

Town Planning Appeal No.4 of  
1997

IN THE MATTER of the Town  
Planning Ordinance Chapter 131

and

IN THE MATTER of an appeal  
under Section 17B by Ms. Lee Fu  
Chun and Ms. Tang Wai Lin

Date of hearing : 22nd April 1998

Date of decision : 13th May 1998

Panel : Mr Robert C. Tang S.C., J.P. (Chairman)  
Mr Chan Pak Keung, O.B.E., J.P.  
Dr Larry Chow  
Mr Man Mo Leung  
Dr Ng Cho Nam

### **DECISION**

This is an appeal by Ms. Lee Fu Chun and Ms. Tang Wai Lin against a decision of the Town Planning Board refusing permission to use Lot 823 RP (part) in D.D.90 ("the Site") for a cooked food stall for 12 months. The Site is situated within the Closed Area near the Vehicle Holding Area ("UHA") at the Man Kam To Border Crossing.

2. In about 1990, the appellants operated Ming Lee Store selling fast food and soft drinks and providing toilet facilities to cross-boundary drivers in the Man Kam To UHA. Ming Lee Store was originally situated at Lots 726 RP and 728 RP in D.D.90 ("the original site"). There were 2 successful applications to use the original site for the purpose of Ming Lee Store. It is quite clear that the Ming Lee Store provided much needed public facilities and the appellant should be commended for their effort.

3. However, the original site was resumed by the Government in 1993/1994. As a result of that, Ming Lee Store was relocated to the Site.

4. On 6th May 1994, permission was granted by the Rural and New Town Planning Committee ("RNTPC") to the appellants to continue the business of the Ming Lee Store at the site for 2 years.

5. At that time, the Site was zoned Unspecified Use on the DPA Plan.

6. On 24th June 1994, the Site was zoned agricultural on the draft Fu Tei Au and Sha Ling Outline Zoning Plan ("OZP").

7. At the same time, an area of about 1,500 m<sup>2</sup> to the north of the site was zoned G/IC so that public toilets and 2 cooked food stalls could be accommodated.

8. Public tender to operate the 2 cooked food stalls were invited. The appellants put in a tender. Unfortunately, it was unsuccessful.

9. On 4th September 1996, the appellants applied for permission to use the site temporarily for a cooked food stall. Since the rejection of the application, the appellants have ceased operation.

10. Cooked food stall is not a use permitted under either Column 1 or 2. However, there is power under para.(vi)(b) of the General Notes of the OZP for permission to use the Site temporarily for a cooked food stall for a period not exceeding 12 months.

11. The appellants' s.16 application as well as the s.17 review were unsuccessful. The reasons given on review are:

- "(a) the proposed development was not in line with the planning intention of the "Agriculture" zone which was to retain and safeguard good agricultural land for agricultural purposes and to retain fallow arable land with good potential for rehabilitation. There were no strong justifications to merit a departure from such planning intention even on a temporary basis;
- (b) there was no strong justification for the proposed development since similar fast food/retail shops to serve the cross-border vehicle users had been approved by the Town Planning Board and were already operating in the adjacent site which was zoned "Government/Institution/Community" on the concerned Outline Zoning Plan; and

- (c) the approval of the application would set an undesirable precedent for similar applications in the area"

12. Ms. Lee Fu Chun who spoke for Ms. Tang as well, argued that because of the smallness of the Site and its physical condition, it is not practical to return the Site to agricultural use. We think there may be some merit in this argument.

13. However, we do not believe we can properly allow this appeal. A decision in the appellants' favour will be inconsistent with the intent and purpose of the OZP, which was to provide properly zoned area for cooked food stalls and public toilets. Those planned cooked food stalls and public toilets are now in operation. Unfortunately, the appellants' tender was unsuccessful, but it will not be right for us to allow them to get round that by permitting them to use the Site for the same purpose. It would be unfair to those who were successful in the public tender. It would also set an undesirable precedent.

14. Moreover, as Ms. Lee frankly admitted, what the appellants want is not merely temporary permission for 1 year but a long term arrangement whereby the permission would be renewed annually.

15. We believe it would be a misuse of the power conferred under para.(vi)(b) to permit that.

16. Ms. Lee also argued that they had made substantial investment on the site which they were unable to fully recoup. That is unfortunate but the appellants were aware that they had only temporary permission to use the site for a cooked food stall.

17. In all the circumstances, and after giving the information and argument provided by the appellants careful consideration, we have come to the conclusion that the appeal must fail. The appeal is accordingly dismissed.