

Town Planning Appeal No.3 of
2000

IN THE MATTER of the Town
Planning Ordinance Cap. 131

and

IN THE MATTER of an Appeal
under Section 17B by Mr Yau
Sung-tak, Simon

Lot 1033 RP in DD253, Au Tau,
Sai Kung, New Territories

Date of hearing : 5th September 2000

Date of decision : 29th September 2000

Panel : Mr Robert C. Tang S.C., J.P. (Chairman)
Mr Fung Pui-cheung
Mr Leung Wo-ping
Mr Thomas Ling Chi-kong
Mr Vincent To Wai-keung

DECISION

The applicant, Mr Yau Sung-tak, Simon is an indigenous villager. The appeal site (the Site) is Lot 1033 RP in DD253, Au Tau, Sai Kung. Mr Yau is a native of Au Tau.

2. The Site falls within the village "environs" for Tseng Lan Shu (TLS) village. It is an old scheduled agricultural lot in Au Tau Village. Au Tau Village is part of the TLS village and represented by Hang Hau Rural Committee on matters relating to village and community affairs and Small House applications.

3. Although the site falls within the village "environs" it is situated within an area zoned "Green Belt" (GB) on the current Tseng Lan Shu Outline Zoning Plan (OZP) No.S/SK-TLS/5.

4. According to the Explanatory Statement accompanying the OZP, the General Planning Intention is stated as follows:

"8.1 The planning intention for the Area is primarily to conserve the natural landscape features and the rural character of the area. Except for the village expansion areas designated to meet the outstanding Small House demand of the recognised villages, the planning intention is to confine residential developments to the already established areas mainly along Fei Ngo Shan Road and Razor Hill Road and in Ta Ku Ling San Tsuen, as well as to maintain such developments to their existing and committed intensity. It is also intended to phase out incompatible industrial activities in Lung Wo, Tan Shan and Ma Yau Tong, and to upgrade the obsolete and sub-standard housing stock with the provision of the necessary basic infrastructure.

8.2 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, Territorial Development Strategy and other studies. Moreover, buildings and places of historical and archaeological interest should be preserved in the Area as far as possible"

5. "9.8.2 There is a general presumption against development within this (Green Belt) zone. Development within this zone will be strictly controlled. 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"

6. Also in the published guidelines for application for development within GB zone under s.16 of the Town Planning Ordinance, which "are intended for general reference only. The decision to approve or reject an application rests entirely with the Town Planning Board and will be based on individual merits and other specific considerations of each case". Under the Main Planning Criteria, after stating that "There is a general presumption against development (other than redevelopment) in a "GB" zone", it went on to say:

"Applications for New Territories Exempted Houses with satisfactory sewage disposal facilities and access arrangements 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"

7. According to Li Cheuk-kwan, a Senior Land Executive,

"As the Site falls within the VEB of TLS Village and the appellant is an indigenous villager of the said village who has not received any concessionary grant before, I have no objection to the SH application from land administration point of view provided that the appellant could satisfy other Government departments' requirements and the obtaining of planning permission under s.16 of the Town Planning Ordinance"

8. The applicant applied to the Town Planning Board for planning permission under s.16 and a review under s.17. He was unsuccessful on both occasions. Hence the appeal to us.

9. The applicant is in his late thirties. This present application is the culmination of 5 years of effort in obtaining permission to build a Small House. He told us he has been trying for over 10 years. He acquired the Site a few years ago from a cousin. The applicant's evidence on how he acquired the Site is vague. He was unwilling to tell us how much he paid for the Site. He said, however, the former owner sold him the land for mutual benefit (互利). We understand that it is not unusual for indigenous villagers to have to wait for years before they are able to build a small house. This can hardly be regarded as satisfactory. However, our duty is to consider the application on planning grounds. Policy considerations relating to Small Houses are not within our jurisdiction.

10. On the basis of the evidence of Ip Po-kwong, Senior Town Planner/Sai Kung, we have no reason to doubt that sufficient land has been zoned "V" to cater for forecast Small House demand for the next 10 years within the Tseng Lan Shu Village area.

11. We were told by Mr Li Cheuk-kwan that it is possible that Government land might also be available within the "V" zone for exempted houses. However, he is far from certain about the suitability of such Government land for exempted houses. In any event, such land might not be made available for years.

