

Town Planning Appeal No. 2 of  
2001

IN THE MATTER of the Town  
Planning Ordinance Chapter 131

and

IN THE MATTER of an Appeal  
under Section 17B by Mr TSANG  
Yau-ki

Date of hearing : 18th July 2001

Date of decision : 9th August 2001

Panel : The Hon Mr Justice Gareth Lugar-Mawson (Chairman)  
Mr H.M.G. Forsgate, JP  
Mr Tam Kar-chuen  
Mr Herman To Yung-sing,  
Mr John Tong Chor-nam, JP

### **DECISION**

The Appellant, Mr. Tsang Yau-ki, appeals against the decision of the Town Planning Board rejecting his application for the erection of 3 New Territories Exempted Houses each of 3-storeys (8.23m) in height with a built-over area of 65.03m<sup>2</sup> on land at Cheung Po Tsuen, Kam Tin, Yuen Long, New Territories.

#### **The appeal site**

2. The appeal site ('the site') is located at Lots 243 and 244 in DD113, Kam Tin, Yuen Long, New Territories. It has an area of about 0.13 ha. and is occupied by a 3-storey village house, 2 temporary structures and fallow agricultural land. It is located to the north of Cheung Po Tsuen and is about 150m from the main villager cluster. It is within the village environs ('VE') of Cheung Po Tsuen and is accessible via a substandard 2m wide local track leading from Pat Heung Road. It is surrounded by both fallow and cultivated agricultural land with scattered on-farm domestic structures. There are a number of existing village houses located about 50m to the west of the Site and separated from it by an orchard and a village track. It is held under a block Government Lease and is

demised for agricultural use. A building licence was issued for the erection of the existing village house on Lot No. 243 in DD113 on 21 November 1974.

3. At the time of the application (1 September 2000) the site fell within an area zoned 'Agriculture' ('AGR') on the draft Kam Tin South Outline Zoning Plan (OZP) No.S/YL-KTS/5. The zoning of the site remains unchanged on the approved Kam Tin South OZP No. S/YL-KTS/6, which was published in the Gazette under section 9(5) of the Town Planning Ordinance (the Ordinance) on 22 December 2000.

#### Planning history

4. On 1 September 2000 the Appellant, through Nomometric Design and Planning Consultants, submitted a planning application (Application No. A/YL-KTS/233) under section 16 of the Ordinance for the development of 3 New Territories Exempted Houses on the site.

5. The application was rejected by the Rural and New Town Planning Committee of the Town Planning Board on 27 October 2000 and by the Town Planning Board on review on 9 February 2001. The reasons for the rejection were:

- (a) the proposed development is not in line with the planning intention of the 'AGR' zone which is to retain and safeguard good agricultural land for agricultural purpose and to retain fallow arable land with good potential for rehabilitation. No strong justification had been provided in the submission justifying a departure from the planning intention;
- (b) the site is located away from the village cluster of Cheung Po Tsuen. Village house development should be sited on land zoned 'Village Type Development' ('V') to ensure orderly development and provision of facilities; and
- (c) insufficient information had been provided in the submission demonstrating why suitable sites within the 'V' zone could not be identified for the proposed development.

6. On 2 April 2001 the Appellant lodged this appeal under section 17B(1) of the Ordinance against the Town Planning Board's decision.

#### Grounds of appeal

7. The Appellant's grounds of appeal are that:
- (a) active agricultural activities on the site ceased in 1975 and that generally agricultural activities in Hong Kong have declined;
  - (b) the site is not located away from the village cluster of Cheung Po Tsuen and falls within its village environs; and
  - (c) his brother obtained approval to build a small house on Lot 243 in DD113 (part of the site) in 1974.

#### Planning Intention

8. The planning intention of the 'AGR' zoning of the site, as stated in paragraph 9.8 of the Explanatory Statement of the approved Kam Tin South Outline Zoning Plan is:

*'... 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 guidelines

9. On 24 November 2000 the Rural and New Town Planning Committee, formally endorsed interim criteria for consideration of applications for New Territories Exempted Houses and small house developments in the New Territories. Although this was done after the date of the same Committee's rejection of the present application, we were told that the criteria reflected the Town Planning Board and the Committee's practice followed since 1998. These criteria are applied in order to ensure consistency in assessing planning applications for New Territories Exempted Houses and other small house developments in the New Territories. The following planning principles, set out in the criteria, are relevant in this appeal:

- (a) Sympathetic consideration may be given if the application site is located within the 'VE' of a recognized 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.

The Town Planning Board's reasons for not supporting the application

10. The Town Planning Board considers that the proposed development does not comply with the interim criteria for these reasons:

- (a) It is not in line with the Planning Intention of the "AGR" Zone, which is to retain and safeguard good agricultural land for agricultural purposes and to retain fallow arable land that has potential for rehabilitation. We were told that the Director of Agriculture, Fisheries & Conservation does not support the application and advises that agriculture infrastructure facilities such as farm access, irrigation water supply and marketing facilities are all available in the area. When the application was considered active agricultural activity was found to be taking place both on the site and in its vicinity. Before us, the Appellant admitted that for many years gardeners have used the site on an informal licence for growing flowers for the Chinese New Year festival.
- (b) There is sufficient Land in the 'V' zone of Cheung Po Tsuen for small house development. We were told that the District Lands Officer/Yuen Long's 10-year forecast of small house demand at Cheung Po Tsuen and Tai Wo Tsuen villages is 50 and 60 units respectively. The total area of the 'V' zone of both villages is about 21 ha. and it is estimated that within that area there is about 16 ha. of land on which houses and other buildings could be erected. This is sufficient to accommodate about 470 small

houses, which is far in excess of the District Land Officer's forecast.

- (c) The site is isolated from the village cluster of Cheung Po Tsuen, which lies about 150m to its south. The nearest village houses to the west of the site are about 50m away and are separated from it by an orchard, which the Applicant told us is used to grow ornamental peach trees for the Chinese New Year festival. It is the planning intention that development be concentrated within the 'V' zone in order to ensure orderly development in terms of the economic and efficient use of land and the provision of infrastructure and services. All recent grants of permission to erect New Territories Exempted Houses, as shown on plan S-1 produced before us, have been in respect of proposed developments within the village cluster. According to the District Land Officer's records the existing house on the site was erected under a building licence granted under the Small House Policy in force in 1974. This was 27 years ago, long before the gazetting of the Kam Tin South Interim Development Permission Area Plan on 5 October 1990, which was the first statutory town plan covering the Kam Tin South area.

### Decision

11. We are satisfied that the proposed development of 3 New Territories Exempted Houses on the site is not in line with the planning intention of the 'AGR' zone in which it lies and that insufficient justification has been made out justifying a departure from that intention. We are also of the view that the existence of a village cluster within the 'AGR' zone some 50m to the west of the site offers insufficient justification for a departure from the established planning intention to allow the Appellant to develop the site. The site is separated from the village cluster of Cheung Po Tsuen by a clearly marked demarcation - the still worked orchard. We consider that village house development at Cheung Po Tsuen should be sited only within the 'V' zone of that village in order to ensure orderly development and provision of infrastructure facilities. We are also satisfied that sufficient land has been reserved within the 'V' zone of Cheung Po Tsuen on which the eligible indigenous villagers can build small houses. We appreciate that the Appellant claims that neither he, nor his clan, own any land other than the site.

However land ownership is not a planning consideration when assessing applications for New Territories Exempted House development.

12. The appeal is dismissed.

Costs

13. We make no order for costs.