

Town Planning Appeal No. 8 of 2001

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

and

IN THE MATTER of an Appeal
Under Section 17B by Mr. TANG
Koon-yau

Date of hearing: 7th May 2002

Date of decision: 12th July 2002

Panel : The Hon. Mr Justice Lugar-Mawson (Chairman)
Mr Eugene Fung Pui Cheung
Mr Stephen Lau Man Lung JP
Mr Thomas Ling Chi Kong
Dr. Andy Wong Kam Din

DECISION

This is an appeal under section 17B(1) of the Town Planning Ordinance (the Ordinance) by Mr. Tang Koon Yau (the Appellant) against the refusal by the Town Planning Board of his application for planning permission for the temporary open storage of construction materials, machinery and container store-rooms for a period of 3 years at a site at lots of Lots No. 371 (part), 373 (part) and 385 (part) in D.D. 110, Pat Heung, Yuen Long, New Territories (the site).

The appeal site

2. The site is held under a Block Government Lease and is demised for agricultural use. It is irregular in shape having an area of about 5,000m². It is accessible via a local track leading from Kam Tin Road, which lies at a distance of about 300m to its south.

3. The site falls within the southwestern portion of an area zoned Agriculture (AGR) on the approved Pat Heung Outline Zoning Plan No. S/YL-PH16 (the OZP). The areas to the east and north of the Site are in the same AGR zone. They comprise mainly of fallow and cultivated agricultural land with some residential structures located in the east and several open storage/workshop/warehouse uses in the north. These uses are all suspected unauthorized developments and are subject to enforcement action by the Planning Authority. To the west of the Site is another AGR zone lying in the Kam Tin North OZP with mainly fallow agricultural land uses. To the immediate south of

the Site is an Open Storage (OS) zone of 42 ha with a mixture of storage and open storage uses, fallow and cultivated agricultural land and residential structures.

4. The Site was used for open storage of construction materials, machinery and container store-rooms at the time of the section 16 application and the section 17 review.

5. The Appellant is not the owner of the Site.

Planning history

6. On 6 February 2001, the Appellant submitted a planning application under section 16 of the Ordinance for permission to continue to use the site for temporary open storage of construction materials, machinery and container store-rooms for a period of 3 years.

7. The Rural and New Town Planning Committee (RNTPC) of the Town Planning Board rejected this application on 30 March 2001, on the following grounds:

- (a) The development was not in line with the planning intention of the AGR zone, which was to retain and safeguard good agricultural land for agricultural purposes and to retain fallow arable land with good potential for rehabilitation. There was no strong justification in the submission for a departure from the planning intention, even on a temporary basis.
- (b) The development did not comply with the Town Planning Board Guidelines for Application for Open Storage and Port Back-up Uses, in that it was not compatible with the residential dwellings in the vicinity.
- (c) There was no information in the submission to demonstrate that the development would not have adverse drainage and environmental impacts on the surrounding areas.
- (d) The approval of the application would set an undesirable precedent for other similar applications and the cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.

8. The Appellant applied for review of the RNTPC's decision to reject the application under section 17 of the Ordinance on 8 May 2001. The Town Planning Board considered the review application on 10 August 2001 and rejected it for similar reasons to those of the RNTCP.

9. The Appellant was informed of the Town Planning Board's decision on 24 August 2001, whereupon he lodged this appeal against the Board's decision.

The Approved Pat Heung Outline Zoning Plan

10. As stated, the Site is zoned AGR on the OZP. According to the Notes to that Plan, the open storage of construction materials, machinery and container store-rooms is neither a Column 1, nor a Column 2 use within an AGR 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.

The planning intention

11. The planning intention of the AGR zone is stated in paragraph 9.7.1 of the Explanatory Statement to the OZP to be:

“...to retain and safeguard good agricultural land for agricultural purposes. The areas under this zoning are usually well served by irrigation and servicing facilities as well as marketing facilities for intensive farming including livestock rearing, fish culture and horticulture. This zone is also intended to retain fallow arable land with good potential for rehabilitation.”

Planning considerations

12. The Town Planning Board Guidelines for ‘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 backup 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.
- (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.

13. The guidelines were revised in October 2001, and the revisions were 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.

The Appellant’s case

14. The Appellant argues that, as nobody has been willing to undertake farming activities on the site, it and the surrounding land have become filled up with sand and gravel. Therefore, the site should be used for open storage purpose to ensure that proper use is made of land resources. Further, the Site could provide space for nearby residents to store their ‘tools’ - by which we believe the Applicant means contractor’s plant and not agricultural implements. The Appellant also claims, without providing justification for it, that the development would not cause adverse drainage and environmental impact to the surrounding areas.

The Town Planning Board’s responses

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

- (a) The proposed development is not in line with the planning intention

of the AGR zone and no strong justification has been provided justifying a departure from that intention, even on a temporary basis. The Director of Agriculture, Fisheries and Conservation (DAFC) has advised that the site is a good quality piece of agricultural land with potential for rehabilitation. Farm access and irrigation facilities in the area are considered to be adequate. The Director is not in favour of the application.

- (b) The proposed development is incompatible with the predominantly rural character of the surrounding areas and does not comply with the guidelines. The neighbouring residential dwellings are considered to be sensitive receivers in the vicinity of the site.
- (c) Save for those within the OS zone to the immediate south of the Site, which are permitted developments (or may be permitted on application to the Town Planning Board), the surrounding open storage/workshop/warehouse uses are all suspected to be unauthorized developments.
- (d) The Director of Environmental Protection considers the development undesirable and does not support the application. With regard to environmental impact, the transportation of construction materials and machinery to and from the site will bring heavy vehicles to the site. This will generate adverse air and traffic noise impacts on the nearby residential dwellings, especially those along the access track from Kam Tin Road. The nearest residential structure is less than 10m from the site. The Appellant has provided no proposed mitigation measures to address these problems.
- (e) The Chief Engineer/Mainland North of the Drainage Services Department has advised that the site is in an area that has no proper drainage system. Certain of the existing local village drains probably serve the area, but these are believed to be inadequate. Paving the site will increase the surface runoff and affect the existing poor drainage conditions. The Appellant has provided no details of his proposals for providing adequate drainage facilities at the site.
- (f) Allowing the appeal and granting approval of the application would set an undesirable precedent for similar uses to proliferate into the AGR zone. The cumulative effect of approving such similar applications would result in a general degradation of the surrounding environment.

Decision

16. We are unanimously of the view that the Town Planning Board's decision rejecting the application should be upheld.

17. The Appellant has failed to demonstrate that the development would not generate adverse environmental and drainage impacts to the surrounding areas, or that the potential adverse impacts can be mitigated satisfactorily.

18. The site is a good quality piece of agricultural land with adequate farm access and irrigation facilities and potential for agricultural rehabilitation. The proposed open storage use is incompatible with that rural land use.

19. The Appellant has failed to address the drainage problems associated with the proposed development.

20. Should the local residents require storage space for tools (of any kind) there are suitable sites within the nearby OS zone. We were told that about 8 ha of land remain available there for such uses.

21. We agree with the Town Planning Board that the approval of this application would set an undesirable precedent for other similar applications in the area. The cumulative impact of the approval of similar applications would lead to further degradation of the rural environment of the area.

22. There are insufficient strong justifications for a departure from the planning intention of the AGR zone, even on a temporary basis. Open storage use is incompatible with the nearby residential dwellings and the surrounding rural and agricultural uses.

23. The appeal is dismissed.

Costs

24. We make no order for costs.