

Town Planning Appeal No. 2 of
1996

IN THE MATTER of the Town
Planning Ordinance Cap 131

and

IN THE MATTER of an Appeal by
Ingenuity Limited under Section
17B

Appellant: Ingenuity Limited

Respondent: Town Planning Board

Dates of hearing : 16th & 17th July 1997

Date of decision : 29th August 1997

Panel : His Hon Judge G. J. Lugar-Mawson (Deputy Chairman)
Mr Marvin Cheung Kin Tung, OBE, JP
Mr Lester Kwok Chi Hang, JP
Mr Stephen Lau Man Lung, OBE, JP
Mr Douglas Van

DECISION

Introduction

This is an appeal under section 17B of the Town Planning Ordinance, by Ingenuity Limited (the Appellant), as occupier of the land, against the decision of the Rural and New Town Planning Committee of the Town Planning Board made on 13 January 1995 to refuse the grant of permission for container trailer/tractor parking and use of containers for storage with associated office and storage uses on Lot No. 2741 RP in DD 124, Tong Yan San Tsuen, New Territories ("the site").

The site

2. The site is situated in the midst of a large piece of woodland to the south of the Yuen Long Highway. Access to the site is from Castle Peak Road, via Tai

Kwan Tsuen Road and an unnamed village road which runs under the elevated section of the Yuen Long Highway. The surrounding area is predominately rural in nature. The area to the north of the site on the opposite side of the Yuen Long Highway, bounded by Castle Peak Road, Hung Tin Road and the Yuen Long Highway, is mainly residential. Residential developments here include Tan Kwai Tsuen, Osmanthus Garden and Meadowlands. In time, this area is expected to grow into a major residential area.

- 2.1. The site falls within the "Unspecified Use" area on the draft Tong Yan San Tsuen Development Permission Area Plan No. DPA/YL-TYST/2, gazetted on 13 June 1993.
- 2.2. The site is now within the "Green Belt" zone on the draft Tong Yan San Tsuen Outline Zoning Plan No. S/YL-TYST/1, gazetted on 14 June 1996.

Section 17 application for review

3. The Appellant's application, under Section 17 of the Town Planning Ordinance, for a review of the 13 January 1995 decision of the Rural and New Town Planning Committee was rejected by the Town Planning Board on 13 October 1995 on the grounds that:

- 3.1. the proposed development is not in line with the planning intention of the area, which is for a comprehensive improvement and retention of the existing residential communities through physical upgrading, and local environmental improvement. No strong justification was included in the application to merit a departure from the planning intention;
- 3.2. the proposed development is in-compatible with existing developments in the surrounding area, which are rural in character;
- 3.3. there is insufficient information in the application to demonstrate that the proposed development will not have any significant visual, noise and drainage impact on the surrounding area; and
- 3.4. there is insufficient information in the application on vehicular access arrangement, traffic generation,

parking space provision and vehicular manoeuvring spaces.

Prosecution

4. The Appellant is now being prosecuted for an offence relating to the unauthorised development of the site. The hearing of the prosecution has been adjourned pending the result of this appeal. This prosecution has had no bearing on our decision.

The Appellant's grounds of appeal

5. The grounds of appeal put forward by the Appellant are that:
- 5.1. they can beautify the land and make it compatible with the rural land use of the surrounding area.
 - 5.2. the application complies with traffic requirements.
 - 5.3. the application has no adverse drainage impact.
 - 5.4. the proposed development will improve the surrounding environment and;
 - 5.5. since the application will improve the surrounding environment, it complies with the planning intention for the area.

The Appellant's argument

6. The Appellant was represented at the hearing by its director, Mr Leung Yee Tok. The argument of the Appellant was :
- 6.1. With the opening of new roads between Yuen Long and Tuen Mun, the number of vehicles using the Castle Peak Road section between Yuen Long and Tuen Mun has been greatly reduced and the traffic flow is now very smooth.
 - 6.2. Tan Kwai Tsuen Road is a 1 kilometre long road with only a few vehicles using it. There are only a few low density residential developments located on both sides of the road and the traffic flow along the road is low.

