

Town Planning Appeal No. 16 of
1995

IN THE MATTER of the Town
Planning Ordinance Chapter 131

and

IN THE MATTER of an Appeal
under Section 17B by Weltgeist
Surveyors Limited on behalf of Mr
LEE Chi-chiu, Alexander

Date of hearing : 21st March 1996

Date of decision : 12th April 1996

Panel : Mr Robert C. Tang Q.C., J.P. (Chairman)
Mrs Alice Piera Lam O.B.E., J.P.
Mr Stephen Lau Man-lung, O.B.E., J.P.
Mr Lee Man-ban, M.B.E., J.P.
Mr Fan Sai-yee

DECISION

This is an appeal by Arzignano Leather Co. Ltd. against a refusal by the Town Planning Board ("the Board") to permit the erection of 2 two-storey buildings to be used for storage of gloves and as office. The building will be 6.1 m in height. The site coverage will be 25% and the total built over area will be 374.33m² over an area of 1,497.3m².

2. The Site falls within a "Residential (group D)" ("R(D)") zone under the draft Kam Tin OZP No.S/YL-KTN/1. The OZP Plan was gazetted on 17th June 1994. The appellant has objected to the zoning on 3rd August 1994 and requested that the Site be re-zoned. The objection will be dealt with in June this year.

3. There was some argument over whether the appellant's application is for permission to use the Site for the storage/offices for three years or one year.

4. It appears from the s.17 review papers that the Town Planning Board was under the impression that the application was for a term of three years.

5. Mrs Jessie Chu who appeared for the appellant before us, also appeared before the Board on review. According to her, the Board had misunderstood her position. The appellant's application was for permission to use the Site for the storage of gloves and for offices for one year. This is important because the proposed user does not fall within column (1) or column (2) and the application has to be considered under para.(vi)(b) of the Notes which reads

"temporary use or development of any land or building not exceeding a period of 12 months requires permission of the Town Planning Board. Notwithstanding that the use or development is not provided for in terms of the plan, the Town Planning Board may grant, with or without conditions, or refuse to grant permission"

6. Mr Wingrad, who appeared for the Town Planning Board, objected to what he described as a change of ground.

7. However, we decided that it was right for us to deal with this appeal on the basis that it was an application for permission to use the Sites for storage/office for a period not exceeding 12 months. We do not have the power to remit the matter to the Board and felt that in all the circumstances, we should deal with the appeal the best we could.

8. The only witness on behalf of the appellant is Mr Lee Chi-chiu, Alexander ("Mr Lee"). Mr Lee and his co-owners purchased the Site at a time when it had a short term waiver for the operation of a bean curd factory.

9. On 16th April 1991, building plans for office/storage of gloves were submitted to the Buildings and Lands Department which were rejected on the ground that, amongst other things, the proposed development had not obtained planning permission from the Board.

10. At that time, the site was covered by the draft Kam Tin North Development Permission Area Plan No.DPA/YL-KTN/1, which was gazetted on 12th July 1991.

11. On 1st August 1991, a s.16 application to use the site for storage/office was made by Mr Lee.

12. On 20th September 1991, the application was approved by the Rural and New Town Planning Committee (RNTPC) of the Town Planning Board subject to various conditions. The duration of the permission was three years up to 20th September 1994.

13. According to Mr Lee, there followed frustrating attempts to comply with the conditions. The matter was not helped by the fact that there were illegal structures on the Site which had to be removed. He was unable to satisfy either one Government department or another. And it was not until 31st October 1994 that he managed to obtain a short term waiver for office/storage use (but with retrospective effect to 20th August 1992). He also caused the illegal structures on the Sites to be demolished.

14. In the meantime, on 17th June 1994, the draft Kam Tin North Outline Zoning Plan No.S/YL-KTN/1 was gazetted.

15. On 3rd August 1994, Mr Lee and his co-owners objected to the zoning of the present site as residential group D.

16. On 5th September 1994, a s.16 application was made by Mr Lee for temporary permission for storage of gloves and office for a period of one year. It will entail the building of 2 buildings on the site. However, as Mr Lee frankly admitted, a permission for only 1 year would not make it commercially viable for such investments to be made.

17. The application was rejected on 4th November 1994.

18. A s.17 review was made on 29th December 1994 and it was rejected on 5th January 1995.

19. Mr Paul Ng, who gave evidence on behalf of the Town Planning Board, said that the power under para.(vi)(b) of the General Notes to allow temporary uses is intended to cover genuine temporary uses, for example, temporary showrooms, show flats and users in relation to festivals or fairs.

20. We have no doubt that, generally speaking, Mr Ng must be right. But we do not believe para.(vi)(b) is confined to such users.

21. Had the owners been able to comply with the conditions imposed on them in 1991 and are now applying to us for temporary permission to continue such use until the disposal of their objection to the zoning under the OZP, we would have viewed the application sympathetically. But that is not the position. There are no structures on the Site. Permission to use the Site for 12 months with no guarantee that it will be renewed will not really help the appellants. It is difficult to believe the appellants would be prepared to incur the expenditure of putting up substantial structures on the Site when they have no more than a year's permission. The appellants' hope must lay in their objection to the new zoning.

22. Mr Ng reminded us of the planning intention for this area which has been zoned R(D) in the OZP. Of course, we must have regard to the planning intention which is to improve and to upgrade the existing temporary domestic accommodation within the zoned area.

23. As we have said earlier, the intended use does not fall within either column (1) or (2) and we have no power to permit such user except as a temporary measure under para.(vi)(b). We are not prepared to grant permission under para.(vi)(b) because we do not believe the intended use which will involve the erection of 2 permanent buildings on Site falls within the true intent of para.(vi)(b).

24. Mrs Chu also sought to argue before us that the storage/office user is covered by para.iii of the General Notes which reads

"A development permitted under an earlier draft or approved plan including interim development permission area plan/development permission area plan for the area and undertaken during the effective period of that plan is always permitted under this Plan. Any alteration and/or modification to the completed development, unless permitted in terms of the Plan, requires permission of the Town Planning Board. Notwithstanding that the use or development is not provided for in terms of the Plan, the Town Planning Board may grant, with or without conditions, or refuse to grant permission to the development"

25. However, if she is right, and the intended user 'is always permitted under this plan" no s.16 application is necessary. That being the case, there could be no appeal to us under s.17B. We are not the correct tribunal for the determination of this issue.

26. The appeal is dismissed.