

Town Planning Appeal No. 10 of 2001

IN THE MATTER of the Town
Planning Ordinance, Cap. 131

and

IN THE MATTER of an Appeal Under
Section 17B by Mr. KWAN Tak-wah

Date of hearing: 4th June 2002
Date of decision: 26th July 2002

Panel : The Hon. Mr Justice Lugar-Mawson (Chairman)
Mr Au Chi Yuen
Mr Richard Chan Kam Lam
Dr. Chau Kwai Cheong
Dr. Larry Chow Chuen Ho

DECISION

This is an appeal under section 17B(1) of the Town Planning Ordinance (the Ordinance) by Mr. Kwan Tak Wah (the Appellant) against the refusal by the Town Planning Board of his application for planning permission for the temporary open storage of building materials, said to be marble/ceramic sanitary ware and scrap metal, for a period of 3 years at a site at Lot No. 642 in D.D. 121, Tong Yan San Tsuen, Yuen Long, New Territories (the site).

The Site

2. The site is a private lot held under Block Government Lease and demised for agricultural use. It has an area of about 2,000m². It is accessible via a local track leading from Shan Ha Road/Long Tin Road, which lies to its north.

3. Unused and cultivated/fallow agricultural land lie to the immediate northwest of the site and vacant land lies to its immediate northeast. There are a number of open storage yards located to its immediate southeast and southwest. A number of residential dwellings lie to its north, northwest and south. The nearest residential dwelling is located about 15m to its northwest.

4. The site falls within an area zoned 'Residential (Group D)' (R(D)) on both the approved Tong Yan San Tsuen Outline Zoning Plan No. S/YL-TYST/5 (the approved OZP) and the draft Tong Yan San Tsuen Outline Zoning Plan No. S/YL-TYST/6.

5. The Appellant is the owner of the site.

Planning history

6. Prior to April 2001 the Appellant had three previous grants of permission to use the site for temporary open storage of building materials, each of which had expired.

7. On 25 April 2001 the Appellant submitted a planning application for permission to continue to use the Site for temporary open storage of building materials for a period of 3 years.

8. On 15 June 2001, the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board rejected the application on the following grounds:

- (a) the current environmental and traffic conditions associated with the access track to the application site were already deteriorating. Approving the application would result in a further degradation of the environmental and traffic conditions of the area; and
- (b) there was no information in the submission to demonstrate that the development would not generate adverse drainage impact on the surrounding areas.

9. On 23 July 2001, the Appellant applied for a review of the RNTPC's decision. On 12 October 2001 the Town Planning Board considered the review application and rejected it for the same reasons as the RNTCP had.

10. The Appellant was informed of the Town Planning Board's decision on 26 October 2001, whereupon he lodged this appeal.

The planning intention

11. The planning intention of the R(D) zone is stated in paragraph 9.5 of the Explanatory Statement to the approved OZP to be:

"...to improve and upgrade the existing domestic accommodation largely in temporary structures within the zoned area.... Apart from the intention of residential upgrading, very low-rise and low-density residential development may be permitted on application to the Board."

The Tong Yan San Tsuen Outline Zoning Plan

12. According to the Notes to the approved OZP, the open storage of building materials (marble/ceramic sanitary ware and scrap metal) is neither a Column 1, nor a Column 2 use within the R(D)zone. Under paragraph (vi)(b) of the Notes, the temporary use or development of any land or building not exceeding a period of 3 years requires planning permission from the Town Planning Board. The Board may, notwithstanding that the proposed temporary use or development is not provided for in terms of the Plan, grant permission (with or without conditions) for it to be carried out for a maximum period of 3 years, or may refuse to grant permission.

Planning considerations

13. The Town Planning Board Guidelines: ‘Application for Open Storage and Port Back-up Uses under Section 16 of the Town Planning Ordinance’ (TPB PG-No.13A) (the guidelines) that prevailed at the time of both the section 16 application and the section 17 review provide for the following relevant assessment criteria:

- (a) planning permission should not be granted in areas where the policy is to prevent the proliferation of either port back-up or open storage sites and/or encourage the relocation of such uses to more appropriate areas;
- (b) those types of open storage that generate adverse noise, air pollution and visual intrusion should not be located adjacent to sensitive receivers, including residential dwellings;
- (c) favourable consideration may be given if application site is adjoining industrial uses, port activities, public utility installations, quarrying and other port back-up and open storage activities which are considered compatible in land-use term;
- (d) adequate screening of the site through landscaping and/or fencing should be provided where sites are located adjacent to public roads or are visible from surrounding residential areas; and
- (e) there is a general presumption against development on sites of below 1,000m² for open storage uses and below 2,000m² for port back-up uses in rural areas, other than sites located in major road corridors, industrial/godown/workshop areas, quarrying activities or where it is demonstrated that optimum

use is made of the site. This is to prevent the further proliferation of small sites in rural areas and to minimize sprawl over countryside areas as well as to reduce travel trips.