- 6.3. As vehicles gain access to the site via Castle Peak Road and Tan Kwai Tsuen Road there will be no traffic congestion if permission for the proposed development is granted.
- 6.4. The unnamed village road leading to the site from Tan Kwai Tsuen Road is about 100 metres in length. Admittedly the early section of the road is only suitable for small vans as the width of the road is only 10 feet. Later on, the road widens to about 13 feet and can be used by large lorries, or 20 feet container trucks. The road then widens to about 15 feet, and later to its maximum width of more than 20 feet. From that point on, even a 40 feet container truck can travel on this road.
- 6.5. The nearby environment of the site and its landscape are not as pleasing as that in other rural areas. To the side and the back of the site is a graveyard. Though the nearby residents are used to it, its presence still makes them feel a little uneasy. If the site is left waste, the atmosphere will be more horrifying. If it is used for parking vehicles, container tractors and trailers, and storing goods in containers, the atmosphere of the surrounding environment will be more lively. This will be warmly welcomed by the residents.
- 6.6. If the environment is improved by the Appellant planting trees and flowers, the rural nature of the landscape surrounding the site will not be destroyed, but will be improved.
- 6.7. The rural environment of the New Territories has changed with time. Before the 1960's, the rural areas of the New Territories were mostly used for agriculture and farms. In the 1970's, uncultivated land gradually appeared and soon afterwards most of the agricultural land in the New Territories lay to waste. In the 1980s, the use of much uncultivated land changed and land in the New Territories became better used. The grant of permission will cause no damage to the environment and landscape. If permission is granted the Appellant is committed to planting not less than 100 trees on the site. With this afforestation, the Appellant can provide better

protection for the environment and create a more pleasant scene than that of uncultivated land.

- 6.8. Hong Kong needs the proposed development of the site to backup its commercial and transportation activities.

The Respondent's objections

7. The objections of the Respondent are that:

- 7.1. The proposed development is not in line with planning intention for the area.

- 7.1.2. The planning intention of the draft Tong Yan San Tsuen Development Permission Area Plan for the area in which the site is situated is, primarily, to encourage the comprehensive improvement and retention of the existing residential communities through physical upgrading and local environmental improvement. The proposed development is industrial in nature and will have various adverse environmental impacts, such as noise pollution, air pollution, visual intrusion to adjacent residential dwellings and drainage problem. This is not in line with the planning intention of upgrading the area. If the appeal is allowed, the proposed development will cause degradation to the area.

- 7.1.3. It is the specific intention of the Government to contain the rapid and uncontrollable proliferation of open storage uses, particularly along Castle Peak Road and Tan Kwai Tsuen Road which, in the past, have led to the degradation of the environment.

- 7.1.4 Other suspected unauthorised developments and unauthorised open storage uses near to Tan Kwai Tsuen are currently subject to investigation and enforcement action by the Planning Authority.

- 7.2. The proposed development is incompatible with the surrounding land uses.
 - 7.2.1. The location of the site was referred to at the hearing: the proposed development is neither compatible with the surrounding land uses, nor the residential nature of the surrounding area.
- 7.3. The Appellant has provided insufficient information on the visual, noise and drainage impacts of the proposed development.
 - 7.3. 1. Under the Explanatory Statement to the Draft Development Permission Area Plan all applicants must demonstrate that their proposals will either have an insignificant adverse impact on the environment, traffic and drainage of the area, or that appropriate measures will be taken by the Appellant to minimise such impacts.
 - 7.3.2. The proposed development will cause visual intrusion to the adjacent residential dwellings. Fencing to a height of 1.5 metres, proposed by the Appellant, is insufficient to address the problem and fencing on one side only is inadequate. The Appellant has put forward no other mitigation measures.
 - 7.3.3. The movement into and out of the site by heavy vehicles will cause noise pollution in the surrounding area, especially the nearby residential neighbourhood. The Appellant has not put forward any mitigation measures.
 - 7.3.4. The Appellant has failed to demonstrate that the proposed development will not cause an increase in the drainage susceptibility of the surrounding area.
- 7.4. The proposed development will have an adverse traffic impact.

