

TOWN PLANNING APPEAL
NO. 1 OF 1997

BETWEEN

CONNIE LAW YUK WAH,
APPELLANT

and

TOWN PLANNING BOARD,
RESPONDENT

Date of hearing : 25th September 1997

Date of decision : 3rd November 1997

Panel : Mr Ronny F.H. Wong, S.C. (Chairman)
Mr Chan Pak Keung
Mr Albert Chan Wai Yip
Mr Fan Sai Yee
Dr Wong Kam Din

DECISION

Background of this appeal

This is an appeal by the Appellant against the decision of the Town Planning Board ["TPB"] of 11.10.1996 in rejecting her application for temporary open storage of construction material for a period of 12 months at Lot 1217 and the adjacent Government land in DD 119 in Pak Sha Tsuen, Yuen Long ["the Site"].

2. The Site has an area of about 1,537m². The Site is situated in a predominantly rural area with Pak Sha Tsuen located to the north-east and Wong Nai Tun Tsuen and Tai Tong Tsuen located to the south-east. Access to the Site is made via Kung Um Road.

3. The relevant OZP (and the notes that form part of the plan) that governs this application is the draft Tai Tong OZP No. S/YL-TT/1. This OZP was gazetted on 8.7.1994 before the Appellant's application on 11.3.1996. The Site was zoned "Agriculture" ("AGR") in the OZP.

4. Paragraph 7.1 of the Explanatory Statement of the OZP states the general planning intention for the Tai Tong Planning Area as follows :

"The general planning intention for the Tai Tong area is to retain the rural characteristics by preserving active agricultural land, reserve sufficient land for village type development and land for environmental and infrastructural improvements."

5. The planning intention of the "Agriculture" zone, as stated in paragraph 8.8.1 of the Explanatory Statement of the OZP, is :

"to retain and safeguard good agricultural land for agricultural purposes. The zoned areas are usually well served by irrigation and servicing facilities as well as marketing facilities for intensive farming including livestock rearing, fish culture and horticulture. This zone also intends to retain fallow arable land with good potential for rehabilitation."

6. 3 reasons were given by the TPB in rejecting the Appellant's application on review :

- (a) The proposed development was not in line with the planning intention of the "agriculture" ("ARG") zone for the area which was to retain fallow arable land with good potential for rehabilitation and to retain the rural characteristics of the area. There was no justification to depart from such planning intention even for a period of 12 months;
- (b) No landscape proposals had been included in the submission; and
- (c) The approval of the application would set an undesirable precedent for other similar developments in the "Agriculture" zone.

7. During site visits on 11.3.1997, 29.8.1997 and 9.9.1997, it was found that the Site was used for open storage of chemicals (ferric chloride solution and dye) stored in barrels and plastic containers. We are perturbed by the presence of these chemicals on the Site. The Site is located to the south of an intersection of two nullahs. Any accidental spillage may result in severe damage.

The hearing before us

8. The Appellant was represented by a Mr. Leung Kam Wing ["Mr. Leung"]. He did not call any evidence. He accepted without any challenge the statement of Mr. Raymond W.M. Wong ["Mr. Wong"], the District Planning Officer called by TPB. He produced before us 2 documents :

- (a) A very rough sketch indicating the trees that the Appellant would be prepared to plant should approval be granted.
- (b) A written undertaking signed by the Appellant undertaking that any open storage approved "will be a genuine temporary development".

9. The whole approach of the Appellant is to merely to urge this Board to accede to the appeal so as to permit the "temporary" user. Mr. Leung is quite candid about the Appellant's wish. He pointed out that it would be even better if this Appeal Board would grant the Appellant a permanent approval. The Appellant is prepared to submit to any condition that we see fit to impose.

10. Ms. Phyllis Wong appeared for TPB. She called Mr. Wong and relied on the evidence in Mr. Wong's statement. She emphasised the planning intention pertaining to the Site. She drew our attention to TPB's Guidelines for 'Application for Open Storage and Port Backup Uses under section 16 of the Town Planning Ordinance' ["the Guidelines"]. She forcefully pointed out that it is incumbent on the Appellant to demonstrate merits in relation to the proposed user for the purpose of the Guidelines. She submitted that the Appellant had not demonstrated any merit as to justify departure from the planning intention in relation to the Site. She also adverted to a similar application for a near-by site which was rejected on 26.4.1996.

Our decision

11. We accept the submissions eloquently put by Ms. Phyllis Wong on behalf of TPB. We do not have an unfettered discretion that Mr. Leung appears to suggest. It is incumbent upon the Appellant to demonstrate a case within the Guidelines. The Appellant made no attempt to put forward a case within those perimeters.

12. We dismiss the Appellant's appeal.

13. We have expressed in paragraph 7 above our grave concern in relation to the chemicals currently stored on the Site. We would expect prompt

Governmental action to be taken to safeguard the public against the serious risks inherent in such user.