

Town Planning Appeal No. 3 of
2001

IN THE MATTER OF THE Town
Planning Ordinance (Cap. 131)

IN THE MATTER of an appeal
under Section 17B by Mr Wong Chi
Wah

Dates of hearing : 21st August 2001 & 13th September 2001

Date of decision : 25th September 2001

Panel : Mr Ronny F.H. Wong S.C., JP (Chairman)
Dr Kwan Sin Ming
Mr Patrick Lau Hing Tat
Mr George Ng Sze Fuk, BBS, JP
Professor Anthony Yeh Gar On

DECISION

Background

This is the appeal by Mr Wong Chi Wah ["Mr Wong"] against the refusal by the Town Planning Board on 19th January, 2001 of his application dated 3rd August, 2000 under section 16 of the Town Planning Ordinance (Cap. 131) for permission to erect a New Territories Exempted House ["NTEH"] on Lot No. 970 RP in D.D. 107 ["the Lot"] held by Mr Wong and his brother Wong Kam Choi.

2. The Lot is of an area of about 476m². It is located to the east of Sha Po Tsuen and is about 300m from the main village cluster. It is outside the village environs and is accessible via a substandard local track leading from Kam Tin Road.

3. The Lot is within the area zoned "AGR" (Agriculture) on the approved Kam Tin North OZP No. S/YL-KTN/3 ["the OZP"]. It is not within the area zoned "V" (Village Type Development) on the OZP.

4. The application was not supported by the Director of Agriculture, Fisheries and Conservation Department; the District Lands Office, Yuen Long and the Planning Department.

Decision of the Town Planning Board

5. The Town Planning Board rejected Mr Wong's application for the following reasons :

- (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 has been given in the submission for a departure from such planning intention;
- (b) the application site is located away from the village cluster of Sha Po Tsuen and falls outside the village environs of the village. Village house development should be sited on land zoned V to ensure orderly development and provision of facilities;
- (c) there is insufficient information in the submission to demonstrate why suitable sites within V zones in the area cannot be identified for the proposed development; and
- (d) no similar applications have been approved in the immediate vicinity of the application site, the approval of the application would set an undesirable precedent for other similar applications within the AGR zone. The cumulative effect of approving such similar applications would have adverse impacts on the environment and infrastructure provision of the area.

The case of Mr Wong before us

6. Mr Wong gave sworn evidence before us. He also called Mr Wong Pak Ming and Mr Ng Moon Hai . His case may be summarised as follows :

- (a) He is a native of Sha Po Tsuen. The villagers in Sha Po Tsuen are surnamed Ng, Wong and Chan. Most land within Sha Po Tsuen are vested in the Ngs. The Ngs are not prepared to sell any land to the Wongs. This is reflected in the testimony given by

Mr. Ng Moon Hai who told us that unless he is utterly broke, he would not be prepared to dispose of his land earmarked for his descendants.

- (b) The V zone on the OZP does not accord with the village boundary of Sha Po Tsuen. He was not aware of his rights and did not make any representation to oppose the draft OZP.
- (c) He and his 2 brothers are residing in their ancestral home at No. 48 Sha Po Tsuen."The house has an area of just over 100 sq.ft. It is too small to accommodate all the people."
- (d) He explains that there is little prospect for him getting Government land within the V zone due to inter-rivalries between the different clans in the village.
- (e) He refers to other successful applications before the Town Planning Board and contends that his application should likewise be entertained.

The Planning Intention

7. The following paragraphs in the Explanatory Statement for the OZP are relevant :

- (a) Paragraph 3.1 makes it clear that "The object of the Plan is to indicate the broad land-use zonings and transport networks for Kam Tin North area so that development and redevelopment within the area can be put under statutory planning control."
- (b) Paragraph 5.2 states that "The boundary of the Area is delineated having regard to physical and topographical features such as road, drainage channel and hills. Therefore, the Area boundary does not necessarily follow the Heung boundaries which are used for administration purpose only. Also, the name of the Plan is geographical in nature and should not have implications on development rights, particularly Small House applications."

- (c) Paragraph 7.1 lays emphasis on the "Opportunities" in the Area. It points out that "There are a number of agricultural lots in the Area. According to Agriculture, Fisheries and Conservation Department, most of the agricultural land in the Area is categorized 'good quality' in the 'Categorization of Agricultural Land'. A number of infrastructural improvement works such as irrigation facilities, drainage channels and farm accesses have been constructed. As such, there are ample opportunities for agricultural development in the Area."

- (d) In relation to "Village Type Development" or V, paragraph 9.5.1 makes it clear that "The planning intention of this zone is to designate both existing recognized villages and areas of land considered suitable for village expansion. The recognised villages in the Area includeSha Po Tsuen ...". Paragraph 9.5.2 explains that "The boundaries of the 'V' zones are drawn up having regard to the existing village environs, outstanding Small House demands for the next ten years, topography and site constraints." Paragraph 9.5.4 observes that "Adequate land has been reserved in this zone area to cater for the demand for Small House upon full development of the Area."

- (e) In relation to "Agriculture" or AGR, paragraph 9.11.1 explains that "The planning intention of this zone 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."

The Lot and its surroundings

8. Mr. Wong told us that the Lot had not been used for agricultural purposes since 1964. We accept his testimony.

9. According to a Site Plan prepared on 1st September, 2000, cultivated agricultural land can be found near the north eastern and southern boundary of the Lot. A residence can be found to the east of the Lot. Fallow agricultural land abuts its western boundaries.

Previous applications for permission

10. We have been furnished with a list of applications for NTEH within the agriculture zone on the OZP. As indicated by Plan A-5 prepared by the Planning Department on 1st September, 2000, these applications do not relate to the same area where the Lot is located. Each application has to be considered on its own merits. We are of the view that little weight can be placed on the success or otherwise of those applications.

Our Decision

11. We agree with the views of the Town Planning Board that Mr Wong's application does not accord with the planning intention of the "Agriculture" zone as depicted in the OZP. We reject Wong's contention that the V Zone on the OZP should be enlarged to cover his lot. The draft Kam Tin North OZP was first exhibited for public inspection on 17th June, 1994. Mr Roy Li, witness for the Town Planning Board, told us that the Board took into account 12 objections including one from Sha Po Tsuen in formulating amendments to that draft OZP. On 22nd February, 2000, The Chief Executive in Council approved the amended draft OZP and the OZP as approved was exhibited under section 9(5) of the Town Planning Ordinance on 3rd March, 2000. The process was a long and difficult one. It is not for us to redefine the zonings arrived at after such careful deliberation.

12. We have borne clearly in mind the perceived difficulties explained by Mr Wong in getting alternative site from the Ngs in Sha Po Tsuen. Given the planning intent and the existing usage surrounding the Lot, we are of the view that there should be no concession to the hardship which he urged so strongly before us. Whilst we are sympathetic to his plight, we are not convinced that there is sufficient justification to depart from the clear objectives of the OZP.

13. For these reasons, we dismiss Mr Wong's appeal.