- 7.4.1. As stated earlier, access to the Site is from Castle Peak Road, via Tan Kwai Tsuen Road and an unnamed village road.
- 7.4.2. The Appellant has provided insufficient information on how much traffic will be generated as a result of the proposed development. For example, the Appellant has not shown the number of parking spaces for private cars, lorries, light goods vehicles and container trailers which they propose to place in the proposed development.
- 7.4.3. Neither has the Appellant provided sufficient information on its proposed vehicular access arrangement. The Appellant has not demonstrated that there is adequate vehicle manoeuvring space along the access roads to the site.
- 7.4.4. The Site is not served by a proper access road. The existing unnamed village road is considered to be highly unsuitable for use by heavy vehicles and particularly by heavy container tractors and trailers. This village road is approximately 430 metres in length and is a narrow, single track, unpaved road. Depending on which section of the road is measured, it varies from 3 to 5 metres in width.
- 7.4.5. The village road does not comply with the standards set out in the Transport Planning and Design Manual, issued by the Transport Department. According to this manual, a standard single track access road should satisfy a number of requirements relating to curve radius, sightlines and the provision of footpaths, and passing bays. The village road falls far below these standards. The problems of inadequate curve radius, sightlines, footpaths and passing bays create severe inherent dangers to all road users, including

heavy vehicle drivers. There are no current plans for the widening of this village road.

7.4.6. Neither does the village road comply with the requirements of items (c), (f) and (g) of the Town Planning Board's Guidelines for Application for Open Storage and Port Back Up uses - the general planning criteria for container lorry park applications; these are:

- (c) planning permission should not be granted for traffic generating activities such as container tractor/trailer parks where the site has to be accessed by local roads adjoining sensitive receivers,
- (f) port back-up uses such as container tractor/trailer parks which generate the highest traffic per unit area should have good access to the strategic road network, or be accessed by means of purpose built roads,
- (g) Traffic Impact Assessment (TIA) should be carried out for those port back up and open storage uses generating substantial volumes of traffic. TIA for sites served by local roads would need to demonstrate that traffic does not interfere with sensitive receivers, that traffic volumes do not exceed the capacity of the local road network or that proposed mitigation measures such as junction improvements are practical and effective. Sites accessed by unpaved tracks should not be considered for port back-up uses.

Statutory Framework

8. It is helpful to set out the legal framework under which this appeal is heard and under which we act.

- 8.1. The Town Planning Board is empowered to undertake the preparation of draft development permission area plans. (*Section 3(1)(b) of the Town Planning Ordinance*)
- 8.2. In any draft plan prepared under Section 3(1)(b) of the Town Planning Ordinance, the Town Planning Board shall designate any area of Hong Kong, as directed by the Governor (now the Chief Executive), as a development permission area. (*Section 20(1) of the Town Planning Ordinance*)
- 8.3. A draft development permission area plan, whether or not it becomes an approved plan, is effective for a period of 3 years after notice of the draft plan is first published in the Gazette. (*Section 20(5) of the Town Planning Ordinance*)
- 8.4. A draft development permission area plan ceases to be effective if replaced by a draft plan for the lay-out of such areas prepared under Section 3(1)(a) of the Ordinance. (*Section 20(6) of the Town Planning Ordinance*)
- 8.5. The Draft Tong Yan San Tsuen Development Permission Area Plan for the area in which the site is situated was gazetted on 18 June 1993. The Draft Tong Yan San Tsuen Outline Zoning Plan was gazetted on 14 June 1996.
- 8.6. The Appellant made its application, under Section 16 of the Ordinance, for permission to carry out the proposed development on 26 November, 1994.
- 8.7. The Town Planning Board may grant permission for an application under Section 16 only to the extent shown and provided for, and specified, in the plan. (*Section 16(4) of the Town Planning Ordinance*) The draft plan in existence at the time of the Section 16 application was the Draft Tong Yan San Tsuen Development Permission Area Plan. The Town Planning Board on 13 October 1995, in deciding to refuse the application on

review, based its decision on the draft development permission area plan.

