

Town Planning Appeal No. 13 of
1999

IN THE MATTER of the Town
Planning Ordinance, Chapter 131

and

IN THE MATTER of an Appeal
under section 17B by Billtech
Limited

Date of hearing : 12th & 13th June 2000

Date of decision : 20th July 2000

Panel : Mr G.L. Lugar-Mawson (Chairman)

Mr H.M.G. Forsgate

Mr Lester Kwok Chi-hang

Mr Herman To Yung-sing

Prof Anthony Yeh Gar-on

DECISION

The site

The appeal site comprises Inland Lots 683, 4051 and 4052 at 1-10 Yu Lok Lane, Sheung Wan, Hong Kong, and covers an area of about 553 m², including an existing right of way of about 146.3 m². The site forms part of a planned open space of about 1,400 m² at 1-25 Yu Lok Lane of which the Site constitutes about 40% of the whole and occupies its only street frontage.

2. The site is partly occupied by dilapidated low-rise buildings at 1-2 and 7-10 Yu Lok Lane. The remaining portion of the site at 3-6 Yu Lok Lane is vacant.

3. The site is located to the south of Yu Lok Lane and abuts Centre Street to its east. It is situated at the portion of Centre Street that is restricted to pedestrian use only. The mean formation level of the Site is higher than that of Centre Street. Yu Lok Lane is a cul-de-sac and the only access to the Site is by means of a staircase from Centre Street.

4. To its north and south, the site is sandwiched by high-rise residential buildings. The building to its north is 28 storeys high and the buildings to its immediate south are 25 and 19 storeys high. Adjoining the Site to its west, at 11 to 25 Yu Lok Lane, are old buildings of one to five storeys. These buildings and the Site are reserved for the open space development. The Government, Institutional or Community zone ("G/IC") further away at the western portion of the street block comprises the Kau Yan Church and a 20-storey high residential tower above the 7-storey high Kau Yan School.

5. The surrounding areas are mainly zoned "Residential (Group A)" ("R(A)") with a few sites zoned "G/IC". Many buildings within the R(A) zones have been redeveloped as high-rise residential blocks.

Planning history

6. On 31 March 1999, Bilitech Limited, the Appellant, submitted a planning application (Application No. A/H3/284) under section 16 of the Town Planning Ordinance ("the Ordinance") to develop a 38-storey composite commercial/residential building with shops on G/F & 1/F and 144 flats above.

7. At the time when the subject section 16 application was processed, the Site was zoned Open Space ("O") on the draft Sai Ying Pun & Sheung Wan Outline Zoning Plan (OZP) No. S/H3112.

8. The Metro Planning Committee rejected the application on 28 May 1999, for the reasons that the proposed development :

- (a) was not in line with the planning intention of the site, which was for open space development. As the proposed open space was under active planning, the proposed development would frustrate the implementation of the planned open space. No strong reasons had been given in the submission for a departure from the planning intention.
- (b) would induce additional population in the area and further aggravate the shortage of open space provision in the district. Moreover, the approval of the application would set an undesirable precedent for other similar applications. The cumulative effect of approving similar applications would result in further reduction of open space sites in the district; and

- (c) would render the remaining part of the open space lacking of a street frontage. This was undesirable from accessibility, management and urban design point of view.

9. The Appellant applied for a review of the Metro Planning Committee's decision on 23 June 1999. On 17 September 1999, the Town Planning Board considered the review application and rejected the application for the same reasons. The Appellant was informed of the Board's decision on 15 October 1999. The Appellant lodged this appeal against the decision under section 17B(1) of the Ordinance on 13 December 1999.

10. In 1996 a major portion of the Site, namely 1-9 Yu Lok Lane, was the subject of two applications (numbers A/H3/236 and A/H3/240) for the development of a 35-storey residential building with retail shops on the lower floors. The Board, on review, rejected both applications on the grounds that they were not in line with the planning intention of the site, the aggravation of the shortage of open space and the setting of an undesirable precedent.

Planning intention for the site

11. On 30 November 1999, the Chief Executive in Council, under section 9(1)(a) of the Ordinance, approved the draft Sai Ying Pun & Sheung Wan OZP (S/H3113). This was subsequently gazetted and exhibited for public approval. The "O" zoning of the Site remains unchanged on this OZP. The planning intention of the "O" zone for the area is to designate suitable areas for the construction of open spaces for use by the general public and provide land for both active and passive recreational facilities.

The Appellant's grounds of appeal

12. The Appellant's grounds of appeal may be summarised as follows:

- (1) The reason given by the Town Planning Board that the site is part of a planned open space not a valid one. The open space has been so zoned in the OZP for almost 30 years, yet no works have been carried out in that time.
- (2) The Western Parkland has already supplied the Western District of Hong Kong with the required amount of open space and there is no need for an

open space project to be carried out involving the site and the surrounding land.

- (3) It is unfair for an owner's development rights over private land to be frozen for 30 years. This means that the owners have no incentive to incur expense in maintaining the buildings on the site and as a result the living environment of the site has deteriorated.
- (4) In view of the continuous drop in the population of the Western District and the completion of the Western Parkland, the need for open spaces has been reduced.
- (5) The loss of open space that would be caused by the proposed development taking place is minimal.
- (6) Changes in the surrounding environment and the physical layout of the site have rendered it no longer suitable for use as a public open space.
- (7) The proposed development would help improve the poor living environment, reduce the government's land acquisition costs in acquiring the site for development as an open space, and minimize the maintenance cost of the open space.
- (8) The planning intention behind the OPZ "O" zoning should be implemented flexibly.