14. The guidelines were revised in October 2001, and the revisions made known to the public. The revisions include clearer locational assessment criteria through the identification of “will-go”, “no-go” and “tolerated” areas for open storage and port back-up uses and the updating of specific assessment criteria on such aspects as site planning, transport, environmental planning and drainage. According to the revised guidelines, the site falls outside the “will-go”, “no-go” and “tolerated” areas. Applications for development falling outside these areas will normally not be favourably considered unless there are very strong justifications for doing so.

15. The guidelines further provide that even for those sites that have had previous planning approval for such uses, which have either lapsed or been revoked, sympathetic consideration will only be given to subsequent applications if technical assessments and proposals on such aspects as landscaping, drainage and environmental mitigation are included in the submission. These should demonstrate that the proposed uses will not generate adverse drainage, environmental and traffic impacts on the surrounding areas and must be acceptable to all Government Departments concerned.

The Appellant’s case

16. The Appellant argues that the Government should repair the damage to the access track. He is, however, willing to pave the section of the track adjacent to the site at his own expense. He claims that as there will only be two vehicle trips to the site per week, noise and dirt nuisances will be kept to a minimum.

17. He began work on constructing a surface water drainage system at the site in 2001, but suspended the work when the Drainage Services Department said the work was substandard. He is willing to do what the Drainage Services Department require, but his consultants say that the Department will not specify what is lacking in his proposal. He believes that the surface water will drain off into a natural watercourse adjacent to the site.

18. He feels aggrieved at the refusal in view of the fact that he has had the benefit of three previous grants of permission to use the site for temporary open storage of building materials.

The Town Planning Board’s responses

19. The Town Planning Board’s responses to the appeal are:

- (a) The road surface of the access track has deteriorated and, since late 1999, has become the subject of complaints by local residents. The residents' complaints have been about the dust and noise nuisances caused by container vehicles using the track and Shan Ha Road. Port back-up uses in the area have also added to the traffic burden in Yuen Long New Town. These concerns were raised at the Yuen Long District Council meeting in mid-2000. As a result the Planning Department conducted a review of applications for temporary uses in the R(D) Zone to the west of Shan Ha Road at Tong Yan San Tsuen. The Department's report was considered by the RNTPC in November 2000. As a result, the RNTCP decided that entirely new applications for port back-up and new open storage/warehouse/workshop uses causing significant adverse environmental and traffic impacts in the zone should be rejected, and that applications for renewal of planning permission - that is those with previous planning approvals such as this application is - should be considered on their individual merits.
- (b) The Director of Environmental Protection has advised that the passage of heavy vehicles to and from the site along the access track will cause noise and dust nuisances, and the loading and unloading of building materials will cause noise nuisance to the nearby noise sensitive receivers. The Director of Environmental Protection does not support the application.
- (c) Although the Appellant has said that he is prepared to pave the access track adjacent to the site to reduce the environmental impact, the District Lands Officer, Yuen Long, has advised that no right of way has been granted along that track.
- (d) According to advice received from the Chief Engineer/Mainland North, Drainage Services Department, the site is located in an area where no proper public drainage system is available. The area is probably served by some of the existing local village drains. However, no drainage proposal has been submitted to demonstrate that all the existing flow paths, as well as the runoff falling onto and passing through the site, will be intercepted and disposed of via proper discharge points. The Chief Engineer/Mainland North, Drainage Services Department, considers the drainage proposal submitted with the appeal application unsatisfactory in that it lacks sufficient detail, including the position of discharge points.

Decision

20. We are unanimously of the view that the Town Planning Board's decision rejecting the application should be upheld. In arriving at our decision we have taken into account the current deteriorating environmental and traffic conditions of the access track leading to the site. As the access track is in a poor condition and there are residential dwellings located in the vicinity of the site, approving the application will result in a further degradation of the environmental and traffic conditions in the area, and cause nuisance to the nearby sensitive receivers.

21. We consider that the Appellant has failed to address the drainage problems associated with the proposed development adequately. He has failed to provide sufficient information to demonstrate that the development will not cause adverse drainage impact on the surrounding areas. In particular, we doubt that the site drains into a natural watercourse as he claims it does.

22. The appeal is dismissed.

Costs

23. We make no order for costs.