

Town Planning Appeal No. 10 of
1999

IN THE MATTER of the Town
Planning Ordinance Cap. 131

and

IN THE MATTER of an Appeal
under Section 17B by Mr. Lam
Chu-keung

Date of hearing : 26th January 2000

Date of decision : 29th March 2000

Panel : Mr Robert C. Tang S.C., J.P. (Chairman)

Mr Albert Chan Wai-yip

Mr Patrick Fung Yuk-bun

Mr Lam Hoi-ham, J.P.

Mr George Ng Sze-fuk, B.B.S., J.P.

DECISION

This is an appeal by Mr. Lam Chu-keung who was refused permission to build a village house at Lot 755A in DD84. It is accepted that Mr. Lam is a male indigenous villager over 18 years of age.

2. Mr. Lam made his village house application on 28/2/1996. The application was rejected on 18/6/1998 because the application site fell outside both the Village "Environs" Boundary (VEB) of his village and the "V" zone in the Outline Zoning Plan (OZP). Since 1/7/94, the site has come within an area zoned agriculture on the draft Ping Che and Ta Kwu Ling Outline Zoning Plan.

3. Lot 755A is situated between the villages of Sheung Shan Kai Wat, Ha Shan Kai Wat and Tai Po Tin. These villages are represented by the Ta Kwu Ling Rural Committee on matters related to village and community affairs and small house applications.

4. Since about 19/7/1993, the VEB has been used as a criterion for small house, that is to say, village house, application in the North District.

5. Prior to 19/7/1993, generally speaking, village house developments were permitted if the application site was within 300 ft measured from the last village type house built before the implementation of the Small House Policy on 1/12/1972.

6. However, in July 1993, after consultation with Rural Committees, including the Ta Kwu Ling Rural Committee, VEBs for all recognised villages in the North District were drawn up by the District Lands Office, North. In drawing up the VEBs, houses which were far away from and not forming part of the main village cluster were excluded.

7. Lot 755A is outside the relevant VEB. Moreover, it fell outside the area zone "V" which denote areas for village type house development. Lot 755A falls within an area which has been zoned as agricultural land on the relevant Outline Zoning Plan.

8. There is land available for small house development within the VEB of Sheung Shan Kai Wat and the "V" zone on the OZP. There is about 2.46 hectares of land (equivalent to about 74 small houses sites) available.

9. Indeed, the applicant has been granted a Free Building Licence on 25/6/1999 in respect of Lot 874A in DD84 which is situated within both the VEB of Sheung Shan Kai Wat and the "V" zone on the OZP.

10. However, the applicant has told us that Lot 755A is in many respects superior to Lot 874A. That is why he is pursuing his appeal.

11. However, we are of the opinion that the appeal must be dismissed because allowing the application would be contrary to the policy on small houses which has been in place since 1993.

12. Mr. Lam relies on the fact that Lot 755A is situated within 300 ft of recognised village type house and therefore permission should be granted. We are prepared to proceed on the basis that Lot 755A is situated within 300 ft of at least one established village house. However, as we have noted above, according to the policy which has been in place since 1993, houses which were situated away from the main village clusters were excluded from the 300 ft. rule. In its place, village environs boundaries were drawn. Lot 755A falls outside such village environs boundary. This application was first made in 1996 and hence after the new policy was implemented. This is the principal reason why we have decided to dismiss the appeal. We agree with the Town Planning Board that to make an exception in favour of Mr. Lam would create an undesirable precedent.

13. According to Town Planning Board, planning permission for a village type house would also be contrary to the planning intention. Lot 755A is situated within an area which has been zoned agricultural. On the evidence before us, it is clear that the site is prime agricultural land. The photographs which have been produced confirmed the rural character of the neighbourhood. According to Chan Wai-wa, agricultural officer, the site is surrounded by active agricultural land. Mr. Chan Wai-wa said:

"The Site is a piece of fallow agricultural land overgrown with grass. The Site is surrounded by agricultural land which are still under active cultivation (details shown in Plan AFCD-1). There are two livestock farms and two nurseries actively operated in the vicinity. Near the site, there are also ten farmers growing different kinds of crops, such as watercress, chinese lettuce, spinach, ginger, gladiolus and water spinach. Such activities occupy over 6 hectares of agricultural land in the area. As the agricultural land in the area is well served by agricultural infrastructures and marketing facilities, we believe that the Site has good potential for rehabilitation"

14. Having regard to the fact that there is ample land within the VEB for village houses, we are of the opinion it is right that we should not ignore the clear planning intention, namely, Lot 755A should be used for agricultural purpose, when Lot 755A is well suited to agricultural use and has until recently been so used.

15. For the foregoing reasons, the appeal is dismissed.