

Town Planning Appeal No. 8 of
2000

IN THE MATTER of the Town
Planning Ordinance Chapter 131

and

IN THE MATTER of an Appeal
under Section 17B by Mr. YAU
Sui-yin

Dates of hearing : 7th & 8th March 2001

Date of decision : 30th March 2001

Panel : Mr Gareth Lugar-Mawson, Chairman
Mr Christopher Chan Yiu-chong
Mr Richard Chan Kam-lam
Dr Larry Chow Chuen-ho
Dr Wong Kam-din

DECISION

The Appellant, Mr. Yau Siu-yin, appeals against the decision of the Town Planning Board rejecting his application for the erection of a New Territories Exempted House with a built-over area of 65.03m² and a height of 8.23m (3 storeys) on land in Nam Wai, Sai Kung, New Territories.

The site

2. The appeal site is located on Government Land Licence No. S7031 in DD214, Nam Wai, Sai Kung, New Territories. It stands at the south-eastern corner of a wooded knoll near Au Tsai Tsuen. There is a disused single storey pigsty erected on it. There are two mature trees near the edge of the site. To the immediate north and west of the site there is a hill, which is densely covered with trees. The hill extends to the northwest and serves as a landscape backdrop for the village and naturally defines the limits of its development. The site is within the village environs of Nam Wai, but is not within Village Type Development Zones ('V zone(s)') for Nam Wai and Au Tsai Tsuen. It is separated from the village settlement of Au Tsai Tsuen to the southwest and west by a road leading from

Nam Wai Road. This road, which is considered to be of substandard quality having only a width of 2 to 3m, also gives access to the site.

3. The site falls within an area zoned Green Belt on the approved Hebe Haven Outline Zoning Plan No. S/SK-HH/3.

4. Under the current Small House Policy, 18 year old male indigenous villagers in the New Territories may be allowed to build a small house for their own occupation on private land within the village environs of their recognised village. These are termed New Territories Exempted Houses. Where a villager does not own any private land within his village environs, he may apply for a small house grant to build on Government Land.

5. If the proposed site for the construction of the house is within the village environs, but outside the 'V zone'; the applicant has to obtain planning permission from the Town Planning Board. If he does not gain that permission construction cannot take place.

Planning history

6. In 1998, the Appellant applied (Application No. A/SK-HH/15) to erect a New Territories Exempted House of the same size and dimensions on the site. He had made earlier unsuccessful applications. The Rural and New Town Planning Committee rejected this application on 11 December 1998 for similar reasons to those given by the Town Planning Board in this appeal.

7. The Appellant made the present application under appeal (Application No. A/SK-HH/21) through an agent on 6 March 2000. It was rejected by the Rural and New Town Planning Committee on 5 May 2000 and by the Town Planning Board on review on 1 September 2000. The reasons for rejection were:

- (a) The proposed development is not in line with the planning intention of the Green Belt zone for the area, which is to define the limits of urban development area by natural features so as to contain urban sprawl. There is a general presumption against development in Green Belt zones and insufficient reasons had been given in the submission justifying a departure from the planning intention.
- (b) Sufficient land for small house developments has been reserved within the 'V zones' for Nam Wai and Au Tsai Tsuen. There was insufficient

information in the submission to demonstrate that land could not be obtained for small house developments within that zone; and

- (c) The approval of the proposed development would set an undesirable precedent for similar applications. The approval of such applications would result in encroachment of the Green Belt zone by developments and have an adverse cumulative impact on the environment, traffic and infrastructural provisions in the area.

8. On 24 October 2000, the Appellant lodged the present appeal under section 17B(1) of the Ordinance against the Town Planning Board's decision.

Grounds of appeal

9. The Appellant's grounds of appeal are that:
- 1. All land that is within the village environs of Nam Wai, regardless of whether or not it is outside the 'V zone', should not be included in a Green Belt.
 - 2. The Town Planning Board in 1998 granted permission for the development of two small houses in a Green Belt zone within the village environs of Nam Wai. This has set a precedent and it is unreasonable of the Board not to follow it.
 - 3. The Appellant requires the proposed small house as a residence for his parents who are now elderly and infirm.

Planning Intention

10. The general planning intention for the Hebe Haven area as stated in paragraphs 8.1 and 8.2 of the Explanatory Statement of the Hebe Haven Outline Zoning Plan is :

'... primarily to conserve the natural landscape features and the rural character of the Area In the designation of various zones in the Area, consideration has been given to the natural environment, physical landform, existing

settlement, land status, availability of infrastructure and local development pressures.'

11. The planning intention of the Green Belt zoning of the Site, as stated in paragraph 9.7 of the Explanatory Statement, is:

'...to define the limits of urban development areas by natural features so as to contain urban sprawl. It would also serve the purpose of providing passive recreational outlet and delineating roadside amenity areas ... There is a general presumption against development within this zone ... Any building development will require permission from the Board and development proposals will be considered on their individual merits taking into account the relevant Guidelines published by the Board.'

Town Planning Board Guidelines

12. The Town Planning Board's guidelines 'Applications for Development within Green Belt Zones' (TPB PG-No.10) are also relevant in this appeal. In summary, the relevant assessment criteria are :

1. There is a general presumption against development (other than redevelopment) in a Green Belt zone. An application for new development in a Green Belt zone will only be considered in exceptional circumstances and must be justified with very strong planning grounds;
2. Applications for New Territories Exempted Houses, with satisfactory sewage disposal facilities and access arrangement, may be approved if the application sites are in close proximity to existing villages and in keeping with the surrounding uses, and where the development is to meet the demand from indigenous villagers;
3. The design and layout of any proposed development should be compatible with the surrounding area. The development should not involve extensive clearance of existing natural vegetation, affect the existing natural landscape, or cause any adverse visual impact on the surrounding environment;

4. The vehicular access road and parking provision proposed should be appropriate to the scale of the development and comply with relevant standards. Access and parking should not adversely affect existing trees or other natural landscape features. Tree preservation and landscaping proposals should be provided; and
5. The proposed development should not overstrain the capacity of existing and planned infrastructure such as sewerage, roads and water supply. It should not adversely affect drainage or aggravate flooding in the area.

