

Town Planning Appeal No. 9 of 2001

Between

WAN SHUK LING trading as Chuen
Kee Motor Engineering : Appellant

-v-

The Town Planning Board : Respondent

Date of hearing : 3rd July, 2002

Date of decision : 31st July 2002

Panel : Mr Ronny F. H. Wong S. C. (Chairman)
Mrs Peggy Lam Pei Yu Dja
Mr Lui Ping Keung
Dr. Ng Cho Nam
Mr Steve Ng Siu Pang

DECISION

On 27th April, 2001, the Appellant submitted an application under section 16 of the Town Planning Ordinance [“the Ordinance”] in respect of a site [“the Site”] in Lots No. 480 (part), 482 (part), 488 (part), 489, 490 (part), 492 (part) and 493 (part) in D.D. No. 99 in San Tin, Yuen Long. The Appellant’s application is for permission to use the Site as a canteen and car washing area for a period of 3 years.

2. The Site is within the Green Belt zone in the draft San Tin Outline Zoning Plan No. S/YL-ST/3 [“Plan 3”]. Neither of the proposed uses is within Column 1 (Uses always permitted) or Column 2 (Uses that may be permitted with or without conditions on application to the Town Planning Board) of the Notes forming part of Plan 3. However, paragraph (vi)(b) of the Notes to Plan 3 provides that “Notwithstanding that the use or development is not provided for in terms of the Plan, the Town Planning Board may grant planning permission, with or without conditions, for a maximum period of three years, or refuse to grant planning permission”.

3. The Appellant had, however, on 3 previous occasions obtained similar approval from the Town Planning Board. The last approval for a period of 12 months was granted on 3rd March, 2000 subject to conditions including, inter alia, the submission and implementation of landscaping proposals and the provision of drainage facilities to the satisfaction of relevant Government

departments.

4. The Town Planning Board considered the current proposal on 15th June, 2001. By letter to the Appellant dated 7th July, 2001, the Town Planning Board rejected the Appellant's application for the following reasons :

- (a) the Site falls within the gazetted scheme boundary for the Sheung Shui to Lok Ma Chau Spur Line ["the Spur Line"]. The approval of the application, even on temporary basis, would jeopardize the implementation of the Spur Line.
- (b) there was insufficient information in the submission to demonstrate that the development would not cause adverse drainage and environmental impacts on the surrounding areas including the nearby residential structures and the Deep Bay.

5. On 21st July, 2001 the Appellant applied for a review by the Town Planning Board under section 17 of the Ordinance. The Town Planning Board reviewed the application on 12th October, 2001. By letter dated 26th October, 2001, the Town Planning Board refused to reverse its previous decision.

6. This is the Appellant's appeal under section 17B of the Ordinance against the decision of the Town Planning Board.

7. At the hearing before us, the Town Planning Board adduced evidence from Mr. Mok Ping Chiu ["Mr. Mok"], Senior Town Planner/North of the Tuen Mun and Yuen Long District Planning Office, Planning Department. Mr. Mok told us that :

- (a) The Spur Line is an extension of the existing East Rail system linking Sheung Shui Station to a new border crossing to the Mainland at Lok Ma Chau. The Site fell within the scheme limits of the Spur Line gazetted on 28th April, 2000, and was originally scheduled to be resumed for the railway works in December, 2001.
- (b) Subsequently, due to the failure to obtain an Environmental Permit for the Spur Line project under the Environmental Impact Assessment Ordinance, the Kowloon-Canton Railway Corporation ["KCRC"] revised the Spur Line scheme. The amendments to the railway scheme were gazetted under the Railways Ordinance on 7th December, 2001 and the related environmental impact assessment report was approved by the Director of Environmental Protection on 11th March, 2002. On

14th June, 2002, the authorization of the Spur Line scheme by the Chief Executive in Council under the Railways Ordinance was notified in the Gazette.

- (c) In the revised scheme, a 4.3 kilometer tunnel running from the north of Sheung Shui station to Chau Tau is proposed. As confirmed by the Highways Department, since part of the Site is within the cut-and-cover tunnel portion of the proposed railway alignment, it will have to be cleared and resumed to facilitate the construction.
- (d) In processing the section 17 review application, the Chief Engineer/Technical Services, Railway Development Office of the Highways Department advised that the Site fell within one of the most critical areas for implementing the Spur Line project and KCRC intends to occupy the Site at the earliest possible time. According to the latest advice of the Chief Estate Surveyor/Railway Department 1, Lands Department, the Site is scheduled to be resumed for the railway works in October, 2002.
- (e) The Site is in an area where no proper public drainage system is available. The Site falls within flood fringe which will be subject to overland flow and inundation during heavy rainfall. The flooding assessment and drainage proposal submitted by the Appellant at the section 17 stage have not fully addressed the concerns of the Drainage Services Department.
- (f) The Appellant has not provided proper handling of chemical waste and the car wash operation and was fined in August, 1998. The Appellant was also convicted on 7th June, 2001 for non-compliance with the discharge licence under the Water Pollution Control Ordinance.

8. The Appellant called Mr. Chan Chi Kuan [“Mr. Chan”]. Mr. Chan told us that a canteen had been in operation on the Site since 1989. The Appellant took over the operation in about 1995 and had always acted in accordance with directives from the Government. According to notices recently posted on the Site, the Site would not be resumed until April, 2003. Mr. Chan urged us to grant a 12 months licence so that the Appellant’s employees could maintain their livelihood.

9. We accept the evidence of Mr. Mok. We are of the view that it is not in the public interest to grant any further permission to the Appellant given the

importance of the railway alignment and the current timing as outlined by Mr. Mok. Furthermore, the Appellant made no attempt to tackle the environmental concerns raised by the Town Planning Board. There is no justification for us to interfere with the decision of that Board.

The Appellant in person

Mr. Simon Lau for the Respondent