

Town Planning Appeal No. 11 of
1998

In the matter of the Town Planning
Ordinance Cap. 131

and

In the matter of an Appeal under
Section 17B by Chan Yuen Ping

Date of hearing : 6th July 1999

Date of decision : 6th August 1999

Panel : Mr Robert C. Tang S.C., J.P. (Chairman)
Mrs Pamela Chan
Mr Christopher Chan
Dr Larry Chow
Mr Chung Wah Nan

DECISION

The appellant appeals from the decision of Town Planning Board dated 26th June 1998 which permitted the use of Lots Nos.2581 and 2582 in D.D. 102, Ngau Tam Mei, Yuen Long, for temporary open storage of construction materials and container vehicles for a period of 12 months. Since then on a further application the appellant has been given temporary permission until the year 2000.

2. Lots 2581 and 2582 fall within the draft Ngau Tam Mei Outline Zoning Plan No.S/YL-IVTM/1. They are within the “Green Belt” zone. Temporary use for open storage for a period not exceeding 12 months can be granted under paragraph (vi)(b) of the Notes to the Plan.

3. Although the appellant has been given the maximum 12 months period, he was dissatisfied. He was dissatisfied because he claims that the use for open storage of construction materials and container vehicles is an existing use within the meaning of the Town Planning Ordinance Cap. 131.

4. According to the Town Planning Ordinance,

“existing use’ (現有用途) in relation to a development permission area means a use of a building or land that was in existence immediately before the publication in the Gazette of notice of the draft plan of the development permission area.”

5. As we have explained to the appellant at the hearing of the appeal, we do not have the jurisdiction to determine whether his claim that the use is an existing use is valid.

6. Our jurisdiction is limited by s.17B of the Town Planning Ordinance. Thus, we can only review decisions by the Town Planning Board over whether any permission which may be granted under any draft plan or approved plan should or should not be granted. In other words, if the appellant had been refused temporary permission or had been granted temporary permission for less than 12 months, we can decide whether any temporary permission should be granted, and for how long.

7. If the appellant wishes to establish his claim that the use is an existing use, he has to resort to the law courts for a determination. If the appellant is correct that the use is an existing use, he does not have to apply for temporary permission to the Town Planning Board.

8. However, unless his claim that the use is an existing use succeeds, he runs the risk of a prosecution under the Town Planning Ordinance. Even so, under s.23(9) it is a defence to a prosecution, if the appellant

"proves that -

(b) the development was an existing use, or in the case of land within an interim development permission area, that the use of a building or land was in existence immediately before publication in the Gazette of the notice of the relevant plan of the interim development permission area;"

9. The appellant should seek independent legal advice as to what he should do.

10. Since the appellant had been given the maximum of 12 months and we have no jurisdiction to decide whether the use is an existing use, the appeal is dismissed.