Government Counsel of the Department of Justice) for the Respondent