12. The Site is located about 30m to the Northeast of the existing village settlement of Au Tau. There is no vehicular access to the Site except a footpath which links the site with the village proper of Au Tau village. It is an abandoned pig sty. It is surrounded by abandoned agricultural land which are at present densely vegetated. On the northern perimeter of the Site is a footpath and further North is a vacant temporary structure. Two single storey domestic structures are found to the Southeast of the Site.

13. The reasons given for opposing the application are

- (1) the application is not in line with the planning intention of "GB" zone
- (2) there is sufficient land in "V" zones of Tseng Lan Shu Village for Small House Development
- (3) adverse cumulative traffic impact
- (4) setting of undesirable precedent.

14. We will deal with these reasons in turn.

15. "Not in line with the planning intention of "GB" zone". It is clear from the photographs that the area is densely vegetated. There is an abandoned pig sty on the Site. There is a general presumption against development within a "GB" zone. We believe we should follow the published guidelines. Here, access would not be completely satisfactory because the Site is not accessible to vehicular traffic. It is in reasonably close proximity to an existing village. However, to build a small house on the Site would not be entirely in keeping with the surrounding uses because it would reduce the dense vegetation in the area. Nevertheless, if there is really no other way in which the requirement of indigenous villagers can be satisfied, we would consider that to be a powerful reason in support of an application.

16. "Sufficient land in "V" zones". We accept the evidence of Mr Li Cheuk-kwan that there is sufficient land reserved. The applicant told us that he could not acquire land within the "V" zone. Mr Ip Po-kwong has said in his statement that vacant land for development of Small Houses is still available within the "V" zone of Au Tau for development. No evidence has been provided by the applicant to satisfy us that land could not be obtained for such purpose within the "V" zones. Mr Yau has told us that he does not own land within the "V" zone and he could not acquire land within the "V" zone. We do not regard such evidence to be sufficient. An applicant who wishes to build within a "GB" zone cannot expect the general presumption against development to be so easily displaced. An applicant who

wishes to satisfy us that he was unable to acquire land within the "V" zone must at least produce clear evidence of what efforts he had made and why they were unsuccessful. We believe that, if, as here, land has been reserved for such houses in the "V" zone, and such land remains available, we should not lightly allow an indigenous villager to build within a "GB" zone unless there are extremely cogent reasons.

17. "Adverse Cumulative Traffic Impact". This is a relevant consideration. However, this has to be considered on a case by case basis. We do not believe the erection of a single Small House in this locality is sufficiently serious to warrant dismissal of the appeal on this ground alone.

18. "Setting of Undesirable Precedent". We have found this a weighty consideration. There were 5 similar applications for the development of Small Houses in Sam Long Tan Shan area which are located within "GB" zone and village "environs" of Tseng Lan Shu. Planning permissions were granted for these applications with sites which abut or are close to the "V" zone of the village proper of Tseng Lan Shu and Clearwater Bay Road. We were asked not to take these as precedents because the Site is about 30m away from the "V" zone of Au Tau, close to the existing dense vegetation and without vehicular access. We are prepared to accept that these 5 sites are different.

19. It is also said that there are 11 hectares of land falling within the village "environs" of Au Tau which is zoned "GB". Within this area, about 6 hectares are undeveloped private land which could accommodate about 250 Small Houses. It is said:

"should this application be approved, the entire stretch of these 6 hectares of GB would be subject to development pressure of application for Small Houses from indigenous villagers. This would set an undesirable precedent for similar applications and would make it difficult to reject similar applications. The cumulative effect of approving such applications would result in 'encroachment' of the "GB" zone by developments and adverse impact on the environment, traffic and infrastructural provisions in this area"

20. This is a strong reason. We do not believe any building within "GB" zones should be lightly granted.

21. Mr Newton Chan, who appeared for the Town Planning Board, has also rightly reminded us that sympathy for Mr Yau (who has sought for years to

exercise his right as an indigenous villager) should not be allowed to outweigh proper planning considerations.

22. Thus, despite our personal sympathy for the applicant, we believe we must dismiss the appeal. Town planning controls are imposed for the benefit of all the citizens of Hong Kong SAR. Just as an owner of land in the urban areas must accept it if planning control is imposed on his land, the same is true for indigenous villagers.

23. For the above reasons, the appeal is dismissed.