Assessment Criteria

13. On 24 November 2000 the Rural and New Town Planning Committee, endorsed an interim criteria for consideration of applications for such houses in the New Territories. Although this was done after the date of the Board's rejection of the present application, we were told that this reflected the Town Planning Board's practice since 1998. These criteria are imposed in order to ensure consistency in assessing planning applications for New Territories Exempted Houses and small house developments in the New Territories. Under these criteria, the following planning principles are relevant in this appeal:

1. Sympathetic consideration may be given if the application site is located within the village environs of a recognised village and there is a general shortage of land in meeting the demand for small house development in the 'V zone' of the village.
2. The proposed development should not frustrate the planning intention of the particular zone in which the application site is located.
3. The proposed development should be compatible in terms of land use, scale, design and layout, with the surrounding area development.
4. The proposed development should not encroach onto the planned road network and should not cause adverse traffic, environmental, landscape,

drainage, sewerage and geotechnical impacts on the surrounding areas.

5. Fire services installations and, if required, emergency vehicular access appropriate to the scale of the proposed development should be provided.

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

14. The Town Planning Board considers that the proposed development does not comply with the Board's Guidelines and interim criteria for these reasons:

1. It is not in line with the planning intention of the Green Belt zone. There is a general presumption against development within such zones. There are insufficient justifications in Appellant's submission justifying a departure from the planning intention. In this connection, we note that on 7 February 2001 several Nam Wai villagers submitted to a joint letter to the Director of Planning expressing their concern that the Green Belt zone behind the Tze Tong of the Yau's clan should be preserved.
2. It is unsuitable for small house development as this may involve clearance of vegetation, site formation works and the erection of retaining structures. We were told that the Chief Geotechnical Engineer (Mainland East) of the Civil Engineering Department had advised, in respect of an earlier application for a certificate of exemption for the site formation works at the site, that the proposed development and its associated site formation works may affect, or be affected by, the stability of the adjoining slopes. He recommended that the Appellant should carry out further investigation to ascertain whether the proposed development will adversely affect the adjoining slopes. We heard no evidence that this had been done, all we were told was the site was flat ground.
3. It is likely that the proposed development and associated site formation works may adversely affect the two existing mature trees at the edge of

the site. We heard no cogent evidence that it would not.

4. Existing land within the 'V zone' should be taken up before any further land is identified for village expansion. The 10-year forecast small house demand for the Nam Wai and Au Tsai Tsuen area up to the year 2008 is about 140 units. We were told that there is sufficient buildable vacant land in the Nam Wai and Au Tsai Tsuen area to cater for about 220 houses. We were also told that in the past 16 years, the annual average number of applications received from indigenous villagers of Nam Wai was about 13. At this low rate of take-up, it follows that the supply of land is more than adequate to meet the 10-year forecast demand for small houses in the area. We received no evidence from the Appellant to counter this claim.
5. The Assistant Commissioner for Transport (New Territories) has commented that unplanned developments will aggravate the traffic capacity problem on Hiram's Highway, which is the only main road in the area, as well as parking provision in the Nam Wai area. The Appellant led no evidence to demonstrate that the proposed development would not have an adverse traffic impact on the area. This does not appear to us to be a very strong reason for objection as any development within the area, whether it be planned or unplanned, will have a traffic effect on Hiram's Highway.
6. There is a risk that approving the application will set an undesirable precedent. About 1.4 hectares of Government and private land within the village environs of Nam Wai are zoned as Green Belt, should this appeal succeed, there will be pressure from other indigenous villagers for permission to build small houses within these zones.

An earlier successful application for development in a Green Belt

15. The Board's counsel and witnesses informed us that permission was given in 1997 for the development of two small houses in a Green Belt zone within the village environs of Nam Wai (Application No.A/SK-HH/9). We were told that this site is sandwiched between existing village houses on its immediate east and west. We were also told that final approval by the District Lands Office in Sai Kung for the erection of these houses has not yet been given because of the absence of a proper emergency vehicle access. The Board considers this application to be distinguishable from the present application as the appeal site is well wooded and is separated from the neighbouring village houses by a road.

Decision

16. We are mindful that this is a town planning appeal, it must be considered and decided from the planning perspective. We appreciate that the Appellant and his representatives genuinely consider that he has not been treated fairly and that there has been prevarication and delay in processing this, and his earlier applications, both by the Planning Department and the Lands Department. These are irrelevant considerations and we express no view in respect of them. However we note that we were told that (including the Appellant's application) there are 50 outstanding applications for New Territories Exempted Houses within Nam Wai and that the Appellant has first priority on the list.

17. We are satisfied that the proposed development of a New Territories Exempted House on the site is not in line with the planning intention of the Green Belt zone in which it stands. There is a general presumption against development within such zones and we consider that insufficient reasons have been made out in this appeal to justify a departure from that presumption.

18. We are satisfied that there were good planning reasons justifying the granting of permission (Application No.A/SK-HH/9) in 1997 for the development of two small houses in another Green Belt zone within the village environs of Nam Wai. We do not consider that the Board set a precedent committing it to granting permission for other developments within other Green Belt zones.

19. We are satisfied that sufficient land has been reserved within the "V" zones of Nam Wai and Au Tsai Tsuen on which the eligible indigenous villagers can seek permission build small houses.

20. The appeal is dismissed.

Costs

21. We make no order for costs.