The Board's reasons for not supporting the application

13. The Board's reasons for not supporting the application may be summarised as follows:

- (1) There is a severe shortfall of open spaces in the planning area. According to the Hong Kong Planning Standards and Guidelines (HKPSG) the standard for provision of open space is a minimum of 2m² per person. In 1999 it was estimated that the population in the planning area was about 113,200, which implies that about 11.32ha of district and 11.32ha of local open space should be provided to

serve that community. Currently there are only 3.7ha and 2.4ha respectively of district and local open spaces in the area. This means that even with the development of all of the “O” sites designated on the OZP, the total open space provision (including district and local open space) will only be about 12ha. This is equivalent to about 50% of the HKPSG requirements for the 1999 population. Every reserved open space site in the area is therefore essential and should be retained for open space development. Should this site be used for other purposes, no replacement site can be found and the shortfall of open spaces in the area will be further exacerbated.

- (2) There are insufficient merits justifying a departure from the planning intention. The site is considered to be well suited for the development of a local open space. It is centrally located and bounded by residential developments on all sides. It is planned on the basis of a central courtyard concept, under which open spaces are provided in the form of a central courtyard serving the adjoining residential developments as well as serving residents living within a walking distance of 200m from the open space. It has a street frontage of 10m to Centre Street, this provides good accessibility, permeability and visibility. The open space will also greatly enhance the existing environment by providing urban greenery within a congested area and will generally open up that area.
- (3) The Appellant's proposed residential development is piecemeal in nature and will not provide a planning gain or environmental improvement to the area. It will take away a site reserved for public open space of which there is already a severe shortage in the planning area. And, as it will increase the population in the area, it will aggravate the overall shortfall of open spaces.
- (4) The site has been designated for open space development since 1970 and there never has been any change in the Government's intention to

provide a public local open space incorporating the site. In 1970, there were 25 similar small plots of “O” sites reserved on the OZP. Since then, six sites have been integrated into comprehensive redevelopment schemes undertaken by the Land Development Corporation and the Government has implemented 14. Of the remaining five sites, two are now under construction. The delay in the implementation of this project does not mean that the public open space is no longer required, rather, is a matter of priority in the allocation of Government resources.

- (5) The proposed development would adversely affect the accessibility, design and utilization of the local open space. Quality is one of the main principles of recreation and open space planning. The HKPSG states that:

“... recreation facilities and open space provided should be of a high quality, in terms of facilities, layout and design, which meet the needs and aspirations of the users. They should also meet environmental standards, and contribute to good civic design.”

- (6) The proposed building at the Site will reduce the area of the “O” site from about 1,400 m² to about 847 m² and will occupy the only street frontage to Centre Street. If the proposed development is allowed to proceed, the land available on which to develop the open space will be reduced to two-third of its original size. The open space will be completely enclosed by buildings and have no proper access, and direct street frontage onto Centre Street. Land-locked open spaces are considered unsatisfactory because of their inaccessibility, back-yard effect and security problems. Further, with a reduced site size, the scope and flexibility of the open space development will be limited and the chances of a successful implementation will be slim.

- (7) The site is unsuitable for high-rise commercial residential use. The site's configuration is long and narrow. The buildings to its north and south are high-rise residential developments built on a similar site configuration. The distance between the proposed building and the buildings to its north and south is only 4 to 5m. Though the proposed building may possibly meet Buildings Ordinance requirements, it is inevitable that adversely affect the natural lighting and ventilation to the adjacent existing buildings and the occupants of the proposed and existing buildings will overlook each other. This type of undesirable living environment should not be encouraged in a residential neighbourhood.
- (8) The proposed development would set an undesirable precedent and further aggravate the shortfall of open spaces in the area. In 1993, the Board rejected a similar application for residential development at 15-16 Yu Lok Lane, mainly on the grounds that the proposal would frustrate the planning intention of developing the open space as a whole.
- (9) The local people do not support the proposed development. The Central & Western District Office consulted various members of the Sai Ying Pun Area Committee and the then Central & Western Provisional District Board. Generally, the proposal was not supported. Members were concerned about the loss of public open space, fire safety, the excessive height of the proposed building and the blocking of light and ventilation to the adjacent properties that the proposed building would cause.

The Appeal Board's decision

14. We are unanimously of the view that:

- (1) There is no merit in the proposed commercial/residential development justifying a departure from the planning intention of the "O" zone, which is to

alleviate the shortage of open spaces in the neighbourhood.

- (2) The quality of the proposed open space will be significantly degraded if the proposed development is permitted. It would reduce the available area, render the remaining portion of the open space site completely enclosed and seriously affect its accessibility and design flexibility.
- (3) The proposed commercial/residential development would deprive the local residents of the open space that they have waited a long time for.
- (4) The Site is unsuitable for high-rise residential development, as there are existing high rise domestic buildings to its immediate north and south. The natural lighting and ventilation of all buildings in this section of Yu Lok Lane will be adversely affected.
- (5) The approval of this application will set an undesirable precedent for other similar applications, leading to cumulative adverse impacts on the local environment and further reduction of "O" sites in the district.

15. For these reasons we dismiss the appeal.

Powers of the Appeal Board

16. The Appeal Board's powers are those stated at section 17B(8) of the Town Planning Ordinance and no other. We are however concerned at the delay in developing the site and its adjacent land as a public open space. This has resulted in the site being the subject of planning blight. For the sake of the community who live in this part of the Western District, we express the hope that this development can take place in the near future.

Costs

17. We make no order for costs.