- 8.8. The Town Planning Appeal Board should determine the appeal under the applicable draft plan at the time of the Section 16 application, not the plan current at the time of the hearing. (*Section 20(6A) of the Town Planning Ordinance*) Notwithstanding that, the Town Planning Appeal Board may take the Draft Tong Yan San Tsuen Outline Zoning Plan into account as providing relevant and persuasive information on the current planning intention of the area.
- 8.9. The Town Planning Appeal Board, after hearing from the parties, can adjourn to reach their decision and can confirm, reverse or vary the decision of the Town Planning Board and can award costs. (*Section 17B(8) of the Town Planning Ordinance*)

Decision and reasons

9. Unanimously, we have decided to dismiss the appeal and confirm the decision of the Town Planning Board. Our reasons are:

- 9.1. The application is neither in line with the planning intention of the draft development permission area plan, nor the land uses of the surrounding area. We endorse the policy behind items (c), (f) and (g) of the Town Planning Board's Guidelines for Application for Open Storage and Port Back Up uses set out in paragraph 7.4.6. of this decision.
- 9.2. The Appellant failed to demonstrate that it has any firm plans for parking arrangements at the site and how vehicles, of all types, are to move about the site.
- 9.3. The Appellant failed to provide us with sufficient information on to the environmental impact of the proposed development on the surrounding area. The only proposal put forward by the Appellant to ameliorate the adverse environmental impact was that they would plant a large number of trees. Although this may reduce some of the visual blight the proposed

development would cause, it would only marginally improve the surroundings.

9.4. Mr Leung Yee Tok, for the Appellant, admitted that he had not taken advice from a civil engineer, or similarly qualified person, on the proposed development generally and, in particular, on the effect the paving of the site would have on the drainage of the surrounding area. Mr Leung Yee Tok admitted that, whether the site was paved or not, there would be some impact on the drainage system. In particular, when asked whether he knew of the risk of increased surface run-off if the site was paved? he referred to the risk of increased flooding if the site was unpaved. Despite his awareness of a possible drainage problem, he said he had not addressed the matter because the application did not relate to drainage. To us, this casts doubt on the Appellant's ability to manage the site efficiently.

9.5. We are particularly concerned about the adverse effect the proposed development would have on the roads leading to the site.

9.5. 1. Mr Wong Wai Kwong, Traffic Engineer of the Transport Department who gave evidence before us, said he had visited the site and found that there was only one properly constructed passing bay on the unnamed village road leading to the Site. That passing bay was only suitable for private cars, not heavy container tractors and trailers. Mr Leung Yee Tok, for the Appellant, disagreed with Mr Wong Wai Kwong and claimed that there are effectively three passing bays suitable for such container vehicles on the village road. We are not persuaded that this is the case, but even if were, the number of passing bays still fall short of the standard minimum requirement; which, according to Mr Wong Wai Kwong, is four.

9.5.2. Mr Wong Wai-kwong, in his evidence, referred to four locations on the village road which he identified as potentially dangerous

because of inadequate curve radii, sightlines and footpaths. To demonstrate his point he referred to one of the photographs produced at the hearing which shows pedestrians waiting at the roadside during the passage of an oncoming lorry. This lorry is seen to occupy nearly the whole width of the road. Although Mr Leung Yee Tok submitted in evidence a letter signed by representatives of eight households living along Tan Kwai Tsuen Road saying there had never been any accident along the road, this does not mean that there are no potential hazards posed by an increased flow of large container vehicles and trailers along the village road.

9.5.3. Further, the increase in the number of heavy vehicles passing along Tan Kwai Tsuen Road, which the grant of the application will undoubtedly cause, will increase the risk of potential hazards to other users of that road. This is especially so because there are several schools and a kindergarten situated along, or near to, that road. Mr Raymond Wong, the District Planning Officer for Tuen Mun and Yuen Long and the Town Planning Board's witness at the hearing, said that, according to the 1996 Bycensus, the number of people living in the area bounded by Castle Peak Road, Hung Tin Road and Yuen Long Highway is 4,200 and is expected to grow to 17,900 on full development of the area. This means that the potential number of users of Tan Kwai Tsuen Road is far more than merely the members of the eight households whose representatives signed the letter produced on behalf of the Appellant.

9.5.4. The Appellant was unable to put forward any measures to deal with any of these traffic problems.

Costs

10. We make no order for costs.